

MEMORANDUM

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

DATE: January 30, 2014

TO: Board of Adjustment

FROM: Chrissy McNally, Planner *CM*
Community Development Department

FILE NO.: VAR2013 0026

PROPOSAL: Variance request for Alaska Department of Transportation & Public Facilities to conduct road rehabilitation along Fritz Cove Road within the 330 foot setback of six 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: Fritz Cove Road

Parcel Code Number: Right-of-Way

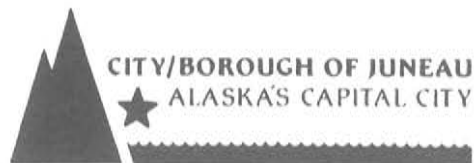
Site Size: 2.5 miles

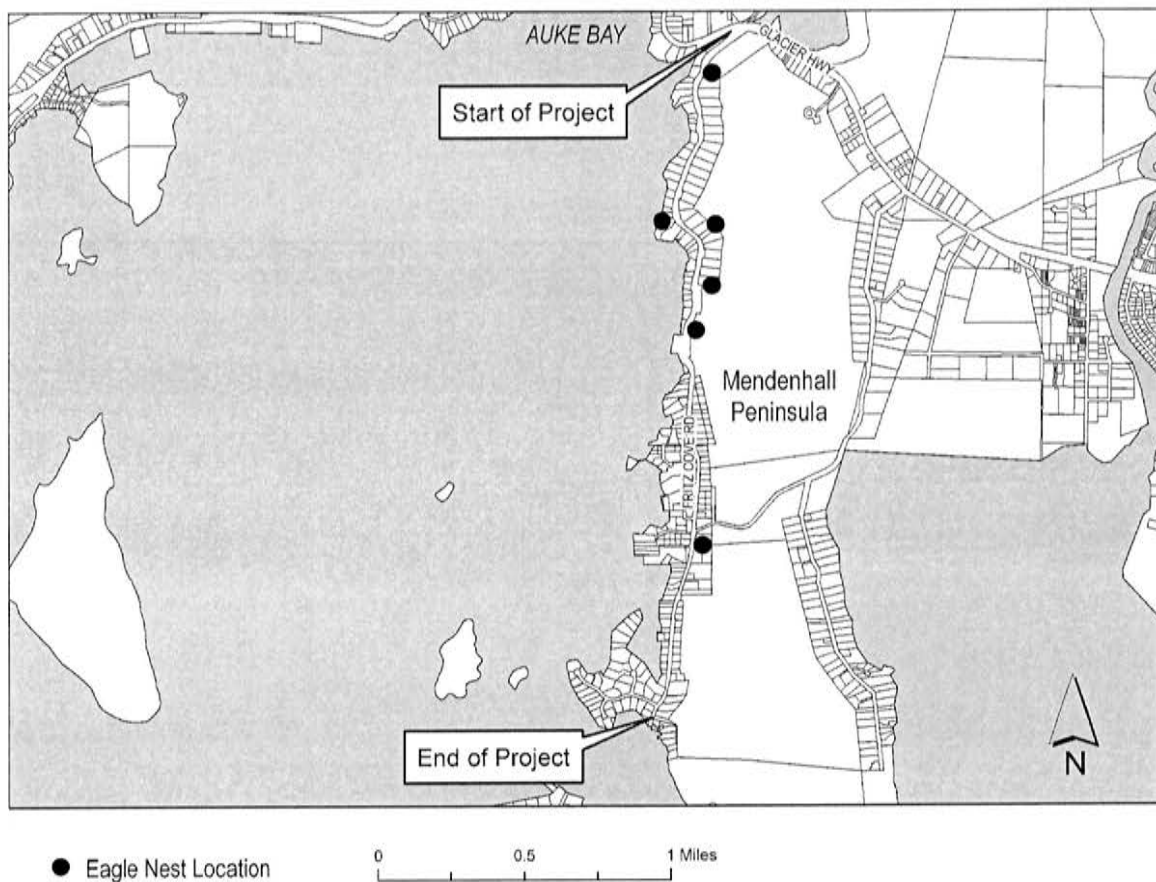
Zoning: Right-of-Way

Utilities: Public Water, Private Sewer

Surrounding Land Use:

North	-	Auke Bay
South	-	Spuhn Island
East	-	Auke Bay
West	-	D1/Rural Reserve





ATTACHMENTS

- Attachment A: Variance Application
- Attachment B: Aerial Survey Maps
- Attachment C: USFWS Eagle Take Permit Application

PROJECT DESCRIPTION

The applicant, Alaska Department of Transportation and Public Facilities (DOT&PF), is proposing to rehabilitate Fritz Cove Road. This project still requires local consistency review. This stretch of roadway is scheduled for repairs which will include widening of the shoulders, asphalt paving, replacement of guardrails, drainage improvements and embankment reinforcement. Construction is expected to begin in spring 2014 and be completed by the end of summer 2014.

DOT&PF conducted an aerial survey of Fritz Cove Road in April 2012. Six eagle nests were

identified within 330 feet of the project site (see Attachment B). 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;*

Nests 520 and 521 were found to be active during the April 2012 aerial survey. Five of the six nests are on the uphill side of Fritz Cove Road, with one on the shore side. These same nests are mapped on the 2006 USFWS Eagle Nest Location Map. Therefore, the extended presence of these nests may indicate that the eagles inhabiting the nests are habituated to human activity and development.

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 2013 Comprehensive Plan Update acknowledges this relationship under POLICY 7.14.IA2;

Work with the United States Fish and Wildlife Service (USFWS) on an as-needed basis to identify eagle nest locations and best practices.

And 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.”

DOT&PF applied for an Eagle Permit from the U.S. Fish and Wildlife Service (USFWS) which will authorize disturbance of eagles along the project route (see Attachment C). DOT&PF anticipates receiving an approved application, but has yet to receive approval at the writing of this staff report.

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 DOT&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. DOT&PF conducted an aerial survey in April 2012. 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.

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 all of these criteria have been met.

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 Fritz Cove Road. A lesser relaxation is not practical because the maintenance must take place within 330 feet 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.

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, DOT&PF, from maintaining Fritz Cove Road. 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, DOT&PF, from maintaining Fritz Cove Road. 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 Fritz Cove Road. The roadway is mostly flat.

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 Fritz Cove 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 two and half mile stretch of Fritz Cove Road to be maintained according to current road safety standards, which would provide a significant benefit to the neighborhood. Assuming it is approved; 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. We find 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 approve the requested Variance, VAR2013 0026. The Variance permit would allow for DOT&PF to conduct road rehabilitation within 330 feet of six eagle nests along Fritz Cove Road.

VARIANCE APPLICATION

Project Number VAR20130026	Project Name (15 characters)	Case Number	Date Received 12/17/13
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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 checked="" type="checkbox"/> Variance to Habitat Setbacks (VHB) | <input type="checkbox"/> Variance to Parking Requirements (VPK) |
| <input type="checkbox"/> Variance to Setback Requirements (VSB) | |

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

There are 6 Bald Eagle Nests within 330' of the proposed Fritz Cove Road construction project. Fritz Cove Road is in need of repair in order to increase safety for pedestrians and bicyclists, improve ride quality and reduce maintenance costs.

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): _____

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

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

This variance is need in order to make repairs to Fritz Cove Road and increase safety to users of the road.

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

If the variance is not granted, the repairs to the road would not be possible. The road would fall into disrepair and the cost of the project would likely increase.

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 application, please contact the Permit Department at 707.477.0770.	VARIANCE FEES				
		Fees	Check No.	Receipt	Date
	Application Fees	\$ <u>400.00</u>	_____	_____	_____
	Adjustment	\$ _____	_____	_____	_____
Total Fee	\$ <u>400.00</u>	<u>066080</u>	<u>CDD4621</u>	<u>12/17/13</u>	

MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

TO BE COMPLETED BY THE APPLICANT

DEVELOPMENT PERMIT APPLICATION

Project Number VAR 20130026	CITY and BOROUGH of JUNEAU	Date Received: 12/17/13
Project Name (City Staff to Assign Name)		

PROJECT / APPLICANT INFORMATION	Project Description Resurface and repair Fritz Cove Road.	
	PROPERTY LOCATION	
	Street Address Fritz Cove Road	City/Zip
	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 <small>****Required for Planning Permits, not needed on Building/ Engineering Permits****</small>	
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>Charles Teujip</i></u> Landowner/Lessee Signature	<u>11/25/13</u> 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 <small>If the same as OWNER, write "SAME" and sign and date at X below</small>		
Applicant's Name same	Contact Person: Work Phone:	
Mailing Address	Home Phone: Fax Number:	
E-mail Address	Other Contact Phone Number(s):	
X <u>Same</u> Applicant's Signature	_____ 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 Parke, Accessory Apartment)			
		X Variance Case (De Minimis and all other Variance case types)		12/17/13	VAR 20130026
		Wetlands Permits			
	Zone Change Application				
	Other (Describe)				
<small>***Public Notice Sign Form filled out and in the file.</small>					
Comments:				Permit Intake Initials	
_____ _____ _____				_____ _____ _____	



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
Fax: 907.465.4414

March 20, 2013

Fritz Cove Road Rehabilitation and Repair
State Project # 69397
Federal Project # STP-0970(4)

Subject: Eagle Tree Variance

City and Borough of Juneau
Attn: Community Development
155 S. Seward Street
Juneau, Alaska 99801

To Whom it May Concern:

The Alaska Department of Transportation and Public Facilities (DOT&PF), in cooperation with the Alaska Division of the Federal Highway Administration (FHWA), is proposing to rehabilitate and repair Fritz Cove Road in Juneau, Alaska.

The proposed project includes:

- widening of the shoulders by one foot on each side
- paving the existing roadway with asphalt
- correcting curves that exceed predicted accident rates by increasing the cross slope
- replacing existing guardrails
- improving drainage, including replacing existing culverts and installing new culverts in areas with drainage problems
- construct spot sub-base improvements, as needed, in areas that are experiencing road subsidence due to embankment failures. This would require excavating below the existing pavement and removing unsuitable embankment material.

There are six (6) eagle trees located along the project (see attached project map). The U.S. Fish and Wildlife Service (USFWS) regulations require a permit for disturbance or take of Bald Eagles for actions associated with otherwise lawful activities, such as construction. The DOT&PF would obtain necessary permits from the USFWS for activities that may cause disturbance to eagles during sensitive periods, such as breeding and nesting, within ½ mile of the project.

March 20, 2013

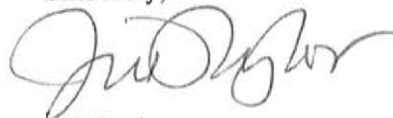
The City and Borough of Juneau (CBJ) prohibits development within 330 feet of an eagle nest on public land (CBJ 49.70.310 (2)).

Construction would require operating within 330 feet of the eagle trees.

The DOT&PF is requesting a variance to CBJ 49.70.310 to operate within the 330' setback. We appreciate your consideration of this project and look forward to your concurrence.

If you have any questions or require additional project details, please call me at 465-4524 or email at jill.taylor@alaska.gov.

Sincerely,



Jill Taylor
Environmental Analyst

Enclosures:

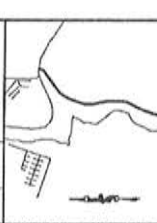
- Variance Application
- Project Location and Vicinity Map (Sheet 1)
- Project Typical Sections (Sheet 2)
- Project Work Area and Eagle Nest Locations Map (Sheets 3-4)

cc w/ enclosures

- Chuck Tripp, P.E., DOT&PF Southeast, Project Manager
- Jane Gendron, DOT&PF Southeast Regional Environmental Manager

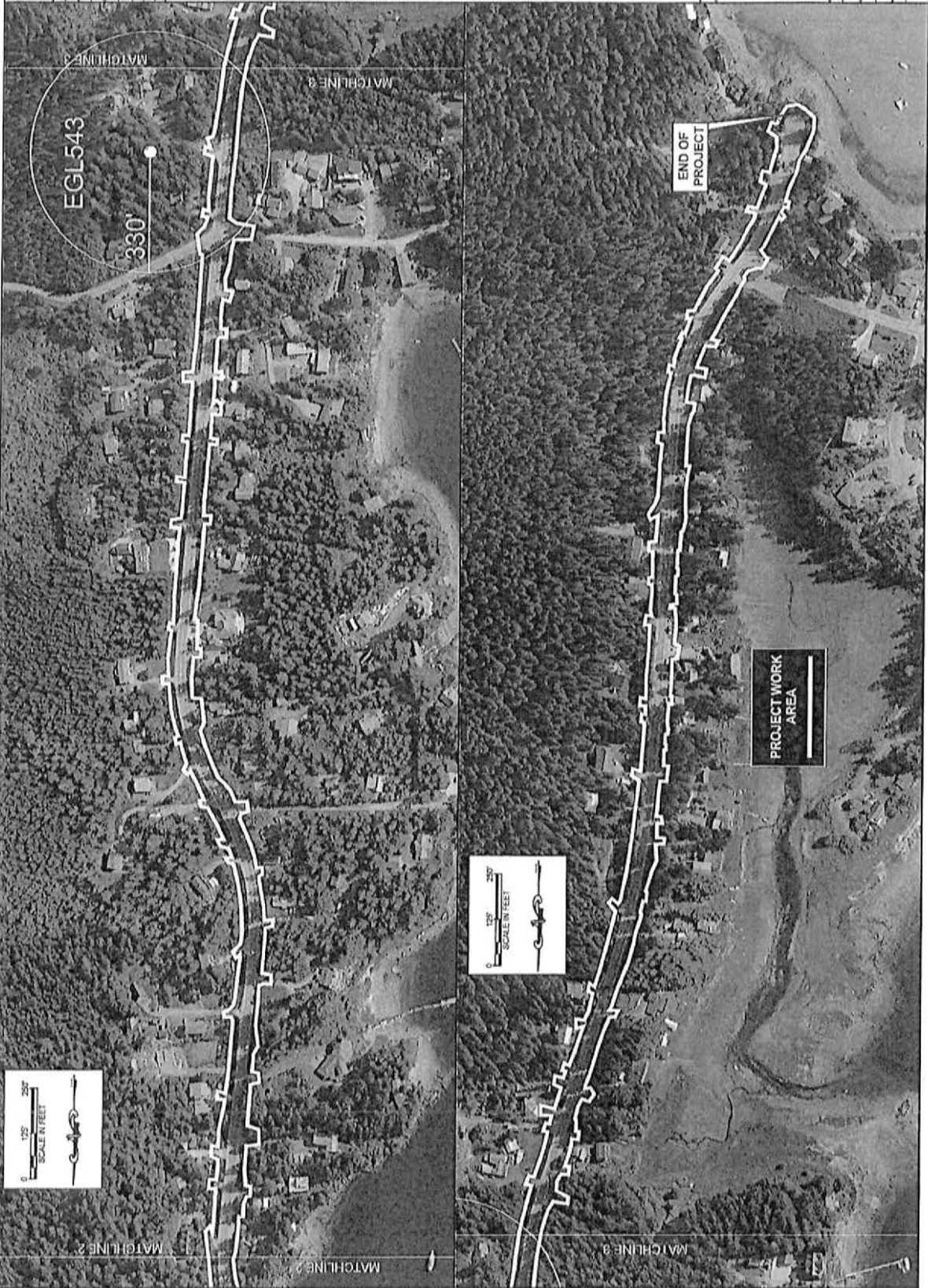
PROJECT INFORMATION SHEET
 COMPLETE/PRELIMINARY/ADJUSTING
 NUMBER: 00019 (001)
 DATE: 08/06/2012
 APPROVED BY: [Signature]

REVISIONS	
NO.	DATE



ATTORNEY GENERAL
 STATE OF ALASKA
 DEPARTMENT OF TRANSPORTATION
 DIVISION OF HIGHWAYS
 PROJECT LOCATION
 69337 (STP-0970(4))
 YEAR
 ALASKA 2012
 SHEET NUMBER TOTAL SHEETS
 4 4

PLAN LEGEND
 Locations



PROJECT INFORMATION SHEET
 COMPLETE/PRELIMINARY/ADJUSTING
 NUMBER: 00019 (001)
 DATE: 08/06/2012
 APPROVED BY: [Signature]

REVISIONS	
NO.	DATE



ATTORNEY GENERAL
 STATE OF ALASKA
 DEPARTMENT OF TRANSPORTATION
 DIVISION OF HIGHWAYS
 PROJECT LOCATION
 69337 (STP-0970(4))
 YEAR
 ALASKA 2012
 SHEET NUMBER TOTAL SHEETS
 4 4

PLAN LEGEND
 Locations





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
Fax: 907.465.4414

November 4, 2013

Jorden Muir
USFWS, AK Migratory Bird Permit Office – MS-201
1011 E Tudor Road
Anchorage, AK 99503

RE: Fritz Cove Road Rehabilitation and Repair
Project Number: 69397/STP-0970(4)
Application for a Bald Eagle Disturbance Permit (50 CFR 22.26)

Dear Mr. Muir:

The Alaska Department of Transportation and Public Facilities (DOT&PF), in cooperation with the Federal Highways Administration (FHWA), is proposing to rehabilitate Fritz Cove Road in Juneau, Alaska. The project would increase safety for pedestrians and bicyclists, improve ride quality, and reduce current efforts to maintain the roadway surface. The project is located in the Copper River Meridian, Juneau B-2, Sections 23, 26 and 35 of T 40 S., R 65 E. and Sections 4 and 5 of T 41 S., R 65 E. in Juneau, Alaska. There are 10 bald eagle nests within ½ mile of this project along the 2.5 mile roadway.

DOT&PF is applying for an eagle disturbance permit for performing construction activities within ½ mile of a bald eagle nest.

Eagle disturbance in the form of noise or vibration may occur from the following project related construction activities:

- Milling & Paving
- Hauling
- Excavation
- Guardrail Post Driving

These construction activities and their proximity to known eagle nests are provided in Table 1 in the enclosed permit application.

Should you have any questions or need additional information, please contact Jill Taylor at (907) 465-4524 or by e-mail at jill.taylor@alaska.gov.

Sincerely,



For

Jane Gendron,
Southeast Region Environmental Manager

Enclosures:

Application for USF&WS Eagle Permit

Narrative

Project Location Map – Sheet 1

Roadway Typical Sections – Sheet 2

Culvert and Spot Repair Typical Sections – Sheet 3

Project Work and Eagle Nest Locations – Sheets 4 and 5

CC:

Richard Enriquez, USFWS Juneau Field Office

Chuck Tripp, P.E., SE Region, DOT&PF Project Manager

Jill Taylor, DOT&PF Environmental Analyst



Department of the Interior
U.S. Fish and Wildlife Service

OMB Control No. 1018 - 0022
Expires 02/28/2014

Federal Fish and Wildlife Permit Application Form

Click here for addresses.

Return to: U.S. Fish and Wildlife Service (USFWS)

Type of Activity: Eagle Take to Protect an Interest in a Particular Locality

Region 7 - Alaska
1011 E. Tudor Road
Anchorage, AK 99503

New Application
 Requesting Renewal or Amendment of Permit # _____

Complete Sections A or B, and C, D, and E of this application. U.S. address may be required in Section C, see instructions for details. See attached instruction pages for information on how to make your application complete and help avoid unnecessary delays.

A. Complete if applying as an individual			
1.a. Last name	1.b. First name	1.c. Middle name or initial	1.d. Suffix
2. Date of birth (mm/dd/yyyy)	3. Social Security No.	4. Occupation	5. Affiliation/ Doing business as (see instructions)
6.a. Telephone number	6.b. Alternate telephone number	6.c. Fax number	6.d. E-mail address

B. Complete if applying on behalf of a business, corporation, public agency, tribe, or institution			
1.a. Name of business, agency, tribe, or institution Alaska Department of Transportation & Public Facilities		1.b. Doing business as (dba)	
2. Tax identification no.	3. Description of business, agency, or institution state agency responsible for transportation infrastructure		
4.a. Principal officer Last name Clough	4.b. Principal officer First name Al	4.c. Principal officer Middle name/ initial	4.d. Suffix
5. Principal officer title Southeast Regional Director		6. Primary contact Jane Gendron	
7.a. Business telephone number 907-465-4499	7.b. Alternate telephone number	7.c. Business fax number 907-465-3506	7.d. Business e-mail address jane.gendron@alaska.gov

C. All applicants complete address information				
1.a. Physical address (Street address, Apartment #, Suite #, or Room #; no P.O. Boxes) 6808 Glacier Highway				
1.b. City Juneau	1.c. State Alaska	1.d. Zip code/Postal code: 99801	1.e. County/Province	1.f. Country USA
2.a. Mailing Address (include if different than physical address; include name of contact person if applicable) PO Box 112506				
2.b. City Juneau	2.c. State Alaska	2.d. Zip code/Postal code: 99811	2.e. County/Province	2.f. Country USA

D. All applicants MUST complete	
1. Attach check or money order payable to the U.S. FISH AND WILDLIFE SERVICE in the amount \$500.00 (standard) or \$1,000 (programmatic) if you are applying for a new permit or \$150.00 (standard) or \$500 (programmatic) if you are requesting a substantive amendment of your existing valid permit. Federal, tribal, State, and local government agencies, and those acting on behalf of such agencies, are exempt from the processing fee -- attach documentation of fee exempt status as outlined in instructions. (50 CFR 13.11(d))	
2. Do you currently have or have you ever had any Federal Fish and Wildlife permits? Yes <input checked="" type="checkbox"/> If yes, list the number of the most current permit you have held or that you are applying to renew/re-issue: <u>several</u> No <input type="checkbox"/>	
3. Certification: I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13 of the Code of Federal Regulations and the other applicable parts in subchapter B of Chapter I of Title 50, and I certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. 1001.	
Signature (in blue ink) of applicant/person responsible for permit (No photocopied or stamped signatures)	Date of signature (mm/dd/yyyy) <u>11.5.2013</u>

Please continue to next page

E. EAGLE TAKE (Eagle Act, 50 CFR 22.26)

1. (A) *A detailed description of the activity that will likely cause the disturbance or other take of eagles;*

See attached project drawings for details:

- Project Location Map – Sheet 1
- Roadway Typical Sections – Sheet 2
- Culvert and Spot Repair Typical Sections – Sheet 3
- Project Work and Eagle Nest Locations – Sheets 4 and 5

Project activities include:

- widening of the shoulders by one foot on each side, which includes reshaping the drainage ditches (Sheet 2)
- paving the widened roadway with asphalt (Sheet 2)
- minor realignment by shifting the centerline to correct select curves to meet current design standards (Sheet 4)
- replacing guardrails (Sheets 2, 4, and 5)
- improving drainage, including replacing five culverts (Sheet 3-5)
- repairing the road in areas that are experiencing subsidence due to embankment failures. This would require excavating below the existing pavement and removing unsuitable embankment material. (Sheets 3 and 4)

Activities with potential to cause disturbances to eagles should they be in the area:

- Mill & Paving
- Hauling
- Excavation
- Guardrail Post Driving

There are ten nests located within ½ mile of the project (Sheets 4-5).

The following table lists the proposed activities that may disturb nesting eagles within various distances of the nest.

Table 1 – Construction Activities in Vicinities of Nests

Nest #	Activity within 330' radius	Activity from 330' radius to 660' radius	Activity from 660' radius to ½ mile
518		<ul style="list-style-type: none"> • Guardrail Post Driving 	
521	<ul style="list-style-type: none"> • Mill & Paving • Hauling • Guardrail Post Driving 		
547		<ul style="list-style-type: none"> • Guardrail Post Driving 	
519	<ul style="list-style-type: none"> • Mill & Paving • Hauling • Guardrail Post Driving 		
545	<ul style="list-style-type: none"> • Mill & Paving • Hauling • Excavation 	<ul style="list-style-type: none"> • Guardrail Post Driving 	
520	<ul style="list-style-type: none"> • Mill & Paving • Hauling • Excavation • Guardrail Post Driving 		
543	<ul style="list-style-type: none"> • Mill & Paving • Hauling • Excavation 		
542			<ul style="list-style-type: none"> • Guardrail Post Driving
541			<ul style="list-style-type: none"> • Guardrail Post Driving
540			<ul style="list-style-type: none"> • Guardrail Post Driving

1. (B) *The species and number of eagles that are likely to be taken and the likely form of that take (e.g., disturbance, other take);*

The species that are likely to be "taken" are Bald Eagles (*Haliaeetus leucocephalus*). There are ten nests within ½ mile of the project.

The likely form of the "take" is disturbance from guardrail post driving, loud construction noise and vibration.

Eagles nesting along Fritz Cove Road are habituated to residential road noise and busy harbor traffic from Auke Bay.

1. (C) *Maps and digital photographs that depict the locations of the proposed activity, including the area where eagles are likely to be taken;*

The eagle nest locations are shown on the attached project work and eagle nest locations (Sheets 4 and 5).

1. (D) *For activities that are likely to disturb eagles (versus other take):*

1. (D-1) *Maps and digital photographs of the eagle nests, foraging areas, and concentration sites where eagles are likely to be disturbed by the proposed activity (including the geographic coordinates of the activity area and important eagle-use area(s) and the distance(s) between those areas);*

The attached project work area and eagle nest locations shows an aerial photo of the project.

1. (D-2) *Whether or not the eagle use area is visible from the activity area, or if screening vegetation or topography blocks the view;*

All nests are located within partially forested hillsides that overlook the project area. It is assumed that there is some screening vegetation that partially blocks the view of the project. The majority of the nests are located uphill from the project. Eagles scanning the Auke Bay marine area would look across the project.

1. (D-3) *The nature and extent of existing activities in the vicinity similar in nature, size and use to that being proposed, and the distance between those activities and the important eagle use area(s);*

Existing activities in the vicinity are road noise. There are no noises similar to guardrail post driving or other construction activity. However, eagles are habituated to vehicle traffic and noise from Auke Bay harbor.

1. (E) *The date the activity will start and is projected to end;*

Construction activities would start in spring 2015 and are anticipated to continue through October 2015.

1. (F) *An explanation of what interests(s) in a particular locality will be protected by the take, including any anticipated benefits to the applicant or to the public;*

The purpose of the Fritz Cove Road Rehabilitation project is to increase safety for pedestrians and bicyclists, improve ride quality, and reduce the current maintenance effort to maintain the roadway surface. All users of Fritz Cove Road would benefit from increased safety of the increased roadway width and repairs to roadway infrastructure and improved drainage.

1. (G) *An explanation of why avoiding the take is not practicable, or for programmatic take, why it is unavoidable; and*

The project is along an existing roadway and the nests are too close to the project to avoid potential impacts. Construction activity cannot be timed outside of the sensitive nest selection/breeding/fledging season due to the need for relatively warm/dry weather to resurface the road. DOT&PF construction requirements for SE region restrict paving to May 15-September 15 and weather warmer than 40°F.

1.(H) *A description of measures proposed to offset the detrimental impact of the proposed activity on the regional eagle population.*

All ten nests are partially screened from the project location by vegetation. However, due to the abundance of nests, their proximity to the project location, and project construction season overlapping with eagle's breeding and nest selection season; disturbance to eagles is unavoidable.

Disturbance to eagles would be minimized by maintaining the existing vegetative buffers and requiring the contractor to have standard mufflers on construction equipment to minimize noise.

2. *You must retain records relating to the activities conducted under your permit for at least 5 years from the date of expiration of the permit. Please provide the address where these records will be kept.*

Records relating to activities conducted under permit will be kept at ADOT&PF Southeast Region, 6860 Glacier Highway, Juneau, Alaska 99811

3. *Any permit issued as a result of this application is not valid unless you also have any required State or tribal permits associated with the activity. Have you obtained all required State or tribal permits or approvals to conduct this activity?*

None required.