


MEMORANDUM

CITY/BOROUGH OF JUNEAU
155 South Seward Street, Juneau, Alaska 99801

DATE: November 4, 2013

TO: Board of Adjustment

FROM: Chrissy A. McNally, Planner 
Community Development Department

FILE NO.: VAR2013 0019

PROPOSAL: Variance request for AKDOT to conduct road rehabilitation along 6 miles of North Douglas Highway within the 330 foot required setback of three eagle nests.

GENERAL INFORMATION

Applicant: State of Alaska Department of Transportation & Public Facilities

Property Owner: State of Alaska Department of Transportation & Public Facilities

Property Address: Juneau-Douglas Bridge roundabout to Fish Creek Road

Legal Description: North Douglas Highway

Parcel Code Number: Right-of-way

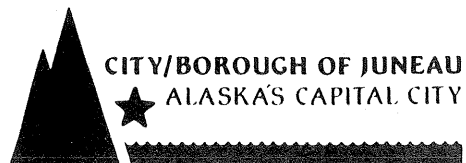
Site Size: 6 miles in length

Zoning: Minor Arterial

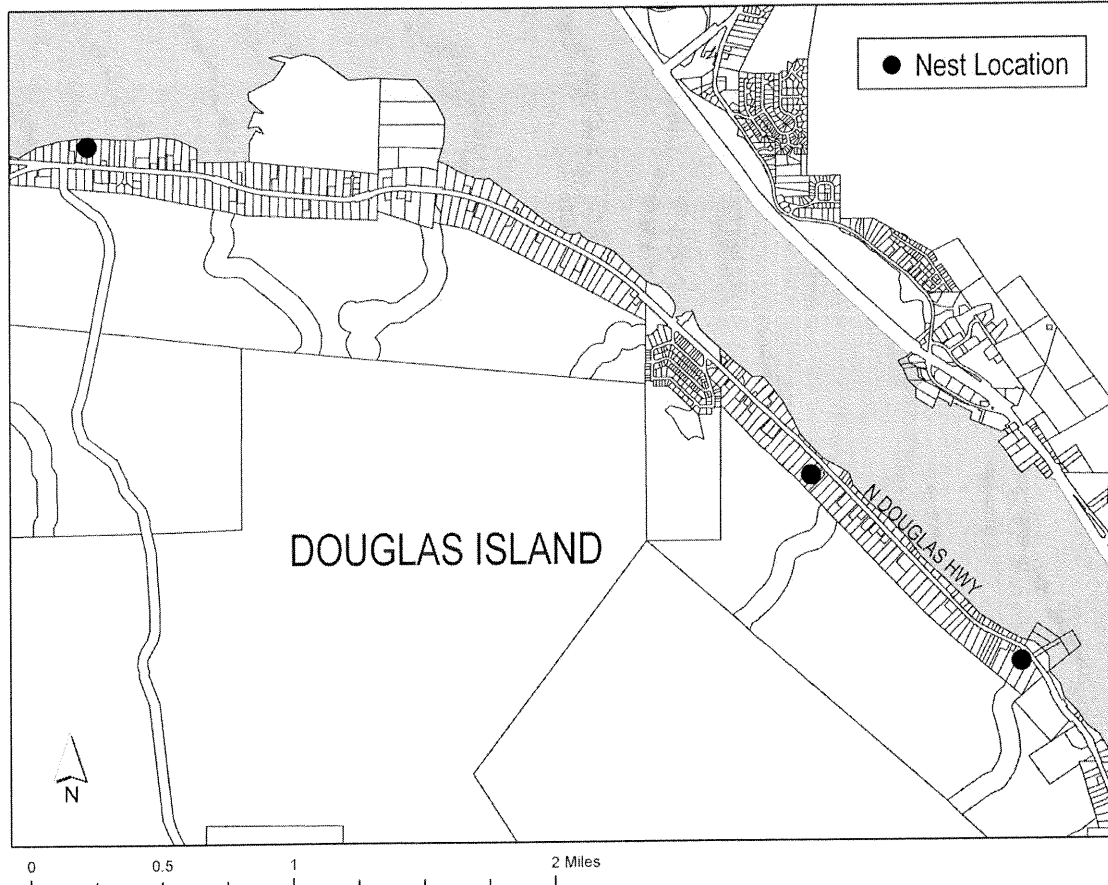
Utilities: N/A

Access: North Douglas Highway

Existing Land Use: North Douglas Right-of-way



VICINITY MAP



ATTACHMENTS

- Attachment A Development Permit application
- Attachment B Variance application
- Attachment C Vicinity map
- Attachment D Applicant aerial survey
- Attachment E Aerial survey table
- Attachment F USFWS Eagle Take Permit

PROJECT DESCRIPTION

The applicant, Alaska Department of Transportation and Public Facilities (AKDOT&PF), is proposing to rehabilitate a six-mile portion of roadway between the Juneau-Douglas Bridge roundabout and Fish Creek Road. This project received local consistency review through CSP2013 0018. This stretch of roadway is scheduled for preventative maintenance of its road surface as well as replacement of guardrails and signage. AKDOT&PF also proposes drainage

improvements in five areas of the project. Construction is expected to begin in spring 2014 and be completed by the end of summer 2014.

The proposed development requires a Variance for construction within 330 feet eagle nests during the construction period. The CBJ Land Use Code states the following:

49.70.310 Habitat

- (a) *Development in the following areas is prohibited:*
- (2) *Within 330 feet of an eagle nest on public land;*
 - (3) *Within 50 feet of an eagle nest on private land, provided that there shall be no construction within 330 feet of such nest between March 1 and August 31 if it contains actively nesting eagles;*

AKDOT&PF conducted aerial site surveys in May 2013 to identify eagle nests along the project area. Nests #48, #2555, and #2556 are within 330 feet of the proposed construction area (see Attachment D). Of the three eagle nests observed to be within 330 feet of the project site, nest #2555 was observed to be active with an incubating adult (see Attachment D). The nest is approximately 300 to 330 feet from the project site and within 660 feet of an active gravel pit. Nest #2556 was also observed to be active with an incubating adult. The nest is approximately 250 feet to 300 feet from the project site. This nest is within the flight path of Era Helicopters that operates flightseeing tours May through September.

The third, nest #48, was previously identified, but was not located during AKDOT&PF's May 2013 aerial survey and June 2013 site visit. If the nest is still in the location once identified, it is immediately south of the entrance to Fish Creek Road on the shore side.

BACKGROUND

CBJ has traditionally relied on the expertise of the Juneau USFWS field office to evaluate and condition, if necessary, projects within the 330 foot eagle nest buffer. The 2008 Comprehensive Plan acknowledges this relationship under POLICY 7.14.IA4;

“Request that the USFWS evaluate the Bald eagle in the CBJ urban area in terms of population, behavior and tolerance of human presence and activity. Consider any new suggestions from USFWS for enhancing the presence and health of eagles in the urban area.”

AKDOT&PF has received an Eagle Take Permit from the U.S. Fish and Wildlife Service (USFWS) which authorizes disturbance of eagles along the project route (see Attachment F). The application materials required by USFWS provide CBJ with appropriate information to provide a thorough review of the proposed variance. While the variance is not contingent upon receiving an approved permit from USFWS the CBJ variance decision is based upon the design set forth in the USFWS Eagle Take Permit application material. Staff is therefore considering that material as the material on which it can judge if there are sufficient mitigation measures and protective measures in place by AKDOT&PF to meet the variance standards of Title 49.

While bald eagles were removed from the Endangered Species list in 2007, the Bald and Golden Eagle Protection Act (Eagle Act), first enacted in 1940, ensures their continued preservation. In September 2009, USFWS instituted two new permits to allow limited incidental take or disturbance of eagles through public safety activities or other development projects. The Eagle Act defines disturbance as;

“to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”

If an applicant receives a permit for disturbance, any activity related to the approved project description is allowed except for cutting the tree or killing the eagle, which would require a separate permit for eagle take. Eagle take permits are granted only in unavoidable or highly unusual circumstances. The USFWS permit requires nesting surveys to be conducted annually, prior to construction, to identify all eagle nests within 660 feet of the proposed construction activities. USDOT conducted an aerial survey in May 2013 (see Attachment D). The permit also limits vegetative clearing within a 330' foot radius of the nest site. In some instances, the applicant is required to submit an annual monitoring report for three years following the completion of the activity.

USFWS eagle permits are voluntary, not mandatory. However, issuance of an eagle permit provides the applicant with a guarantee against federal prosecution under the Eagle Act if the project results in disturbance or take. It's up to the applicant to determine whether the risk of disturbance from the project is worth the time and cost of obtaining the federal permit. If an applicant has obtained an eagle permit from USFWS through the federal permit process, CBJ will defer to the USFWS recommendation. CBJ will not, however, repeat federal permit conditions on CBJ authorizations. If the applicant has not obtained a USFWS permit, since the permit is voluntary, CBJ will seek as much information as possible from USFWS about the sensitivity of the particular nest and what modifications may be needed to ensure protection.

The first phase of the North Douglas Highway rehabilitation occurred during the summer of 2011 and extended from Fish Creek Road to the end of North Douglas Highway. This project received a variance for construction within 330 feet of nine eagle nests.

ANALYSIS

Variance Requirements

Under CBJ §49.20.250 where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of Title 49, the Board of Adjustment may grant a Variance in harmony with the general purpose and intent of Title 49. A Variance may vary any requirement or regulation of Title 49 concerning dimensional and

other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A Variance may be granted after the prescribed hearing and after the Board of Adjustment has determined:

- 1. That the relaxation applied for or a lesser relaxation specified by the Board of Adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.***

The relaxation applied for would give substantial relief to the property owner by allowing maintenance of the North Douglas Highway. A lesser relaxation is not practical because the maintenance must take place within 330' of existing eagle nests, and failing to maintain the roadway would result in a public safety hazard. The variances would be consistent with justice to other property owners along the highway by allowing required maintenance to provide safe access to their property.

This criterion is met.

- 2. That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.***

The intent of Title 49 is established in Section 49.05.100 Purpose and Intent. Those sections, which are applicable to the requested variance, are as follows:

- 1) To achieve the goals and objectives and implement the policies of the Juneau Comprehensive Plan and the coastal management program;
- 2) To ensure that future growth and development in the city and borough is in accord with the values of its residents;
- 3) To identify and secure, for present and future residences, the beneficial impacts of growth while minimizing the negative impacts;
- 4) To ensure that future growth is of the appropriate type, design, and location, and is served by a proper range of public services and facilities such as water, sewage, and electrical distribution systems, transportation, schools, parks and other public requirements, and in general to promote public health, safety and general welfare;
- 6) To recognize the economic value of land and encourage its proper and beneficial use.

A grant of the variance would allow construction to proceed within the summer building season while minimizing disturbance to eagles by following the requirements of the USFWS Eagle Permit, which includes limited vegetation removal, eagle nest monitoring, and reporting requirements. The variance is therefore in accordance with intent numbers 1, 2, 3, 4, and 6.

This criterion is met.

- 3. That the authorization of the Variance will not injure nearby property.***

Construction within the eagle nest setback would not injure nearby property. All work would be within the right-of-way. While traffic delays can be expected for the duration of the project, they would not be a result of this Variance, nor will the Variance cause further delays.

This criterion is met.

4. *That the Variance does not authorize uses not allowed in the district involved.*

Road construction is allowed in all zoning districts; therefore the Variance does not authorize uses not allowed in the district involved.

This criterion is met.

5. *That compliance with the existing standards would:*

(A) *Unreasonably prevent the owner from using the property for a permissible principal use;*

Highway maintenance is not technically considered a permissible principal use in any zoning district. However, compliance with the standard would unreasonably prevent the owner, AKDOT&PF, from maintaining the North Douglas Highway. Road construction must take place during the warmer months that coincide with the eagle nesting period.

This sub-criterion is not met.

(B) *Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;*

Compliance with the standard would unreasonably prevent the owner, AKDOT&PF, from maintaining the North Douglas Highway. Allowing the highway to fall into disrepair would create a public safety hazard and be detrimental to the amenities, appearance, and features of existing development in the neighborhood of the subject property.

This sub-criterion is met.

(C) *Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive;*

There are no unique physical features along North Douglas Highway between the roundabout and Fish Creek Road. The roadway is mostly flat with only the occasional gradual hill.

This sub-criterion is not met.

or

- (D) *Because of preexisting nonconforming conditions on the subject parcel the grant of the Variance would not result in a net decrease in overall compliance with the Land Use Code, CBJ Title 49, or the building code, CBJ Title 19, or both.***

There are no pre-existing non-conforming conditions within the North Douglas Highway right-of-way.

This sub-criterion is not met.

Criterion 5 is met because sub-criterion 5B is met.

- 6. *That a grant of the Variance would result in more benefits than detriments to the neighborhood.***

A grant of the Variance would allow the six-mile stretch of North Douglas Highway from the Juneau-Douglas Bridge roundabout to Fish Creek Road to be maintained according to current road safety standards, which would provide a significant benefit to the neighborhood. Mitigation measures enforced by the USFWS through the applicant's eagle permit would ensure that detriments to eagle nests and eagle nesting behavior would be minimized to the greatest extent practicable. Therefore the Variance would result in more benefits than detriments to the neighborhood.

This criterion is met.

FINDINGS

- 1. *Is the application for the requested Variance complete?***

Yes. Staff finds the application contains the information necessary to conduct full review of the proposed operations. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.15.

Per CBJ §49.70.900 (b)(3), General Provisions, the Director makes the following Juneau Coastal Management Program consistency determination:

- 2. *Will the proposed development comply with the Juneau Coastal Management Programs?***

Not applicable.

- 3. *Does the variance as requested, meet the criteria of Section 49.20.250, Grounds for Variances?***

Yes. Based on the analysis above, staff finds that the proposal does meet the criteria of CBJ 49.0.250, Grounds for Variances. Specifically, the Variance meets criteria 1, 2, 3, 4, 5B, and 6.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and grant the requested Variance, VAR2012 0019. The Variance permit would allow for rehabilitation and repair of North Douglas Highway from the Douglas Bridge roundabout to Fish Creek Road within 330-feet of three eagle nests.

DEVELOPMENT PERMIT APPLICATION

Project Number <i>VAR 2013 0019</i>	CITY and BOROUGH of JUNEAU	Date Received: <i>8/16/13</i>
Project Name (City Staff to Assign Name)		

INFORMATION	Project Description Resurface North Douglas Highway from the Douglas Roundabout to Fish Creek Road.		
	PROPERTY LOCATION		
	Street Address North Douglas Highway, Roundabout to Fish Crk Rd	City/Zip Juneau/99801	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot)		
	Assessor's Parcel Number(s)		
	LANDOWNER/ LESSEE		
	Property Owner's Name DOT&PF	Contact Person: Jane Gendron	Work Phone: 465-4499
	Mailing Address PO Box 112506, Juneau, AK 99811-2506	Home Phone:	Fax Number:
	E-mail Address jane.gendron@alaska.gov	Other Contact Phone Number(s):	
	LANDOWNER/ LESSEE CONSENT ****Required for Planning Permits, not needed on Building/ Engineering Permits****		
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission. B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.			
X	<u><i>Same</i></u> Landowner/Lessee Signature	_____ Date	
X	_____ Landowner/Lessee Signature	_____ Date	
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.			
APPLICANT If the same as OWNER, write "SAME" and sign and date at X below			
Applicant's Name same	Contact Person:	Work Phone:	
Mailing Address	Home Phone:	Fax Number:	
E-mail Address	Other Contact Phone Number(s):		
X	<u><i>Same</i></u> Applicant's Signature	<u><i>JANE GENDRON</i></u> Date of Application	

OFFICE USE ONLY BELOW THIS LINE

STAFF APPROVALS	<input checked="" type="checkbox"/>	Permit Type	***SIGN	Date Received	Application Number(s)
		Building/Grading Permit			
		City/State Project Review and City Land Action			
		Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)			
		Mining Case (Small, Large, Rural, Extraction, Exploration)			
		Sign Approval (If more than one, fill in all applicable permit #'s)			
		Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)			
		Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)			
	X	Variance Case (De Minimis and all other Variance case types)		<i>8/16/13</i>	<i>VAR 2013 0019</i>
		Wetlands Permits			
	Zone Change Application				
	Other (Describe)				
***Public Notice Sign Form filled out and in the file.					
Comments:				Permit Intake Initials	
_____				<i>Same</i>	

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS
 I:\FORMS\2010 Applications Revised November 2009

VARIANCE APPLICATION

Project Number	Project Name (15 characters)	Case Number <i>VAL20130019</i>	Date Received <i>8/16/13</i>
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TYPE OF VARIANCE REQUESTED:

- | | |
|--|--|
| <input type="checkbox"/> Variance to the Sign Standard (VSG) | <input type="checkbox"/> Variance to Dimensional Standards (VDS) |
| <input type="checkbox"/> Variance to Habitat Setbacks (VHB) | <input type="checkbox"/> Variance to Parking Requirements (VPK) |
| <input checked="" type="checkbox"/> Variance to Setback Requirements (VSB) | |

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

DOT&PF proposes a project to rehabilitate pavement on North Douglas Highway from the Douglas Roundabout to Fish Creek Rd. Activities would include grinding and paving, culvert work, replacement of guardrail and signs, and road striping.

Previous Variance Applications? YES NO Date of Filing: _____

Previous Case Number(s): _____

Was the Variance Granted? YES NO

UNIQUE CHARACTERISTICS OF LAND OR BUILDING(S): _____

None

UTILITIES AVAILABLE: WATER: Public On Site SEWER: Public On Site

WHY WOULD A VARIANCE BE NEEDED FOR THIS PROPERTY REGARDLESS OF THE OWNER?

Bald eagles nest within 330 feet of North Douglas Highway, and project activities would potentially occur within 330 feet of an active bald eagle nest. The eagles are habituated to the high volume of commuter and commercial vehicle traffic on North Douglas Highway, as well as other human activities including residential use, a commercial rock and gravel pit, and a commercial heliport.

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

North Douglas residents would suffer if the main access road to downtown Juneau were allowed to further deteriorate; Juneau residents and visitors who use the highway to access recreational opportunities such as Eaglecrest Ski Area, the North Douglas Boat Launch, and Outer Point trails would also suffer.

For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side.

If you need any assistance filling out this form, please contact the Permit Center at 586-0770.

VARIANCE FEES

	Fees	Check No.	Receipt	Date
Application Fees	\$ <u>400⁰⁰</u>	_____	_____	_____
Adjustment	\$ _____	_____	_____	_____
Total Fee	\$ <u>400⁰⁰</u>	<u>CC</u>	<u>004170</u>	<u>8/16/13</u>

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

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PERMIT CENTER/CDD

TO BE COMPLETED BY THE APPLICANT

Variance Approval Criteria

- 1) *The relaxation applied for or a lesser relaxation specified by the board of adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;*

Relaxation of the CBJ code would give substantial direct relief to the right-of-way (ROW) owner, DOT&PF, to reduce maintenance costs to North Douglas Highway. The indirect benefit of justice delivered to CBJ residents and visitors would be safe access for all users of the road.

- 2) *Relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare preserved;*

The purpose of the project is to not only preserve public safety and welfare, but to improve it. A variance can be granted such that the intent of §49.20.200 is observed. Any eagles in the area are already habituated to human activity, which includes commuter, commercial and industrial vehicle traffic on North Douglas Highway. There would be no direct interference to eagle nests or birds as a result of the project. DOT&PF would adhere to all conditions imposed by USFWS as the federal permitting agency for bald eagle disturbance.

- 3) *The authorization of the variance will not injure nearby property;*

A variance that would allow the project to proceed would not cause injuring to nearby properties because all work would be completed within the DOT&PF ROW.

- 4) *The variance does not authorize uses not allowed in the district involved;*

All project activities would be performed within the scope of normal road maintenance and construction standards.

- 5) *Compliance with the existing standards would:*

(A) *Unreasonably prevent the owner from using the property for a permissible principal use;*
Unreasonably prevent DOT&PF from providing a safe and efficient roadway.

(B) *Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;*
Unreasonably prevent DOT&PF from maintaining safe public access on North Douglas Highway.

(C) *Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive; or*
Not applicable.

(D) *Because of preexisting nonconforming conditions on the subject parcel, the grant of the variance would not result in a net decrease in overall compliance with the land use code, title 49, or the building code, title 19, or both; and*
Preexisting conditions include the presence of three eagle nests within 330 feet of North Douglas Highway. The activities proposed by this project either conform with or do not affect Land Use Code, Title 49, or Building Code 19.

- 6) *A grant of the variance would result in more benefits than detriments to the neighborhood.*

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Attachment B

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Variance Approval Criteria

By granting the variance, Juneau residents and visitors would have the benefit of smoother and safer travel on North Douglas Highway as a result of resurfacing, new signage, road lines, and guardrail.

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AUG 16 Attachment B

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THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Transportation
and Public Facilities

SOUTHEAST REGION
DESIGN & ENGINEERING SERVICES
Preconstruction

6860 Glacier Highway
PO Box 112506
Juneau, Alaska 99811-2506
Main: 907.465.4444
Toll free: 800.575-4540
Fax: 907.465.4414

August 15, 2013

Borough Assembly
City and Borough of Juneau
155 Seward St.
Juneau, AK 99801

RE: North Douglas Highway Rehabilitation Roundabout to Fish Creek Road
Federal/ State Project Number: CM-0959(020)/67531
Subject: Variance Application

To the Borough Assembly:

VAR20130019

Please accept the attached variance application and supporting material regarding a variance for development activities within 330 feet of active bald eagle nests. The Alaska Department of Transportation and Public Facilities (DOT&PF) is proposing to resurface North Douglas Highway between the Douglas Bridge roundabout and Fish Creek Road. Project activities would include guardrail post driving and grind and pave equipment operating within 330 feet of three bald eagle nests. The attached materials give a full description of project location and details, and include a copy of the USF&WS eagle permit application.

Should you have any questions or need additional information, please contact Hilary Lindh at (907) 465-4645 or by e-mail at hilary.lindh@alaska.gov.

Sincerely,

John Barnett
Acting Regional Environmental Manager
DOT&PF Southeast

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Enclosures:

- Variance Application
- Variance Approval Criteria
- Application for USFWS Eagle Permit

"Keep Alaska Moving through service and infrastructure."

Attachment B

Egan Drive Pavement Rehabilitation 10th St to Mendenhall Loop Rd
State #68129/Federal # NH-0932(049)
Application for Bald Eagle Non-Purposeful Take Permit

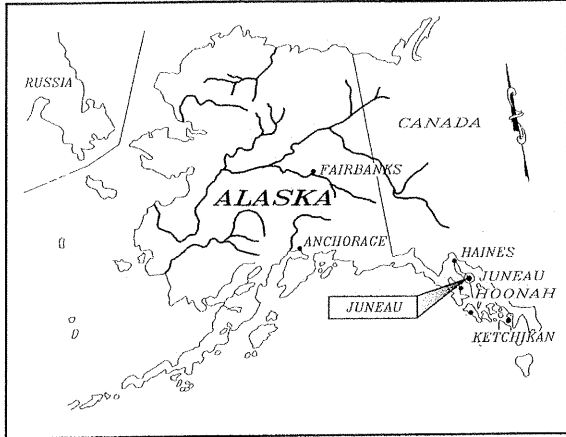
Project Description
Project Area Maps (Location Map and Nest Locations)

Cc without enclosures:

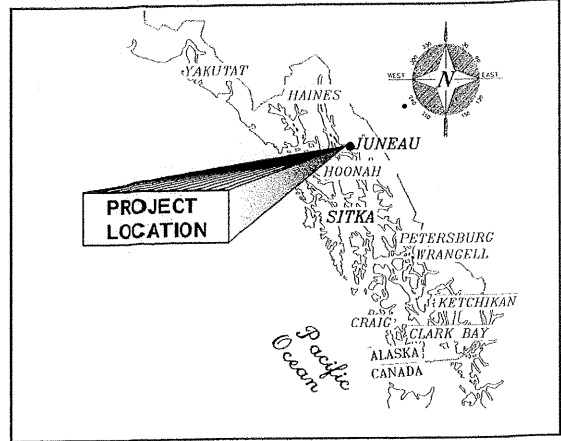
Keith Karpstein, P.E., DOT&PF Project Manager
Amy Sumner, DOT&PF Statewide NEPA Manager
Hilary Lindh, DOT&PF Environmental Analyst

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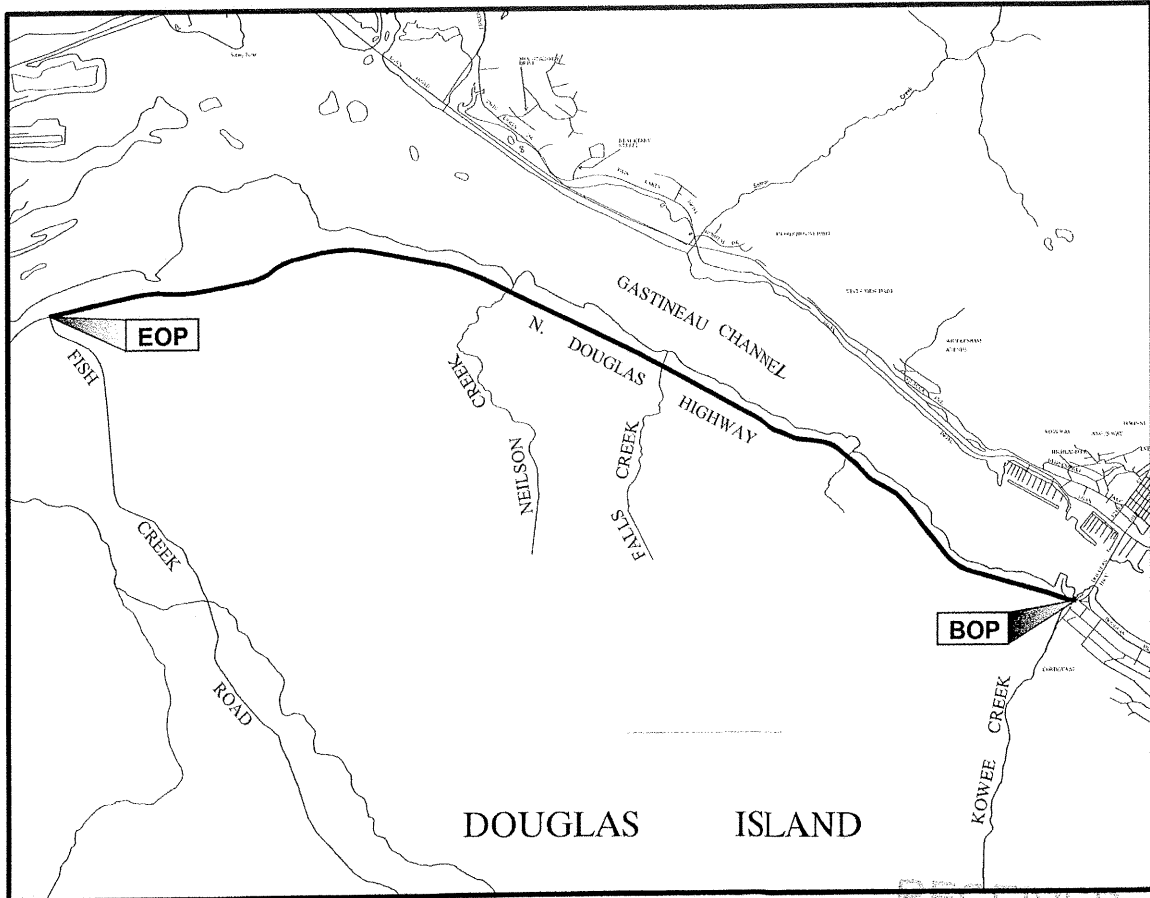
Attachment B



KEY MAP



LOCATION MAP



VICINITY MAP
N. DOUGLAS HWY

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PERMIT CENTER

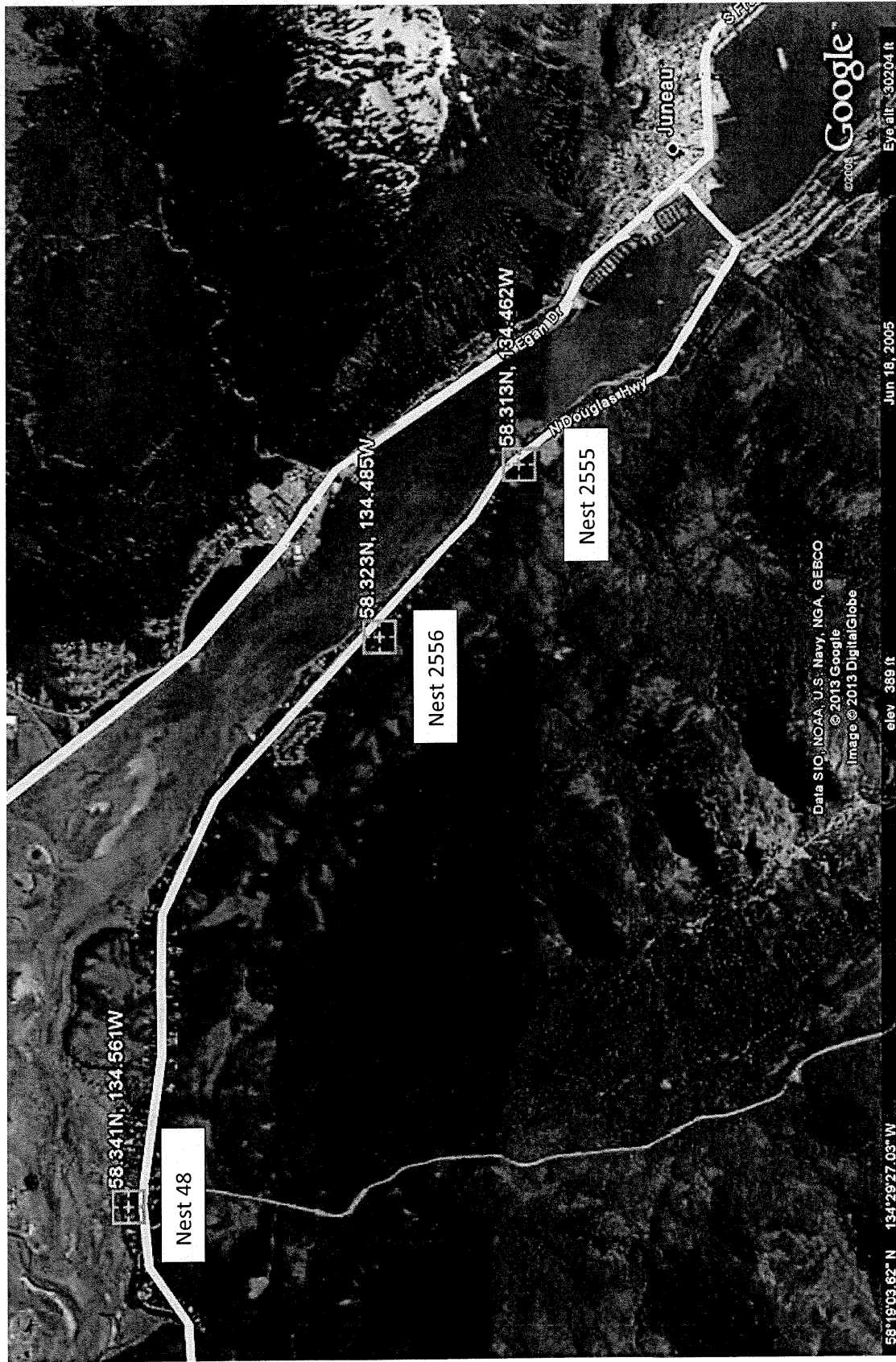
WATER BODIES:
GASTINEAU CHANNEL

KEY AND REGIONAL MAPS

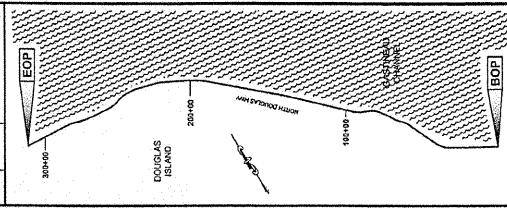
APPLICATION BY:
ALASKA STATE DEPT. OF TRANSPORTATION
AND PUBLIC FACILITIES
SOUTHEAST REGION

JNU N. DOUGLAS PAVEMENT REHABILITATION
ROUNDBABOUT TO FISH CREEK
PROJECT NO. 67531

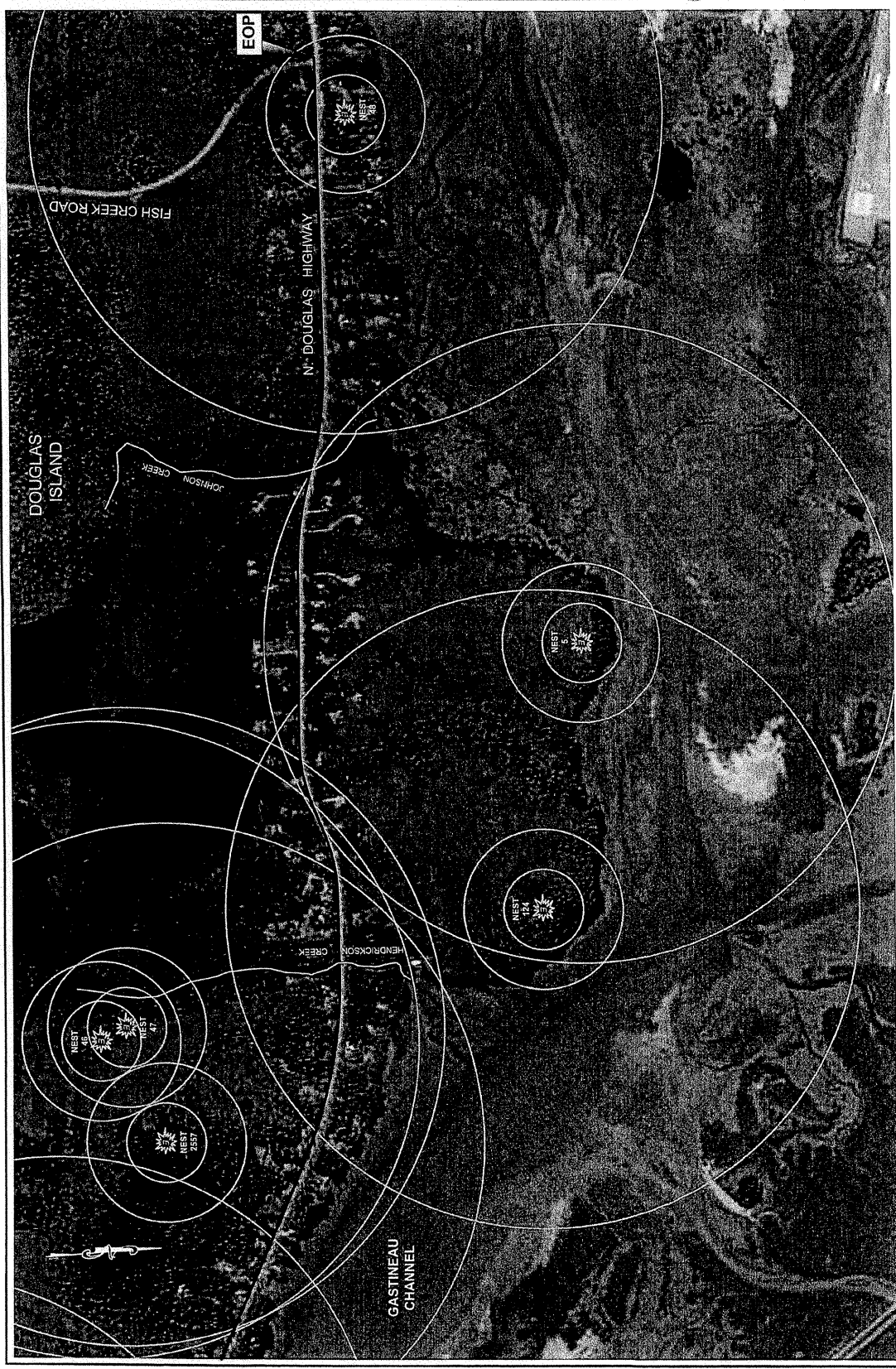
AT: JUNEAU, ALASKA
LOCATED IN: SEC. 12, T41S, R6E,
SEC. 6, 7, 8, 16, 22, T41S, R6E,
JNU B-2 QUAD MAP, COPPER RIVER MERIDIAN
DATE: JUNE 2013



PARTIAL UNITS TO BE EAGLE
 NESTS 67531_04A.DWG
 CRYSTAL REEF, COOK
 INDIAN VILLAGE, JUN 11, 2013 8:58 AM
 ADDRESS: N. DOUGLAS
 ATTACHEMENT NUMBER:
 RECORD OF REVISIONS
 NO. DATE DESCRIPTION
 1. 11/11/13



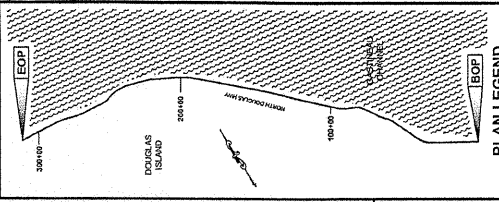
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 DESIGNED BY:
 DRAWN BY:
 STATE OF ALASKA
 DEPARTMENT OF
 TRANSPORTATION
 SOUTH EAST REGION
 JNU N. DOUGLAS PAVEMENT
 ROUNDABOUT TO FISH CREEK
 PROJECT NO. 67531
**EAGLE NEST
 PLAN VIEW**
 PROJECT DESIGNATION:
 67531
 STATE ALASKA
 YEAR 2013
 SHEET NUMBER 4
 TOTAL SHEETS 4



DO NOT SCALE FROM THESE DRAWINGS USE DIMENSIONS

FAIRCHILD INDUSTRIES STORAGE
 10000TH LANE
 GRANTHAM, ALASKA 99540
 FILE # 3 Friday, June 23, 2011 2:26:27 PM
 ADDITIONAL ISSUES

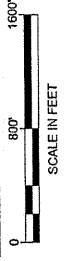
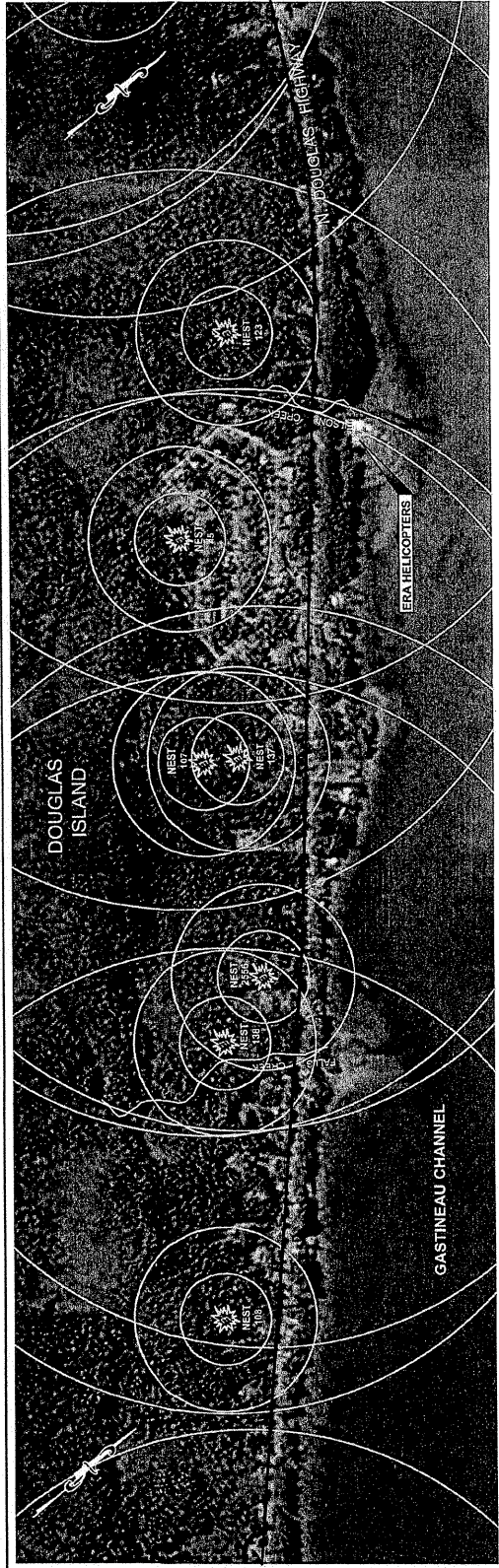
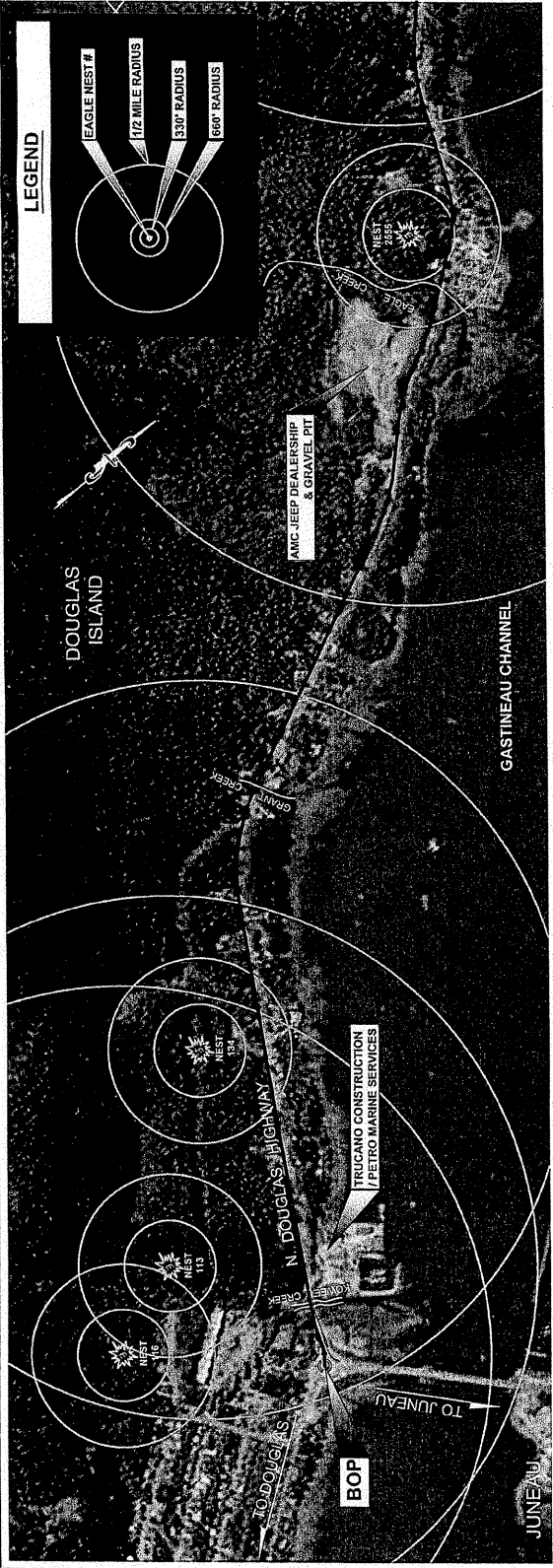
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No.	DATE	
RECORD OF REVISIONS		
No.	DATE	DESCRIPTION



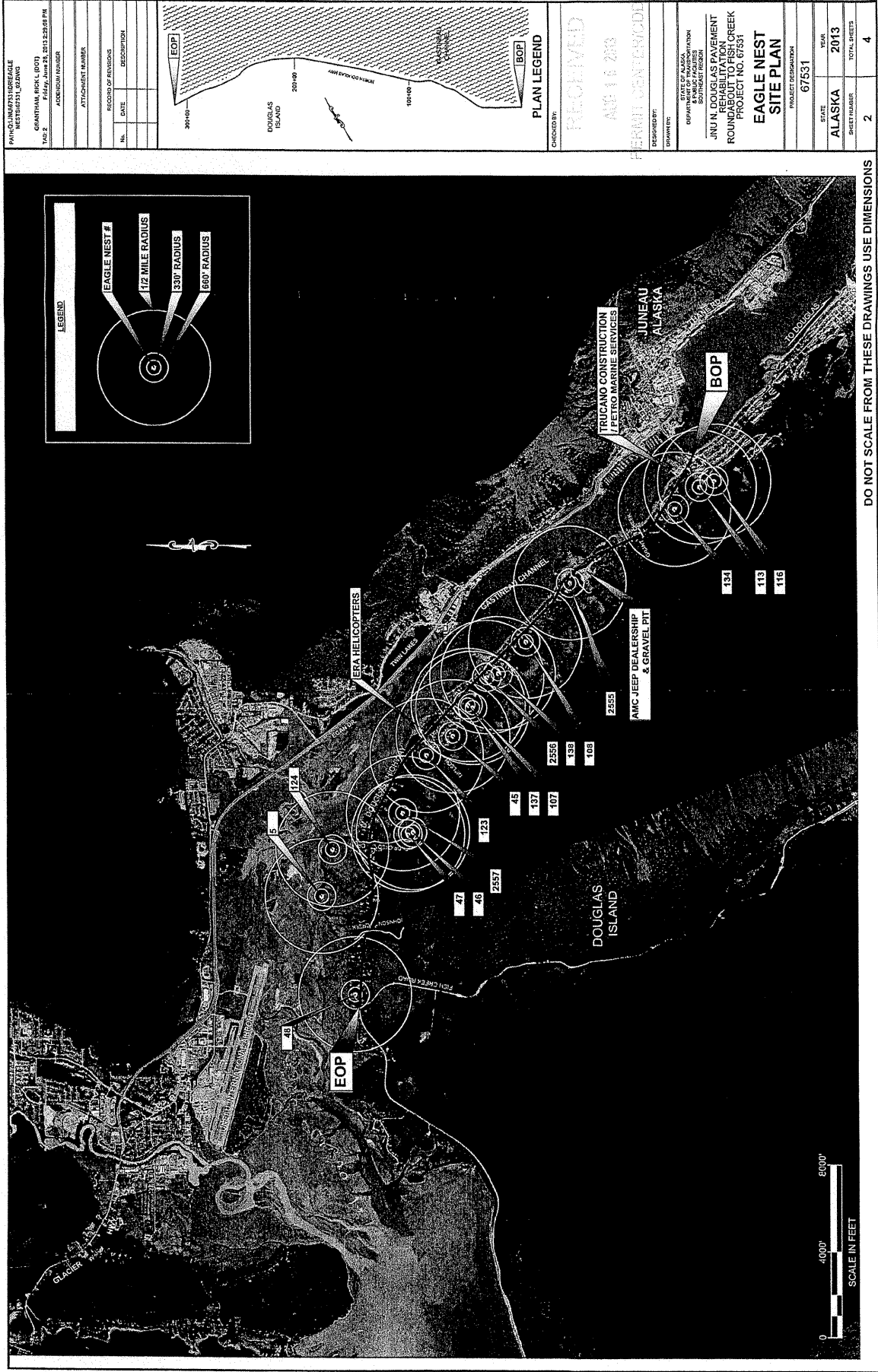
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 PERMIT CENTER (00)

DESIGNED BY:
 DRAWN BY:
 STATE OF ALASKA
 DEPARTMENT OF HIGHWAYS
 & PUBLIC SAFETY
 JUNEAU DOUGLAS PAVEMENT
 REHABILITATION
 ROUNDABOUT TO FISH CREEK
 PROJECT NO. 07551

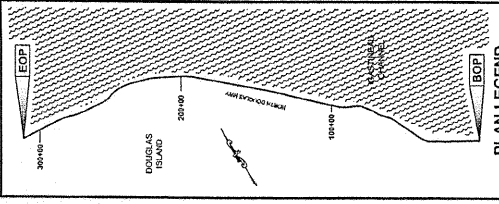
PROJECT IDENTIFICATION	
STATE	YEAR
ALASKA	2013
SHEET NUMBER	TOTAL SHEETS
3	4



DO NOT SCALE FROM THESE DRAWINGS USE DIMENSIONS



PARKLAND UNIVERSITY
 UNIVERSITY OF ALASKA
 GRANTHAM, RICKL (DPT)
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 Ertsey, June 28, 2013 2:28:09 PM
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CHECKED BY: RECEIVED
 APR 16 2013
 DESIGNED BY: FERRARI ENGINEERING
 DRAWN BY: STATE OF ALASKA, JUNEAU
 DEPARTMENT OF PUBLIC UTILITIES
 JUNEAU, ALASKA
 JUNEAU, ALASKA
 ROUNDABOUT CONSTRUCTION
 REHABILITATION
 ROUNDABOUT TO FISH CREEK
 PROJECT NO. 67531
**EAGLE NEST
 SITE PLAN**
 PROJECT IDENTIFICATION
 67531
 SCALE YEAR
 ALASKA 2013
 SHEET NUMBER TOTAL SHEETS
 2 4

DO NOT SCALE FROM THESE DRAWINGS USE DIMENSIONS

Attachment D

Application for Eagle Non-Purposeful Take Permit
 North Douglas Highway Rehabilitation Roundabout to Fish Creek Road
 State #67531/Federal # CM-0959(020)

Table 1. Eagle nests near proposed project activities.

Nest ID #	Location	Activity within 330' radius	Activity between 330' to 660' radius	Activity between 660' to ½ mile radius
48	58.341N 134.561W	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail o grind and pave equipment 	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail o grind and pave equipment 	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
5	58.345N 134.538W	--	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
124*	58.343N 134.527W	--	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
47	58.334N 134.523W	--	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
46	58.333N 134.522W	--	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
2557*	58.335N 134.518W	--	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
123	58.331N 134.504W	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail o grind and pave equipment 	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
45	58.328N 134.499W	--	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
107	58.325N 134.492W	--	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
137	58.326N 134.492W	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail o grind and pave equipment 	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
2556*	58.323N 134.485W	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail o grind and pave equipment 	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail o grind and pave equipment 	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
138	58.322N 134.484W	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail o grind and pave equipment 	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
108	58.319N 134.476W	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail o grind and pave equipment 	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
2555*	58.313N 134.462W	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail o grind and pave equipment 	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail o grind and pave equipment 	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
134	58.300N 134.444W	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail o grind and pave equipment 	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
113	58.296N 134.440W	--	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail
116	58.294N 134.438W	--	--	<ul style="list-style-type: none"> o Mechanized post driving to install guardrail

5 Bold Nest Number = Active Nest

*active nest with incubating adult

48 Normal Text = Previously identified nest not located during May 24, 2013 aerial survey



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE PERMIT

I. PERMITTEE

ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES
dba THE STATE OF ALASKA
PO BOX 112506
ATTN: JANE GENDRON
JUNEAU, AK 99811-2506
U.S.A.

2. AUTHORITY-STATUTES
16 USC 668a

REGULATIONS
50 CFR 13
50 CFR 22.26

3. NUMBER
MB20559B-0

4. RENEWABLE
 YES
 NO

5. MAY COPY
 YES
 NO

6. EFFECTIVE
10/30/2013

7. EXPIRES
12/31/2013

8. NAME AND TITLE OF PRINCIPAL OFFICER *(If #1 is a business)*
AL H CLOUGH
REGIONAL DIRECTOR

9. TYPE OF PERMIT
EAGLE TAKE ASSOCIATED WITH BUT NOT THE PURPOSE OF AN ACTIVITY

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

North Douglas Highway, Douglas, Alaska

11. CONDITIONS AND AUTHORIZATIONS:

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL, TRIBAL, OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

D. This permit is only valid with authorization from Alaska Department of Fish and Game. Contact:

Alaska Department of Fish and Game
Division of Wildlife Conservation
PO Box 115526
Juneau, AK 99811-5526
(907) 465-4148
Dfg.dwc.permits@alaska.gov

E. You are authorized to disturb bald eagles among 17 nests (see coordinates below) adjacent to North Douglas Highway, Douglas, Alaska. Authorized disturbance is limited to work associated with rehabilitation of North Douglas Highway as described in ADOT's Eagle Take Permit Application submitted to U.S. Fish and Wildlife Service on July 19, 2013. Expected impacts to bald eagles include loss of one year's productivity for up to seven breeding pairs.

F. You must comply with the following avoidance, minimization, or other mitigation measures prescribed by the permit issuing office, including:

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

See Conditions G, H, I, L, and M.

ISSUED BY

TITLE
CHIEF, DIVISION OF MIGRATORY BIRD MANAGEMENT - REGION 7

DATE
10/30/2013

- i) The project shall be completed with the smallest footprint practicable while still meeting the purpose and need of the project.
- ii) Existing vegetation buffers screening project activities from nests shall be maintained.
- iii) Standard mufflers shall be installed, and used, on all construction vehicles.
- iv) Contractors shall work with Project Engineers to limit time necessary within the 330' primary zone of nests only to that required for completion of the work.

G. You are required to monitor eagle use of the area including:

i. OCCUPANCY SURVEY

April 15 - May 25, 2014, conduct ground or aerial-based nest surveys from a clear vantage point to determine both the status (active vs. inactive) and occupancy (number of eggs and/or chicks) of each nest identified in Condition E. Status may be determined by adult behavior (incubating posture, food delivery, etc.) rather than direct observations of eggs or chicks.

ii. PRODUCTIVITY SURVEY

July 15 - July 31, 2014, conduct ground or aerial-based nest surveys, from a clear vantage point, to determine both the status (active vs. inactive) and occupancy (number of eggs and/or chicks) of nests identified as active during the previous occupancy survey.

iii. NEST FIDELITY SURVEY

April 15 - June 1, 2015, conduct ground or aerial-based nest surveys, from a clear vantage point, to determine both the status (active vs. inactive) and occupancy (number of eggs and/or chicks) of each nest identified in Condition E..

You must submit an annual report summarizing the information you obtained through monitoring to the Migratory Bird Permit Office by December 31 of the year in which the survey was conducted. Submit reports to:

**U.S. Fish and Wildlife Service
Migratory Bird Management
ATTN: Jordan Muir
1011 E Tudor Road MS-201
Anchorage, AK 99503
907-786-3503**

H. Any previously unidentified eagle nest located within a half mile radius of the project area discovered prior to June 1, 2015 must be reported to the migratory bird permit issuing office (907-786-3503) within 10 days of discovery.

I. You remain responsible for all outstanding monitoring requirements and mitigation measures required under the terms of the permit for take that occurs prior to cancellation, expiration, suspension, or revocation of the permit.

J. This permit does not authorize intentional take of live eagles, eggs or young.

K. The authorizations granted by permits issued under this section apply only to take that results from activities conducted in accordance with the description contained in the permit application and the terms of the permit. If the permitted activity changes, you must immediately contact the Service to determine whether a permit amendment is required in order to retain take authorization.

L. You must immediately notify the migratory bird permit issuing office (907-786-3503 or 907-786-3693) regarding any apparent injury or death occurring to any eagle, including viable eggs, during project activities. You must immediately transport any injured eagle to the Juneau Raptor Center (907-790-5424 or 907-586-8393 or by emergency pager at 907-790-5424).

M. You must contact the migratory bird issuing office (907-786-3503) immediately upon discovery of any unanticipated take.

N. While the permit is valid and for up to 3 years after it expires, you must allow Service personnel, or other qualified persons

designated by the Service, access to the areas where eagles are likely to be affected, at any reasonable hour, and with reasonable notice from the Service, for purposes of monitoring eagles at the site(s).

O. You may delegate the authority granted in this permit to the following subpermittee(s): any other person/business who is (1) employed by or under contract to you for the activities specified in this permit, or (2) otherwise designated a subpermittee by you in writing. Any subpermittee who has been delegated this authority may not re-delegate to another individual/business.

P. Subpermittees must be at least 18 years of age. You are responsible for ensuring that your subpermittees are qualified to perform the work and adhere to the terms of your permit. You are also responsible for maintaining current records of designated subpermittees. As the permittee, you are ultimately legally responsible for compliance with the terms and conditions of this permit and that responsibility may not be delegated.

Q. You and any subpermittees must carry a legible copy of this permit and display it upon request whenever exercising its authority.

R. All of the provisions and conditions of the governing regulations at 50 CFR 13 and 50 CFR 22.26 are conditions of your permit. Failure to comply with the conditions of your permit could be cause for suspension of the permit and/or citation. For copies of the regulations, visit: www.fws.gov/permits/mbpermits/birdbasics.html.

S. This permit does not authorize you to conduct activities on Federal, State, Tribal, or other public or private property other than your own without additional prior written permits or permission from the agency/landowner.

T. You must maintain records as required in 50 CFR 13.46. All records relating to the permitted activities must be kept at the location indicated in writing by you to the migratory bird permit issuing office.

U. Acceptance of this permit authorizes the U.S. Fish and Wildlife Service to inspect and audit or copy any permits, books or records required to be kept by the permit and governing regulations (50 CFR 13.46).

V. Permittees and subpermittees operating under this permit may not take or disturb eagles contrary to the laws or regulations of any State, Tribal, or Municipal government, and none of the privileges of this authorization are valid unless the permittee possesses the appropriate State permits, or other authorizations, if required.

W. The U.S. Fish and Wildlife Service is not liable for any damage or injury to person, wildlife, or property that occurs as the result of carrying out the activities associated with this permit.

X. The terms and conditions of this permit that are not specifically prescribed by regulations at 50 CFR parts 10, 13, and 22, should not be construed as precedent and are subject to revision for purposes of any future permit issued under this section.

Nest Site Coordinates:

<u>Nest ID</u>	<u>Coordinates (NAD83)</u>	
48	58.341N	134.561W
5	58.345N	134.538W
124	58.343N	134.527W
47	58.334N	134.523W
46	58.333N	134.522W
2557	58.335N	134.518W
123	58.331N	134.504W
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2555	58.313N	134.462W
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113	58.296N	134.440W
116	58.294N	134.438W