



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Seward Highway MP 105-107 Windy Corner
Proposed Commissioner's Finding
ADL 232839 (DOT&PF)
ADL 232892 (ARRC)
ADL 233527 (Closure of Section Line Easement)
OSL 1632 (ARRC relinquished lands)

1. Proposed Action

The Alaska Department of Transportation and Public Facilities (DOT&PF) is proposing to improve the Seward Highway (highway) by relocating the rights-of-way and the railroad rights-of-way of the Alaska Railroad Corporation (ARRC) between highway mileposts (MP) 105 and 107 also known as “Windy Corner,” (project) within Chugach State Park (CSP). The purpose of this project is to implement safety upgrades and improve traffic operations.

The highway segment within CSP proposed for improvement supports heavy commercial, recreational, and residential traffic and is located in one of five designated safety corridors in Alaska, due to the elevated rate of high-severity (e.g., fatal and major injury) crashes. As a popular area for viewing wildlife and recreating along the highway, traffic operations are frequently disrupted by motorists slowing and parking along the shoulder of the highway. This creates a high differential in speeds combined with limited sight distance and uncontrolled movements of traffic entering and exiting the highway that results in an elevated rate of severe crashes in the highway corridor.

The objective of the project is to address long-standing traffic safety concerns. This will be done by realigning and dividing the highway to meet current design standards, in addition to adding auxiliary lanes for accelerating, decelerating and turning traffic, and constructing a recreational and parking area. The ARRC’s railroad tracks will be realigned to accommodate the new road, improve safety of train operation and allow for the construction of park facilities on the mountain side of the highway. DOT&PF proposes to:

- realign the rights-of-way for the highway, ARRC, and related utilities;
- separate the highway from CSP facilities, creating safer conditions for visitors;
- straighten the railroad and highway segments;
- construct CSP facilities on the mountain side of the highway right-of-way with greater parking capacity and recreational amenities;
- construct an emergency response access ramp for water rescues;
- extract material, for this project only, primarily from a temporary location near MP 109 of the highway and, if needed, a secondary location near MP 104 of the highway.

2. Authority

The authorities undertaken by this project include:

Alaska Constitution Article VIII, Section 7

Article VIII, Section 7 of the Alaska Constitution authorizes the legislature to reserve areas of state land and water from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people. The legislature has exercised this authority by enacting laws creating Chugach State Park and providing for its administration, including the relocation and widening of the Seward Highway within the park.

Session Law

Provided that the Commissioner determines that the following grants would not significantly adversely affect the purposes for which CSP was established, sections 5 and 6 of chapter 116, Session Laws of Alaska 2000 (Ch. 116 SLA 2000, Attachment A) authorize the Department of Natural Resources (DNR) to grant a highway right-of-way easement and management authority of the easement to DOT&PF, convey a property interest in land to the ARRC, and receive land or interests in land in exchange for land or interests in land conveyed to these entities. Land received by DNR in exchange shall be designated as part of CSP. These purposes are described in AS 41.21.121 and are discussed below with respect to this project.

Section 6(b) of the Ch. 116 SLA 2000 also supports the use of material for this project, sourced from within the CSP to construct this relocation and widening of the highway. Authorization(s) for the use of material from sources within CSP for this project will be subject to a reclamation plan consistent with AS 27.19 and will require approval from DNR.

Chugach State Park

Alaska Statutes (AS) 41.21.120-41.21.125 created CSP, define CSP purposes, identify the state land included in the CSP, and establish DNR's and DOT&PF's management responsibilities within it. The CSP's purposes are described in AS 41.21.121:

The park is established to protect and supply a satisfactory water supply for the use of the people, to provide recreational opportunities for the people by providing areas for specified uses and constructing the necessary facilities in those areas, to protect areas of unique and exceptional scenic value, to provide areas for the public display of local wildlife, and to protect the existing wilderness characteristics of the easterly interior area. The eastern area of the park shall be operated as a wilderness area, the central area as a scenic area, and the periphery areas as recreational areas.

Alaska Statute 41.21.122 assigns land and water within the park to DNR “for control, development and maintenance, except that the Department of Transportation and Public Facilities is responsible for the repair and maintenance of all existing public roads within the park.”

Alaska Constitution Article VIII, Section 14 and AS 38.05.127

Article VIII, Section 14 of the Alaska Constitution establishes the right of Alaskan residents and United States' citizens to access public water. This right, along with the State's Public Trust Doctrine responsibility, is implemented, in part, by AS 38.05.126 (establishing the State's power and control of all navigable or public water of the state), and AS 38.05.127, which recognizes the public's constitutional right to access navigable and public water. This statute requires that the Commissioner reserve "easements or rights-of-way necessary to ensure free public access to and along the water body, unless the Commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes." Alaska Statute 38.05.965 defines "public water" to mean "navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest." Turnagain Arm is public water.

Section Line Easement (SLE)

Alaska Statute 38.04.058 allows the commissioner of DNR, upon a written finding, to restrict the use of an easement, such as an SLE, in order to protect public safety or property. A restriction must be narrowly tailored to achieve the protection of public safety and property while preserving access to the maximum extent practicable.

Chugach State Park Management Plan (CSPMP)

The CSPMP guides DNR's management and development of state-owned land and water within the legislatively designated boundary of CSP. The CSPMP is based on an analysis of CSP's natural and cultural environment, current and anticipated trends in use, and human demands on resources in keeping with CSP's enabling legislation and guiding principles. The primary purposes of the CSPMP are to provide a land use plan that allows for optimum recreational use of the area while protecting the natural and cultural resources, and to provide a consistent set of principles and policies for park management and a listing of development projects to facilitate future funding requests and project phasing. The CSPMP can be found online at: http://dnr.alaska.gov/parks/plans/chugach/finalplan/cspmp_2016_complete.pdf

3. Scope of Findings

The scope of this DNR Commissioner's finding (Finding) is limited to the following items:

- Findings under the Session Law:
 - Consistency with CSP purposes;
 - Authorizing the grant of easements to DOT&PF, and utilities;
 - Authorizing the conveyance of a property interest in land to ARRC;
 - Authorizing the acceptance of relinquished rights-of-way from DOT&PF and utilities and property interest in land from ARRC; and
 - Authorization(s) for the use of material;
- Consistency with CSPMP;
- Findings under Alaska Constitution Article VIII, Section 14 and AS 38.05.127, Access to Navigable or Public Water; and

- Closure of a SLE.

4. Administrative Record

The administrative record for the proposed action consists of the applicable session law, statutes and regulations referenced herein, the casefiles are the administrative record and serialized by DNR as:

- ADL 232839 DOT&PF easement;
- ADL 232892 ARRC easement;
- OSL 1632 relinquished rights-of-way; and
- ADL 233527 closure of SLE.

5. Legal Description

The proposed project location and the temporary material locations are located within:

- Sections 2 and 3 of Township 10 North, Range 2 West; and
- Sections 32 and 33 of Township 11 North, Range 2 West; and
- Section 1 of Township 10 North, Range 2 West; and
- Section 6 of Township 10 North, Range 1 West.

6. Agency Review Summary

Agency review of the applications was conducted from December 4, 2019 to December 30, 2019. An updated agency review was re-sent on December 6, 2019 based on input from DOT&PF, in which the legal description was updated. The notice was sent to the following recipients:

- DNR Division of Mining, Land, & Water (DMLW)-Realty Services Section
- DNR DMLW Survey Section
- DNR DMLW Water Section
- DNR DMLW Mining Section
- DNR DMLW Public Access Assertion & Defense Section
- DNR DMLW Resource Assessment & Development Section
- DNR DMLW Land Sales Section
- DNR Division of Parks and Outdoor Recreation (DPOR)
- DNR Division of Agriculture
- DNR Division of Forestry
- DNR Division of Oil & Gas
- DNR Alaska Mental Health Trust Land Office
- Alaska Department of Commerce, Community & Economic Development
- Alaska Department of Fish and Game (ADF&G)
- Alaska Department of Environmental Conservation (DEC) Division of Environmental Health
- DEC Division of Water
- DOT&PF
- U.S. Army Corps of Engineers (USACOE)
- U.S. Coast Guard
- U.S. Fish & Wildlife Service

- U.S. Forest Service, Chugach National Forest
- Bureau of Land Management
- Environmental Protection Agency
- National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS)
- ARRC

A total of 9 comments were received during the agency review and are summarized below:

Agency Review Comment & Response

1. Comment: On December 5, 2019, the U.S. Coast Guard District 17 Bridge Program inquired if there was any bridge construction or modification associated with this project.

Response: As indicated in the initial response to the U.S. Coast Guard, there is no planned bridge construction or modification to an existing bridge for the highway project. The U.S. Coast Guard indicated that they had a permit application for planned bridges on the Seward Highway MP 75-90. The commenter was referred to the DOT&PF's website which would have more information regarding construction activities. DNR asked for clarification on "modification," to which the U.S. Coast Guard responded that a permit is sometimes required when a bridge restricts travel by boat on a waterway. If construction limited travel clearance under the bridge or between pilings, it might be a modification that would require a permit.

2. Comment: On December 6, 2019, the NOAA, NMFS requested a phone call.

Response: DNR spoke with NOAA, NMFS, who requested a follow-up from DOT&PF regarding the letter that NMFS issued in 2015, and asked if it was still current to DOT&PF's proposed construction activities for the project. DNR reminded NMFS of the comment deadline and instructions, and that their NMFS Environmental Site Assessment Section 7 consultation with the Federal Highway Administration and DOT&PF received a Letter of Concurrence from NMFS on October 28, 2015 and that the consultation request by the Federal Highway Administration (FHWA) or DOT&PF agreed to the project descriptions and mitigation measures. DOT&PF was included on this correspondence.

3. Comment: On December 10, 2019, the DEC, Division of Environmental Health, Drinking Water Program, commented that the easement is near an active registered public water system (PWS) source, and requested that the applicant adhere to the "Recommendations for General Construction Projects", where applicable. A map of the PWS source and a copy of the "Recommendations for General Construction Projects" were attached.

Response: DNR forwarded this comment with attachments to the applicants.

4. Comment: On December 16, 2019, the Alaska Mental Health Trust Land Office submitted a comment specific to the conveyance of portions of legislatively designated park land (Chugach State Park-AS 41.21.120) to the ARRC. The comment notes that the legislature

has withdrawn CSP from the public domain and questions whether it is lawful to convey a portion of the park to the Alaska Railroad without amending the enabling legislation to allow for the conveyance.

Response: Conveyance of a property interest in land to the ARRC to allow relocation of the railroad right-of-way is specifically authorized by section 6, chapter 116 SLA 2000. This law also authorizes DNR to receive land or interests in land in exchange and provides that any land or interest in land received by the commissioner in exchange shall be designated as part of CSP.

5. Comment: On December 19, 2019, the Alaska Mental Health Trust Land Office stated their office has no objections to the proposals along the highway project as ADL 232839 and ADL 232892 do not impact Alaska Mental Health Trust lands.

Response: DNR acknowledges this comment.

6. Comment: On December 23, 2019, the DNR, DMLW, Realty Services Section recommended a full title report for the project area.

Response: DNR acknowledges this comment and a formal title report has been requested. The Realty Services Section has created a series of current ownership maps for the entire Turnagain Arm area, including the project site.

7. Comment: On December 30, 2019, ARRC submitted a comment requesting DNR to act on the 2017 application submitted by ARRC under the Alaska Railroad Corporation Act (ARCA) AS 42.40.370(a), which states that “*Within 90 days after receiving a request under AS 42.40.360(b) the commissioner of natural resources shall by written decision*” take action on the request. ARRC states there has been no formal response regarding the adjudication of this request.

ARRC stated that DNR’s action on the 2017 application would temporarily provide ARRC with the minimum necessary right-of-way instrument required to move the railroad right-of-way track through the project area, and that further action under Ch. 116, SLA 2000 involving the transfer of land right to or from ARRC should be struck from these proposed ADLs until they can be more thoughtfully administered in a time-frame that suits DNR and DOT&PF. ARRC also commented that the 2000 session law “has been nonfunctional” because the 2001 Memorandum of Agreement (MOA) between DNR, DOT&PF, and ARRC that described how the three entities would manage the transfer of property rights for Seward Highway alignment projects expired in 2011.

ARRC further commented that it will not agree to an exchange of unequal property interests, that the SLEs in the new railroad alignment must be vacated, and not merely closed, and that any disposition of railroad lands or right-of-way will require an administrative process that would at a minimum require action by ARRC’s Board of Directors. ARRC emphasized their concern of the timeline for this proposed administrative

action and again requests that DNR act on the application submitted by ARRC under ARCA.

Response: The legislature enacted Chapter 116 SLA 2000 to provide specific legal authority for the land management and property interest conveyances required for the project, and other highway and railroad rights-of-way realignment projects along Turnagain Arm. The expired MOA does not affect the validity or applicability of the session law. For the new railroad rights-of-way alignment, DNR will convey to ARRC an equivalent property interest to what ARRC conveys to DNR, which will not be less than ARRC received for the existing railroad corridor from the United States under the Alaska Railroad Transfer Act (ARTA), 45 U.S.C. § 1201 et seq. In exchange, ARRC will convey an equivalent property interest to DNR for the original corridor, which will become part of CSP. Due to safety concerns, DNR will close any SLE that cross the new railroad corridor, and any SLEs will remain closed as long as the land is used for railroad purposes and other purposes listed in AS 42.40.

8. Comment: On December 30, 2019, the ADF&G provided comments that they acknowledged largely reiterated ADF&G's March 2013 comments to DOT&PF regarding this project.

ADF&G acknowledged that the highway is a federally recognized National Scenic Byway (NSB), and that the mission of the NSB Program is to "provide resources to the byway community to create unique travel experiences and enhance local quality of life through efforts to preserve, protect, interpret, and promote the intrinsic qualities of designated byways." The scenery and wildlife viewing opportunities are important characteristics of the highway and are what secured its status as an NSB. In addition to providing important habitat for Dall sheep, Windy Corner is also the most popular viewing area for Dall sheep in Southcentral Alaska. ADF&G recommends that the proposed realignment and associated amenities seek to preserve the wildlife viewing opportunities along the highway and limit wildlife movement onto the highway to the extent possible.

Given the public safety concerns along this portion of the highway, ADF&G supports DOT&PF's effort to improve highway safety. ADF&G provided information of the variety of wildlife species within CSP and recommendations for reducing impacts to fish and wildlife and their habitats. These are as follows:

The mountainous terrain of the project area is important year-round habitat for sheep, and repeated exposure to adverse stimuli such as helicopter over-flights, construction noise and associated light, may result in increased stress on wildlife. ADF&G further acknowledged that DOT&PF proposes to extract material through blasting from an area that is occupied by sheep throughout most of the year. Disturbances, notably blasting activities, should be limited to the extent possible during lambing (May 15-June 15) and the rutting period (November 10-December 10) when it is more likely to have negative population-level impacts. The parking lots and wildlife viewing areas should be constructed in such a way as to promote ethical wildlife viewing and to not encourage wildlife harassment or habitat degradation in the area.

Bear and moose can be found within the project area, and all food and food trash must be contained within bear-resistant canisters or within a secured vehicle to avoid bear conflicts during the construction, operation, and maintenance of this project. The design of parking lot facilities should include permanent bear-resistant trash cans. Moose give birth during the same timeframe as sheep (May 15-June 15) and should be avoided and not disturbed if encountered within the project area.

Lastly, there are no known specified anadromous waterbodies or resident fish populations within the project area, and no Fish Habitat permit will be required for the project as currently proposed. The project area lies within an area that is federally designated as critical habitat for Cook Inlet beluga whales, and that the project should be completed in consultation with the NOAA, NMFS.

Response: DNR followed up with ADF&G to clarify what their agency was responding to in March 2013. ADF&G submitted comments in response to a Scoping Summary Report that was administered by DOT&PF. This report was published in May 2013 and is available on DOT&PF's website at <http://www.windycorner.info/documents/SSR.pdf>

DNR acknowledges the supplemental information provided by ADF&G, such as the highway being listed as an NSB and how wildlife viewing opportunities at Windy Corner, particularly for Dall sheep, is the most popular viewing area for these animals in Southcentral Alaska. Per DOT&PF's application (ADL 232839), improvements such as parking areas and public viewing areas are planned for construction and would offer safer viewpoints along Turnagain Arm than what is currently available.

ADF&G's comment and recommendations for reducing impacts to fish and wildlife and their habitats has been forwarded to DOT&PF for consideration for this project. It should be recognized that DOT&PF has previously solicited agency comments and feedback for the 2013 Scoping Summary Report, in addition to on-going efforts of securing the necessary documentation and authorizations for this project.

As noted by ADF&G, a Fish Habitat permit is not required for the project as it is currently proposed. ADF&G recommended consultation with the NOAA, NMFS, who was sent the agency notice for ADL 232839 and ADL 232892. While NOAA, NMFS did not submit a formal comment, NOAA, NMFS sought separate follow-up with DOT&PF on whether the letter their office issued in 2015 was current with the proposed activities.

9. Comment: On December 5, 2019, the USACOE stated that the Corps ID for the Windy Corner project is POA-2017-00035 and that there is currently no open action, but any impacts proposed to aquatic resources will require a Corps permit.

Response: DNR acknowledges this comment and has forwarded to DOT&PF.

No other comments were received.

7. Findings

Ch. 116, SLA 2000 and CSP purposes found in AS 41.21.121

The Legislature has determined that:

- (1) the highway within the CSP from Potter Station to Girdwood is the sole highway link between the Kenai Peninsula and the rest of this state, an interstate highway on the national highway system, and a national scenic byway;
- (2) the highway within the CSP is affected by avalanches and other potential operational problems;
- (3) relocation or widening of the highway to avoid some of the operational problems will require relocation of some adjacent railroad and utility facilities; and
- (4) relocation of railroad facilities within the CSP will allow some areas of the railroad track to be straightened.

Based on these findings, the Legislature determined that “[i]t is the policy of the state that relocation or widening of the Seward Highway or relocation of railroad facilities within the Chugach State Park is appropriate and may be accomplished without significantly adversely affecting the purposes for which Chugach State Park was established.”¹

Below are the primary purposes of CSP, as described in AS 41.21.121, and how these purposes are affected by the proposed project.

1. Protect and supply a satisfactory water supply.
 - The project area does not serve as a public water supply, and no public water supply will be affected by this project.
2. Provide recreational opportunities for the people by providing areas for specified uses and constructing necessary facilities in those areas.
 - The project area is currently used for hiking, sightseeing, wildlife viewing, photography, rock and ice climbing, cycling, and water access to Turnagain Arm. While safety concerns require removal of the existing southbound pullout and its associated access, the project will provide a new and much larger recreational facility on the mountain side of the highway with safer access and new amenities. Proposed amenities include paved parking spaces, handicap accessible spaces, an overflow gravel parking lot, pedestrian paths, improved trailhead access, viewing platforms, benches, signage, restrooms, spotting scopes, and interpretive panels. These facilities

¹ Sec. 5, ch. 116 SLA 2000

increase access to and opportunity for CSP visitors to participate in the primary recreational activities in the area. Many visitors experience CSP from the highway, and the project would improve user safety by providing facilities separated from the highway. In addition, the project will enhance the CSP visitor experience by providing a more relaxed setting for viewing wildlife, the scenery of Turnagain Arm, and participating in recreational activities compared to the current setting adjacent to congested traffic. CSP visitors are anticipated to spend longer periods of time enjoying these activities in the new setting. The need for improved safety for traveling in both directions will be accommodated by the new mountain side recreational and parking facilities.

- This project will eliminate rock-climbing routes, however, these sites see little use because of their poor quality, according to the *Alaska Rock Climbing Guide*, 2nd Edition. The project will improve climbing area conditions by providing improved access, with greater separation from the highway, to the remaining higher quality rock-climbing routes.

3. Protect areas of unique and exceptional scenic value.

- The new CSP facilities on the mountain side of the highway and separation from the roadway are expected to transform the location from an unimproved pullout with limited parking capacity to a scenic destination for CSP visitors. The proposed new parking areas, interpretive panels, spotting scopes, viewing platforms, pathways, and benches will provide a focal area for visitors to experience the unique and exceptional scenic values of CSP and Turnagain Arm, reducing visitor impacts—such as soil compaction and litter—on undeveloped natural areas. The project will enhance CSP visitor appreciation of the scenic views of CSP in the Windy Corner area by providing a safe and relaxing place for motorists to observe the scenic views (landscape, bore tide, Dall sheep and other wildlife).
- The proposed material location at MP 109, will be designed to include a vegetated topographic screen, consisting of a buffer of intact earth between the proposed material extraction and much of the adjacent highway. This screen would be approximately 100 feet wide, and would limit visual impacts for northbound traffic except at the access point for the material location. It would also minimize the visual impacts for southbound traffic except for approximately 0.5 miles (approximately 30 seconds) prior to the material location. The proposed material location at MP 104 would only be utilized if material located at MP 109 did not provide sufficient quality and quantity for material for this project.

4. Provide areas for the public display of local wildlife.

- The proposed park facilities will enhance the visitor viewing experience of local wildlife, specifically Dall sheep, by providing convenient vantage points with spotting scopes, viewing platforms, and interpretive panels. The proposed project provides a larger viewing area that is separated from traffic and designed to discourage users from crossing the highway and railroad tracks in search of better viewing points of Turnagain Arm. A dedicated southbound turn lane will provide access to the new mountain side park facilities reducing the likelihood of visitors stopping on the existing southbound highway shoulder to view wildlife. However, the proposed project will change the vantage point from which the public can view beluga whales at Windy Corner. There are other nearby highway pull-offs such as Beluga Point—located at milepost 110.5 of the Seward Highway—and other nearby southbound-side pullouts that provide developed facilities on the ocean side of the highway for viewing belugas.
- The project will provide a high quality and safe public wildlife viewing experience in a unique location that consistently attracts Dall sheep. This rugged area is suitable to raising and sheltering lambs from predators and provides a high value mineral lick. According to the CSPMP, Windy Corner provides one of the best Dall sheep viewing opportunities in Alaska. In addition, the ADF&G claims this “is the only place in the world where Dall sheep can be seen at sea level from a nearby road.”²

5. Protect the existing wilderness characteristics of the easterly interior area.

- The easterly interior area of CSP will not be impacted by this project and shall continue to be operated as a wilderness area and the central area continue to be operated as a scenic area.

6. The eastern area of the CSP shall be operated as a wilderness area, the central area as a scenic area, and the periphery areas as recreational areas.

- The eastern area of the CSP shall continue to be operated as a wilderness area as this project will not impact the eastern area of the CSP.
- The central area of the CSP shall continue as a scenic area as the project will not impact the central area of the CSP.
- The proposed project will protect and enhance the recreational purpose of the CSP periphery by protecting and creating recreation facilities and providing for increased and safer access as described above. The proposed new CSP facilities are anticipated to improve recreational opportunities and protect CSP values by transforming the

² <https://www.adfg.alaska.gov/index.cfm?adfg=viewinglocations.windycorner>

location from an unimproved pullout with limited parking capacity to a scenic destination for CSP users.

Based on the analysis above, DNR finds that the proposed project will not significantly adversely affect the purposes for which CSP was created. While the proposed project would eliminate three low-value climbing routes and change beluga-watching locations along the two-mile project corridor, other measures would substantially enhance the CSP visitor experience, improve safety, and concentrate visitor impacts within a developed facility, resulting in an overall net benefit to the purposes of the CSP.

Chugach State Park Management Plan

The CSPMP management objectives for the Windy Corner Sheep Viewing Area, are to “[u]pgrade existing pullout to create a safe sheep viewing area. Expand parking to a large lot with a buffer between the highway and the parking area. Include interpretive displays and spotting scopes. Coordinate development with highway upgrades. Consult with ADF&G and the Board of Game to establish management practices that may lead to enhanced wildlife viewing.” The stated justification is “[t]his area of the highway poses safety concerns as visitors try to view the sheep that congregate in the area. Parking is limited and there is significant traffic congestion when animals are present” (CSMP p. 116).

Use of Material

The CSPMP recognizes the use of material within the park for highway construction, repair, and maintenance: “as safety upgrades are made to the Seward Highway material is needed and usually found locally by creating a quarry using park resources” (page 115). The CSPMP outlines several sites that may be suitable as a material location for highway safety-related upgrades and makes recommendations for new facilities and facility upgrades that are consistent with this project, including the site selected by DOT&PF for this project:

- MP 109 - Rainbow Point Group Recreation Site: Create a group use site in the quarry area that is established for highway upgrades. Include latrines, pavilions, and parking. As safety upgrades are made to the Seward Highway material is needed and usually found locally by creating a quarry using park resources. A group use site can be sited in this quarry site. The size and shape of this site would be dependent on the reclamation area (page 115).

The plan recognizes that the extraction and use of gravel, rock, sand, and minerals from within the park is a compatible use within the Recreation Development zone, if the material is used within CSP for projects that benefit park purposes and enhance public safety. Construction of a group use site is not within the scope of this project, due to funding limitations and the absence of nearby support facilities (i.e., parking, toilets, water), therefore the proposed site will be closed in a manner that protects public safety and deters unauthorized access.

If there is not enough material in the MP 109 location, DNR may also authorize the use of material from a temporary material location (only to provide materials for this specific project) near MP

104. Use of the MP 109 and the MP 104 (if needed) locations would be subject to the following conditions:

- DOT&PF will sign a material use agreement that incorporates the following conditions and reclamation plans, which require approval from DNR, prior to material extraction:
 - All material removed from a temporary material source must remain in state ownership.
 - All material removed from the MP 109 (and MP 104, if applicable) source must be used solely for this project at Windy Corner.
 - DOT&PF will require any DOT&PF contractors to post performance bonds for construction of a state highway project, and those performance bonds shall include reclamation conditions that will require prior approval from DNR.
 - Material may not be extracted from outside the boundaries of the locations approved by DNR.
 - Any temporary material location(s) must be reclaimed upon completion of this project, consistent with AS 27.19 and reclamation plans which must be approved by DNR. Any modification of the reclamation plan(s) requires the written approval of DNR.
 - Reclamation plans would include measures to deter public access to the material location(s).
 - DOT&PF will require any contractors or subcontractors extracting the material to agree to these conditions.

Access to Navigable Water: Alaska Constitution Article VIII, section 14, and AS 38.05.127

Article VIII, section 14 of the Alaska Constitution authorizes the legislature to regulate and limit access to the navigable or public waters of the state for other beneficial uses or public purposes. Alaska Statute 38.05.127(a)(2) authorizes DNR to restrict free access to navigable or public water when the commissioner finds that limiting access is necessary for other beneficial uses or public purposes. Turnagain Arm is a navigable water body, and access to it already is limited within the project area by the highway and railroad corridors. The railroad and the high volume of traffic on the existing highway alignment limit the opportunities for pedestrians to safely access the tidelands or engage in watersports. As recognized in section 5 of the session law, the highway is the sole highway link between the Kenai Peninsula and the rest of the state and an interstate highway on the national highway system. Similarly, the Alaska Railroad corridor in the project area provides a vital transportation, tourist, and commercial freight link between Anchorage and the communities and ports on the Kenai Peninsula. The highway rights-of-way and the railroad rights-of-way corridors constitute a beneficial use of the tidelands and waters of Turnagain Arm and serve a vital public purpose. DNR finds that continued access limitations are necessary in this area to ensure the safe operation of the Seward Highway and the railroad.

Section Line Easement:

DNR finds that an indefinite closure of the SLE that runs across the project area, more specifically described as Sections 2 and 3 of Township 10 North, Range 2 West, Seward Meridian, is in the

State's best interest because closure is necessary to protect public safety while also protecting railroad property. As described above, the Alaska Railroad corridor along Turnagain Arm provides essential transportation and freight services between Anchorage and ports on the Kenai Peninsula. Closure of the SLE will protect ARRC's property and operational interests in the rail corridor through the project area. Additionally, the SLE closure is entirely within CSP, which has been set aside for public enjoyment of its natural resources and recreation opportunities. Public access is generally unrestricted on lands surrounding the project area. Therefore, the underlying land ownership, land management policies, current use patterns, and practicality of use all indicate that closure of the SLE is appropriate. Therefore, the SLE will be closed for an indefinite period of time concurrent with the use of the property for the operation of the railroad.

Survey

A DNR-approved pre-construction survey and an as-built surveys are required to establish the final location and acreage of installed improvements and the associated easements or rights-of-way for this project. Pre-construction mean high water details must be included in the surveys. Easements or rights-of-way will not be issued until the survey has been approved by DNR.

8. Related Actions

Land and Water Conservation Fund (LWCF) Act, Section 6(f)

Section 6(f) refers to a section in the 1965 LWCF Act, codified as Public Law 88-578, 78 Stat. 897.³ The state portion of the LWCF program provides matching grants to states and local governments for the acquisition and development of public outdoor recreation areas and facilities. The conversion of outdoor public recreation areas to a non-recreation use triggers a requirement to replace the converted land with land of equal or greater value. The goals of this program include creating and maintaining high quality recreation areas and facilities with the hope of stimulating non-federal investment in recreation sites across the country.

Section 6(f)(3) of the LWCF Act prohibits the conversion of property acquired or developed with grants from this fund to a non-recreational purpose without the approval of the National Park Service (NPS). Importantly, Section 6(f) applies to all transportation projects that involve possible recreation site conversions (including protected parks, such as CSP), regardless of whether federal funding is being utilized for the project. Because this project will convert existing encumbered recreational land to a non-recreational use, replacement land of equal or greater value has been identified for acquisition. The Environmental Assessment and the Finding of No Significant Impact indicating this Section 6(f) requirement has been met and was approved by the NPS on May 30, 2019 for the partial conversion of CSP, protected under the LWCF. (Attachment B)

National Historic Preservation Act (NHPA), Section 106

³ 54 U.S.C.A. § 100101 note.

Section 106 of the NHPA⁴ requires the project lead federal agency to consider the effects of their undertakings on historic properties. At the time of consultation for the Seward Highway MP 105-107, Windy Corner Safety Improvements Project, No. NH-0A3-1(34)/56631, DOT&PF had assumed certain NEPA responsibilities of the FHWA under 23 U.S.C. § 326 and consulted the Alaska State Historic Preservation Office (SHPO) pursuant to Section 106 of the NHPA, 36 CFR 800, and the 2014 Programmatic Agreement for the Federal-Aid Highway Program in Alaska.

In 2013 the DOT&PF, in consultation with the SHPO, deemed Reger's 2001 survey⁵ sufficient for identification of historic properties for the proposed area of potential effects (APE). Further identification of historic properties was carried out in 2015 for the Turnagain Arm District of the Alaska Railroad (ANC-04057) by Cultural Resource Consultants⁶. The DOT&PF found ANC-04057 eligible for the National Register of Historic Places (letter to SHPO dated January 15, 2015) along with a finding of no historic properties adversely affected for the project. The APE attached to DOT&PF's letter included the highway, ARRC tracks, and cut and fill limits (pullout and parking area at Gorilla Rock) from approximately MP 105-107 as well as material site 1 (at MP 109). The SHPO concurred (letter to DOT&PF dated February 6, 2015) that ANC-04057 is eligible and with DOT&PF's finding of no historic properties adversely affected. In December of 2015, the APE for the project was expanded to include material site 6 (near MP 104) and a supplemental survey was completed by DOWL⁷ for the expansion. DOT&PF further identified the Historic Camp (SEW-1579) site and found it not eligible for the National Register with a finding of no historic properties adversely affected for the project (letter to SHPO dated December 16, 2015). The SHPO concurred that SEW-1579 is not eligible and with DOT&PF's finding of no historic properties adversely affected for the project (letter to DOT&PF dated January 4, 2016). At this time, DNR understands that DOT&PF has fulfilled their obligations under the implementing regulations of Section 106 of the NHPA and provided documentation in support of their findings to the SHPO, as required at 36 CFR 800.11(e).

⁴ 54 U.S.C.A. § 306108.

⁵ Reger, Douglas R. 2001 Archaeological and History Site Survey Along the Seward Highway, Mile 105 to Mile 115, for the Alaska Department of Transportation and Public Facilities, Seward Highway Bird Point to Potter Marsh Passing Lanes and Pathway Project (FHWA No. NH-0A3-1(25). Cultural Resource Consultants, LLC and URS. Reger Archaeological Consulting, Anchorage, AK.

⁶ Yarborough, Michael R., Aubrey L. Morrison, Catherine L. Pendleton, and Lawrence J. Mishkar 2014 Determination of Eligibility for the Turnagain Arm District of the Alaska Railroad (ANC-04057). DOWL HKM and the Alaska Department of Transportation and Public Facilities. Cultural Resource Consultants LLC, Anchorage, AK.

⁷ Zuccotti, Lucy F., and Caitlin L. Kennedy 2015 Cultural Resources Investigation for the Seward Highway MP 105-107, Windy Corner Safety Improvements, Material Site 6 (DOT&PF Project No. 56631). State of Alaska Department of Transportation and Public Facilities. DOWL, Anchorage, AK.

9. Authorizations & Acceptances

DOT&PF Easement

DNR will grant a highway easement to DOT&PF consistent with the Session Law and DOT&PF's certification requirements to FHWA. The location of this easement will be within Sections 2 and 3 of Township 10 North, Range 2 West, Seward Meridian. The highway easement will be 150 feet on each side of the centerline of the relocated highway.

ARRC Right-of-Way

For the new railroad alignment, DNR will convey to ARRC an equivalent property interest to what ARRC received for the existing railroad corridor from the United States under the Alaska Railroad Transfer Act (ARTA), 45 U.S.C. §§ 1201 et seq. The location of this property interest will be within Sections 2 and 3 of Township 10 North, Range 2 West, Seward Meridian. This corridor will be 150 feet on each side of the centerline of the relocated railroad. In exchange, ARRC will convey an equivalent property interest to DNR for the original corridor, which will become part of CSP.

Utility Easement(s)

For utilities that need to be relocated or installed and cannot be collocated within the DOT&PF and ARRC rights-of-way, DNR may grant utility easements necessary to complete this project because they will not adversely affect the purpose for which CSP was created.

Relinquished Rights-of-Way

DNR will accept relinquished rights-of-way and property interests in land from DOT&PF, ARRC, and utilities. Prior to final acceptance of the relinquishments, DNR will require that the relinquished rights-of-way be in or returned to a condition that facilitates DPOR management consistent with the statutory purposes of the park and the CSPMP.

Use of Material

DNR will authorize DOT&PF's use of state-owned materials from a temporary, project-specific material location near Seward Highway MP 109. If needed, DNR also may authorize the use of material from a temporary, project-specific material location near MP 104 subject to the conditions outlined above.

10. Public Notice, Comments, and Process

The public is invited to review and comment on this Finding, which will be advertised for a **60-day** public comment period. Notice will be posted on the Alaska Online Public Notice System at <http://aws.state.ak.us/OnlinePublicNotices/Default.aspx> and at the post offices located in Girdwood, Hope, Anchorage (Huffman), and Whittier. Courtesy notices will also be mailed or emailed to the Municipality of Anchorage, neighboring property owners, third parties, and other interested parties on February 26, 2020 for a **60-day** public comment period.

Public Notice of this Proposed Finding and the public comment period began on February 26, 2020. **Public comments will be accepted through 4:00 PM on April 27, 2020.** Public comments must be in writing and may be submitted to:

Chugach State Park
Superintendent Kurt Hensel
18620 Seward Highway
Anchorage, AK 99516
DNR.Windycorner@alaska.gov

The State of Alaska, Department of Natural Resources, complies with Title II of the American with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services and/or special modifications to comment may call Relay Alaska at 711 or 1-800-770-8973 for assistance at no cost.

The public comment period has been extended for an additional 30 days. Comments will be accepted through April 27, 2020.

At the conclusion of the public comment period, DNR will review all comments received and determine how best to proceed. If DNR chooses to proceed with the Finding, with or without modifications, a copy of the Final Finding will be provided to all commenters. Upon issuance of the Final Finding, anyone who submits a public comment on this Finding may request reconsideration.

Approval

In consideration of the authorities and criteria listed above, I hereby determine that the authorizations to be granted by this decision are consistent with DNR's mission, that this project is consistent with legislative direction and administrative management intent for this land and that issuance of the authorizations described above is in the interest of the State of Alaska. The Department assumes no responsibility for maintenance or liability for injury or damages attributable to this authorization.

As Commissioner of DNR, I find that there is no significant adverse effect of this project to Chugach State Park and therefore, I approve this Finding.

Corri A. Feige, Commissioner
Alaska Department of Natural Resources

Date

A person affected by this decision may request reconsideration, in accordance with 11 AAC 02. Any reconsideration request must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d), and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Under 11 AAC 02.030, requests for reconsideration filed under 11 AAC 02 must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160 (a) and (b).

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on their own motion, this decision goes into effect as a final order and decision on the 31st calendar day after the date of issuance. Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

Attachments

- Attachment A: The Session Law (Chapter 116, Session Laws of Alaska 2000)
- Attachment B: Land and Water Conservation Fund Finding of No Significant Impact

Chapter: CH116

Source: CSSB 235(FIN) am H

Action Date: June 6, 2000

Effective Date: June 7, 2000

00

AN ACT

Authorizing the exchange of land between the Alaska Railroad Corporation and Eklutna, Inc., between the Alaska Railroad Corporation and the United States Department of the Army and the United States Department of the Air Force, between the Alaska Railroad Corporation and Chugach Alaska Corporation, and between the Alaska Railroad Corporation and the Municipality of Anchorage; authorizing the transfer of land between Alaska Railroad mileposts 133 and 134 from the Alaska Railroad Corporation to certain named individuals; relating to transfers of public land or grants or conveyances of interest in public land among the Alaska Railroad Corporation, the Department of Transportation and Public Facilities, and the Department of Natural Resources to relocate or widen the Seward Highway, to relocate railroad facilities, and to relocate adjacent utility facilities from Potter Station to Girdwood; and providing for an effective date.

Article 1. Land Exchanges Between Alaska Railroad

Corporation and Eklutna, Inc., Department of Army and

Department of Air Force, Chugach Alaska Corporation, and

Municipality of Anchorage; Transfer of Land to Certain Individuals.

*** Section 1.** The uncoded law of the State of Alaska is amended by adding a new section to read:

APPROVAL OF THE TRANSFER OF REAL PROPERTY TO EKLUTNA, INC. (a) The Alaska Railroad Corporation is authorized to convey the corporation's entire interest in approximately 384 acres of rail land within Tract 39 of Dependent Resurvey of Rectangular Survey of Township 15 North, Range 2 West, Seward Meridian, officially filed November 10, 1992, to Eklutna, Inc., in exchange for the conveyance to the corporation by Eklutna, Inc., of approximately 65 acres of land adjacent to the railroad utility corridor at railroad mileposts 129, 130, 133, 140, 142, 146, and 151 and sufficient additional acreage east of Birchwood Airport and adjacent to the railroad between miles 134.5 and 136.3 to equalize the value of lands exchanged.

(b) The conveyances described in this section are made for the purpose of realignment of railroad track to improve operating efficiency and enhance safety.

(c) The land conveyed by Eklutna, Inc. to the Alaska Railroad Corporation shall be held and managed by the corporation in accordance with AS 42.40.

(d) This section constitutes legislative approval under [AS 42.40.285](#) (1) for the Alaska Railroad Corporation to convey its entire interest in the land described in (a) of this section.

*** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPROVAL OF THE TRANSFER OF REAL PROPERTY TO THE UNITED STATES DEPARTMENT OF THE ARMY AND THE UNITED STATES DEPARTMENT OF THE AIR FORCE. (a) The Alaska Railroad Corporation is authorized to convey the corporation's entire interest in approximately 229 acres of railroad utility corridor between railroad mileposts 118 and 127.5, within Township 13 North, Range 3 West, Seward Meridian, Township 14 North, Range 3 West, Seward Meridian, and Township 14 North, Range 2 West, Seward Meridian to the United States Department of the Army and the United States Department of the Air Force in exchange for the conveyance of approximately 227 acres of land in the same vicinity to the corporation by the United States.

(b) The conveyances described in this section are made for the purpose of realignment of railroad track to improve operating efficiency and enhance safety.

(c) The land conveyed by the United States to the Alaska Railroad Corporation shall be held and managed by the corporation in accordance with AS 42.40.

(d) This section constitutes legislative approval under [AS 42.40.285](#) (1) for the Alaska Railroad Corporation to convey its entire interest in the land described in (a) of this section.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPROVAL OF THE TRANSFER OF REAL PROPERTY TO CHUGACH ALASKA CORPORATION. (a) Contingent upon the conveyance to the Alaska Railroad Corporation by the Chugach Alaska Corporation of an equivalent interest in real property onto which the railroad utility corridor may be relocated, the Alaska Railroad Corporation is authorized to convey the corporation's entire interest in approximately 6.4 acres of railroad utility corridor between railroad mileposts 14 and 15, within Township 2 North, Range 1 East, Sections 6 and 7, Seward Meridian, to the Chugach Alaska Corporation.

(b) The conveyances described in this section are made for the purpose of realignment of the railroad to allow relocation of the Seward Highway by the Department of Transportation and Public Facilities to improve highway operations and enhance safety.

(c) Land conveyed by the Chugach Alaska Corporation to the Alaska Railroad Corporation shall be held and managed by the Alaska Railroad Corporation in accordance with AS 42.40.

(d) This section constitutes legislative approval under [AS 42.40.285](#) (1) for the Alaska Railroad Corporation to convey its entire interest in the land described in (a) of this section.

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPROVAL OF THE TRANSFER OF CERTAIN REAL PROPERTY WITHIN THE MUNICIPALITY OF ANCHORAGE. (a) Contingent upon the approval of the conveyance of affected municipal park land by the voters of the Municipality of Anchorage, the Alaska Railroad Corporation is authorized to convey the corporation's entire interest in

(1) approximately 4.5 acres of railroad utility corridor between railroad mileposts 133 and 134, within Township 15 North, Range 2 West, Sections 13 and 24, Seward Meridian, to the Municipality of Anchorage in exchange for the conveyance of approximately 13.6 acres of land in the same vicinity to the corporation by the Municipality of Anchorage;

(2) approximately 5.1 acres of railroad utility corridor between railroad mileposts 133 and 134, within Township 15 North, Range 1 West, Sections 18 and 19, Seward Meridian, to Richard and Carol Drebert, Harry and Simone Thomson, and Richard Moore or their personal representatives, successors, or assigns; each to receive that portion of the railroad utility corridor immediately adjacent to their respective parcels of land.

(b) The conveyances described in this section are made for the purpose of realignment of railroad track to improve operating efficiency and enhance safety.

(c) The land conveyed by the Municipality of Anchorage to the Alaska Railroad Corporation shall be held and managed by the corporation in accordance with AS 42.40.

(d) This section constitutes legislative approval under AS 42.40.285 (1) for the Alaska Railroad Corporation to convey its entire interest in the land described in (a) of this section.

Article 2. Potter Station to Girdwood.

* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

FINDINGS AND POLICY REGARDING CHUGACH STATE PARK. (a) The legislature finds that

(1) the Seward Highway within the Chugach State Park from Potter Station to Girdwood is the sole highway link between the Kenai Peninsula and the rest of this state, an interstate highway on the national highway system, and a national scenic byway;

(2) the Seward Highway within the Chugach State Park is affected by avalanches and other potential operational problems;

(3) relocation or widening of the Seward Highway to avoid some of the operational problems will require relocation of some adjacent railroad and utility facilities; and

(4) relocation of railroad facilities within the Chugach State Park will allow some areas of the railroad track to be straightened.

(b) It is the policy of the state that relocation or widening of the Seward Highway or relocation of railroad facilities within the Chugach State Park is appropriate and may be accomplished without significantly adversely affecting the purposes for which Chugach State Park was established.

*** Sec. 6.** The uncoded law of the State of Alaska is amended by adding a new section to read:

CHUGACH STATE PARK LAND TRANSFERS AND CONVEYANCES. (a) Notwithstanding AS 41.21.120 - 41.21.125, the commissioner of natural resources may, for the purpose of relocation or widening of all or portions of the Seward Highway or relocation of railroad facilities within the Chugach State Park, and upon a finding by the commissioner that any grant or conveyance for that purpose would not significantly adversely affect the purposes for which the Chugach State Park was established,

(1) grant a highway easement to the Department of Transportation and Public Facilities;

(2) convey a property interest in land to the Alaska Railroad Corporation to allow relocation of the Alaska Railroad;

(3) grant utility easements; and

(4) receive land or interests in land in exchange for land or interests in land granted or conveyed under (1), (2), or (3) of this subsection.

(b) A grant or conveyance made under (a) of this section may not exceed the interest needed to relocate or widen the Seward Highway or relocate railroad facilities within the Chugach State Park and to construct, repair, and maintain the relocated or widened highway and the relocated railroad or utility.

(c) A property interest conveyed to the Alaska Railroad Corporation under (a)(2) of this section shall be held and managed by the corporation in accordance with AS 42.40.

(d) Land or an interest in land received by the commissioner under (a)(4) of this section shall be designated as part of Chugach State Park.

*** Sec. 7.** The uncoded law of the State of Alaska is amended by adding a new section to read:

ALASKA RAILROAD LAND TRANSFERS AND CONVEYANCES. Notwithstanding AS 42.40.285 , the Alaska Railroad Corporation may, for the purpose of the relocation or widening of the Seward Highway or relocation of Alaska Railroad facilities within the Chugach State Park, and relocation of adjacent utility facilities, transfer land or convey interests in land in exchange for land or interests in land conveyed to the corporation.

*** Sec. 8.** The uncoded law of the State of Alaska is amended by adding a new section to read:

IDENTIFICATION OF STATE PARK LAND OR INTERESTS IN LAND BEING TRANSFERRED OR CONVEYED UNDER SECTIONS 5 - 7 OF THIS ACT. By the first day of the First Regular Session of the Twenty-Second Alaska State Legislature, or as soon as possible after that date, the governor shall

(1) identify any land being transferred under secs. 5 - 7 of this Act that requires amendment to statutes describing the Chugach State Park; and

(2) submit to the legislature any legislation needed to make those statutory amendments.

* **Sec. 9.** This Act takes effect immediately under AS 01.10.070 (c).



United States Department of the Interior



NATIONAL PARK SERVICE

Alaska Region
240 West 5th Avenue
Anchorage, Alaska 99501

**Seward Highway Mileposts 105-107, Windy Corner Improvements
A Partial Conversion of Land Subject to Section 6(f)(3)
of the Land and Water Conservation Fund Act, Public Law 108-198
Chugach State Park, Anchorage, Alaska
Environmental Assessment
Finding of No Significant Impact**

February 2019

This Finding of No Significant Impact (FONSI) documents the decision of the National Park Service (NPS) to adopt the preferred alternative in the Windy Corner Environmental Assessment. Alternative 2, the Selected Alternative, includes partial conversion at Chugach State Park by transferring Land and Water Conservation Fund (LWCF) 6(f)(3) requirements from 39.56 acres of land that is currently in park use to 14.7 acres of land currently in transportation use that will be redeveloped for park use. There will remain at Chugach State Park more than 430,000 acres to be managed subject to LWCF requirements.

This alternative was evaluated against Alternative 1, No Action. Both alternatives were described and analyzed in the February 2019 "Seward Highway Mileposts 105-107, Windy Corner Improvements: A [Partial] Conversion of Land Subject to Section 6(f)(3) of the Land and Water Conservation Fund Act, Public Law 108-198 Environmental Assessment" (EA). This EA was prepared by the Alaska Department of Transportation (ADOT) on behalf of the Federal Highway Administration (FHWA) and in cooperation with the Alaska Department of Natural Resources (AKDNR) and NPS.

The LWCF Act is now codified at 54 U.S.C. Section 200305(f)(3). The request to adopt the preferred alternative is made to NPS by the AKDNR, who both administers the LWCF program in Alaska on behalf of NPS and owns and manages Chugach State Park. Chugach State Park is located east of Anchorage, Alaska. The replacement parcel is currently part of the Seward Highway right-of-way where it runs through Chugach State Park.

PURPOSE AND NEED

In 1970, the U.S. Department of the Interior (DOI) Bureau of Outdoor Recreation (now the NPS LWCF AKDNR and Local Assistance Program) awarded grant #02-00057 for development of water wells at a number of AKDNR parks, including Chugach. Overall, there have been awarded fifteen LWCF grants for acquisition and development projects at Chugach. The AKDNR accepted the terms of the grant agreements with full knowledge that those terms include maintaining the park for public outdoor recreation purposes unless those responsibilities are otherwise transferred to an alternate location and approved by the Secretary of the DOI as delegated to the NPS. This LWCF program "conversion" process is described more fully in NPS regulations at 36 C.F.R. 59.3.

Seward Highway travels through Chugach State Park, connecting the City of Anchorage to important points of interest to the south, including the City of Soldotna and Kenai Fjords National Park. ADOT has determined that numerous design issues along Seward Highway contribute to significant public safety concerns and has concluded that reconfiguration of this section of road is needed in order to decrease the number of high-severity injury motor vehicle crashes and also to improve traffic flow. The realignment of the highway would be permanent. In order to complete these safety improvements, ADOT has also determined

the need to gather some construction materials onsite. Although the impact in that area of the park will be temporary, it will be in excess of how NPS currently defines "temporary" for the purposes of LWCF. For LWCF purposes, "temporary" is currently defined as 180 days. The impacts at the borrow site area may last up to two years before they are returned to park use.

While the transportation project itself is not subject to NPS review, NPS must approve the request to convert AKDNR LWCF responsibilities from one section of Chugach State Park to the portion of Seward Highway that will be added to Chugach State Park. The areas to be converted from recreation to transportation use are currently valued as open space, mostly mudflat accessible to the public at low tide. The two materials borrow sites are steeply sloping vegetated banks with bedrock outcroppings, also valued as open space but with no developed public access points. The replacement property will be developed with a new scenic overlook taking advantage of views that include Turnagain Arm and the Kenai Mountains. New recreation developments will include vehicle access, parking, and interpretive signage.

The scope of the NPS review is limited to: 1) assessing equivalency between the area proposed for removal from LWCF related public outdoor recreation use restrictions and the proposed replacement properties as further described in 36 C.F.R. 59.3; 2) determining whether the 430,000 acres at Chugach State Park that remain subject to Section 6(f)(3) requirements will constitute a viable outdoor recreation unit; and, 3) determining whether there are any potential significant environmental impacts associated with developing the replacement park for public outdoor recreation use.

ALTERNATIVES CONSIDERED

1. No Action Alternative

NPS does not approve the AKDNR's proposal to convert a portion of Chugach State Park pursuant to the LWCF conversion regulations. This would not prevent ADOT from moving forward with reconstruction of Seward Highway, but it could subject the AKDNR to penalties including freezing grant funding to other agencies within the state of Alaska. It would also prevent the old Seward Highway alignment from being added to the LWCF estate.

2. Proposed Action Alternative (Selected Alternative)

NPS approves the AKDNR's request to convert LWCF requirements from 39.56 acres at Chugach State Park to 14.7 acres that will be added to Chugach State Park. This will result in a net loss of 24.86 acres from the LWCF estate but a net gain of 10.54 acres to the public recreation estate.

SELECTED ALTERNATIVE

The NPS has selected for implementation the Proposed Action Alternative as described in the EA.

Under the selected alternative, 430,000 acres +/- will continue to be managed consistent with LWCF requirements and will continue to provide public outdoor recreation opportunities for park users. The slightly reduced Chugach State Park will continue to include camping, hiking, trails, and open space for the recreating public. A 39.56 acre section of Chugach State Park will be removed from LWCF requirements. This represents approximately 0.0092% of the LWCF acreage at Chugach State Park.

ADOT will develop a 14.7 acre property as a scenic overlook and trail head and then transfer it to AKDNR where it will become part of the acreage administered for LWCF purposes. The 35.4 acre temporary impact area will remain in AKDNR ownership and be restored for public outdoor recreation use, but will be permanently removed from the LWCF estate.

Based on the analysis provided in chapters three and five of the EA, along with a Biological Assessment and other appendices, NPS concludes the environmental impacts of the conversion are as follows:

Land Use and Recreation: The LWCF Act requires replacement property to be equivalent fair market value, location, and recreation usefulness. It does not require there to be no net loss in total LWCF acreage. While this conversion will result in a net loss of LWCF acreage, the net gain to public recreation infrastructure results in an equivalent exchange. The location is almost identical and the fair market equivalency has been established by appraisals that meet Uniform Appraisal Standards for Federal Land Acquisitions. The impact to land use and recreation as a whole (beyond LWCF) is both a net gain in recreation acreage and a net gain in recreation infrastructure.

Circulation and Transportation: Circulation and transportation through Chugach State Park should improve as a result of the ADOT project that is prompting this conversion request. While that project is outside the scope of the NPS NEPA action, approval of the conversion will result in a safe overlook and trailhead, reducing the potential for people to stop their vehicles in unsafe locations in pursuit of recreation purposes.

Site Aesthetics: For the two years that they are in use, the borrow pits have the potential to negatively impact site aesthetics. Given the slope of the terrain, the existing vegetation cover, and the distance between the borrow pits and the two closest trails, it is believed they will not be visible to trail users. If recreation users choose to hike off trail to a point where they can see the borrow pits, it is possible their experience of site aesthetics will be negatively impacted. As the impacts will be temporary in nature and not affecting a developed recreation amenity, adverse impacts are likely to be minor.

Surface Waters, Floodplains, and Wetlands: Although approval of the conversion and development of the replacement site for park purposes will have no effect on water resources (the conversion approval is administrative and the replacement site is currently in road use), the Seward Highway project itself may impact these resources. Although the referenced EA includes some analysis of those potential impacts, assessment of significance lies with FHWA and should be addressed in their decision document.

Plants, Animals, and Federally Listed Species: Although approval of the conversion and development of the replacement site for park purposes will have no effect on plants or animals, federally listed species, or sensitive habitat (the conversion approval is administrative and the replacement site is currently in road use), the Seward Highway project itself may impact these resources. Although this EA includes some analysis of those potential impacts, assessment of significance lies with FHWA and should be addressed in their decision document.

Historic Properties: Although approval of the conversion and development of the replacement site for park purposes will have no effect on properties listed on or eligible for listing on the National Register of Historic Properties (the conversion approval is administrative and the replacement site is currently in road use - the road itself is not an historic property), there is an historic property within the Area of Potential Effect for the Seward Highway Project and impacts have been assessed by ADOT on behalf of FHWA in consultation with the State Historic Preservation Officer (SHPO).

PRELIMINARY ALTERNATIVES AND ACTIONS CONSIDERED BUT DISMISSED

NEPA allows for alternatives to be eliminated from detailed study based on criteria described in 40 CFR 1504.14 (a). In the case of LWCF conversions, NPS has only two options available: 1) approve the conversion if the criteria are met; or, 2) request additional materials of the AKDNR until the criteria for approval are met. This is also described as the no action alternative and the selected alternative as discussed above.

However, ADOT also considered a smaller conversion footprint alternative that would have required them to locate the materials borrow sites outside the park. Had NPS been forwarded the [Smaller] Conversion Alternative as the selected option instead, it could also have been approved. A choice between the Proposed

Action Alternative and the [Smaller] Conversion Alternative is not with the authority of NPS to select but lies solely with AKDNR and ADOT.

WHY THE SELECTED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT

After considering the environmental consequences described in the EA, the NPS has determined that the Selected Alternative and its associated actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. This finding is based on the following:

- The Selected Alternative will include both beneficial and adverse effects. The Selected Alternative will not have adverse impacts to geological resources, air quality, noise level, water quality/quantity, natural resources such as floodplains, wetlands, and species habitat; land use and planning, circulation such as transportation and accessibility, recreation, aesthetics, historical and cultural resource and socio economic resources, or economic justice for minority and low income populations. The finding of no significant environmental effects is not biased by the beneficial effects of the action.
- The Selected Alternative will not adversely affect public health or safety.
- The Selected Alternative will not result in significant adverse effects to the unique natural resource characteristics of the area, including prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- The effects on the human environment are known, and there were no controversial impacts or aspects of the proposed project that surfaced during the environmental analysis process. There is no scientific controversy over the impacts of the project.
- The Selected Alternative will have no effect on historic properties. There will be no adverse effect to historic properties within the area of potential effect.
- The Selected Alternative would have no effect on species listed or proposed for listing as endangered or threatened or their critical habitat as determined under the Endangered Species Act of 1973. There are no relevant species or critical habitat in the project area.
- No significant cumulative effects and no highly uncertain, unique or unknown risks were identified during preparation of the EA or during the public review period. The Selected Alternative was evaluated under the standard conversion process criteria in 36 C.F.R. 59.3. Thus, the Selected Alternative neither establishes a precedent for future actions with significant effects nor represents a decision in principle about a future consideration. Conversion proposals are evaluated independently on a case by case basis without reliance on prior decisions.
- The Selected Alternative will not violate federal, state, or local laws or requirements for the protection of the environment.

AGENCY COORDINATION

The public outreach called for by Section 106 of the NHPA was integrated into the NEPA process. Consultation was delegated by FHWA as the lead federal agency to ADOT. The SHPO concurred with a finding of no adverse effect to historic properties in a letter dated February 6, 2015.

This proposal was developed by ADOT on behalf of FHWA in consultation with the AKDNR and the National Park Service, State and Local Assistance Programs.

PUBLIC INVOLVEMENT

The public was invited to participate throughout the scoping process as documented in the "Public Involvement" appendix to the EA. The EA was released for a 30-day public comment period. Substantial comments were addressed by ADOT. Those relevant to NPS review include concerns raised about the potential for aesthetic impacts related to the borrow sites and the equivalency of the replacement land as compared with what is being proposed for conversion.

FINDING

Based on the information provided in the EA and summarized above, the NPS has determined that implementation of the Selected Alternative is not a major federal action and does not require an Environmental Impact statement (EIS). The Selected Alternative will not have a significant effect on the human environment. There are no significant impacts on public health, public safety, or threatened or endangered species. The Selected Alternative will have minor adverse impacts to recreation, which will be mitigated through acquisition and development of the replacement site. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the Selected Alternative is also consistent with 36 C.F.R. 59.3. Therefore, in compliance with the National Environmental Policy Act, an EIS will not be prepared, and the selected project may be implemented immediately.

Recommended by:
Raymond Murray,


Chief, Partnership Programs
State and Local Assistance Programs
Pacific West Region
National Park Service

5/13/19
Date

Approved:
Bert Frost,


Regional Director
Alaska Region
National Park Service

30 May 2019
Date