

**APMA J20195690#1**  
**The Palmer Project, Alaska**  
**Juneau Mining District**  
**Memorandum of Decision**

**Applicant(s):**

Constantine North, Inc.-Mineral Property Owner  
Constantine Mining, LLC. - Operator

August 7, 2023

**1. Requested Land Use and Proposed Activity Description:**

***Broad Proposed Activity Description:*** The applicants propose to conduct sonic geotechnical drilling, hydrogeological monitoring, seismic refraction studies, and associated access construction on ten state mining claims located within the Haines State Forest. Seismic refraction studies would utilize small charge, gellatin dynamite to generate refraction waves for geophone instrumentation and analysis. The purpose of drilling, monitoring, and seismic studies for subsurface investigation to understand the regolith and hydrogeological conditions to determine feasibility and design considerations at two sites (Klehini and Plateau) for potential future mine infrastructure for the Palmer Project.

***Proposed Surface Occupancy:*** Proposed surface occupancy consists of access trails, drill pads and cleared brush for seismic refraction survey lines.

***Acreage Disturbance and Reclamation Bonding:*** Pursuant to AS 27.19.030, this operation is more than five acres and requires a reclamation plan approval. This amendment proposes to include the additional acreage with the existing reclamation plan approval associated with APMA J20195690. The total proposed disturbance for 2023 in this amendment is 19.59 acres, which is rounded up to 20 acres for the purposes of bonding. The applicants have provided the appropriate bond pool deposits and payments for these 20 acres and 16 acres associated with the remainder of their operations at the Palmer Project.

***Water, Fish, Wildlife, Wetlands and Cultural Surveying:***

Water use and water quality, fish and habitat mitigation, wildlife mitigation, wetlands impact and cultural resources are managed and regulated by the following agencies:

- Alaska Department of Natural Resources, Division of Mining, Land & Water, Water Section (DMLW-Water)
- Alaska Department of Natural Resources, Office of History and Archeology (OHA)
- Alaska Department of Fish and Game, Habitat Division (ADFG)
- Alaska Department of Environmental Conservation (ADEC)
- U.S. Army Corps of Engineers, Alaska District (USACE)
- U.S. Fish and Wildlife Service (USFWS)

**2. Relevant Statutory Authorities**

- AS 38.05.020 Authority and Duties of the Commissioner
- AS 38.05.035 Powers and Duties of the Director
- AS 38.05.255 Surface Use of Land or Water
- AS 38.05.850 Permits
- AS 27.19 Reclamation
- AS 41.15.300 through .330 Haines State Forest Resource Management Area

**Relevant Regulatory Authorities**

- 11 AAC 97 Mining Reclamation
- 11 AAC 96 Miscellaneous Land Use
- 11 AAC 86 Mining Rights

**3. Proposed Permit Area Location**

- a. **Geographic Location:** Uplands near the Glacier Creek confluence with the Klehini River, Haines Alaska.
- b. **Legal Description:**  
C028S053E Sec. 26,28  
C028S054E Sec. 29, 30

**4. Land Status Information**

The requested activities lie within the State of Alaska mental health land selection MH 16. The subject lands received Patent #50-65-0019 to the State on July 20, 1964.

Interests within or near the sections listed above: These interests are identified in Alaska's Land Administration System and Alaska Mapper both available online at <http://dnr.alaska.gov/mlw/index.htm>

**Mineral Closing Orders**

None

**Leasehold Location Order**

None

**Municipal Selection**

None

**Other Permits, Leases or Actions**

Baby Brown Timber Sale (Division of Forestry) -NSE 1549

Baby Brown/Glacier Side Sale (Division of Forestry) - 1594

**Land Agreements, Settlements, Conveyances, Reconveyances and Municipal Entitlements of land**

None

**Other Land Information**

Description of activities above lie within the management provisions or may be affected by the

Haines State Forest Management Plan, adopted in August 2002 for the following region:

**Management Plan: Haines State Forest Management Plan**

**Unit Name: Klehini Unit**

**Description:** 3 – E Jarvis / Glacier Creek

- **Classification:** Forest Land
- **Prohibited Uses:** Personal Use Cabins, Commercial Helicopter Landings (Heli-skiing, Tours)
- **Management Intent:** Subunit 3e (Jarvis/Glacier Creeks) encompasses the forested state land west of Porcupine Creek. The subunit, containing approximately 4,400 acres of operable forest land, is classified Forest Land and will be managed primarily for commercial timber harvest. Mineral and material values include silver, lead, and limestone east of Jarvis Creek and gold on Glacier Creek. A barite deposit on federal land is near the headwaters of Glacier Creek. The bridge crossing Glacier Creek has failed, and the Division of Forestry will need to replace it to provide access to the area. Mining operations and minerals extraction will also be allowed. Habitat, recreation, and scenic values are present within this subunit.

**5. Access**

Access from outside the claim block is via the Porcupine Creek Logging Road.

**6. Permitting Background/History of Applicant Compliance**

Constantine Mining, LLC and Constantine North, Inc. have had no compliance issues with the Alaska Department of Natural Resources until May of 2023. Operations at the Palmer Project have been ongoing for over a decade under APMA 5690.

During the comment period, the Division was advised by several commenters that clearing work for seismic lines was initiated at the Klehini Site prior to the issuance of a permit, with some portions of the lines in excess of 5' in width. Constantine provided a preliminary verbal notification shortly after that their contractor had deviated from Generally Allowed Uses and had cleared in excess of 5'. Constantine indicated that they would be providing a follow-up verbal and written report regarding their findings from field teams walking the cleared lines.

On June 18th, Constantine provided DNR the results of a full ground survey of the cleared lines, indicating that approximately a half mile of lines at the Klehini Site were cleared in a width more than 5', but that no areas in excess of 15' were noted. Areas cleared that were wider than 5' of width were in areas of dense devils' club or alder and were cleared to address potential poking, tripping, or travel hazards to the clearing crew. In the report, it was discussed that the contractor understood it to be permissible to clear wider for those above-listed reasons. Constantine also noted that the few standing trees cut were already dead or infested. The Division conducted a follow-up site to the Klehini site on August 2nd and noted that the forest undergrowth, grasses, ferns, and forbs that have grown over the summer have made it difficult in places to determine that the line clearing has occurred.

The Division has determined that commenters are correct in that clearing in a width more than 5' prior to receiving a permit or other written authorization is a violation of 11 AAC 96.010 ("Uses

requiring a permit”). Pursuant to 11 AAC 96.145(a), “A person who violates this chapter or a provision of a permit issued under this chapter is subject to any action available to the department for enforcement and remedies, including revocation of the permit, civil action for forcible entry and detainer, ejectment, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. The department may seek damages available under a civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or 09.45.735 for violations involving injuring or removing trees or shrubs, gathering geotechnical data, or taking mineral resources.”

Upon review of the totality of the circumstances (and that the Division has determined that it is appropriate to issue the requested permit authorizing clearing up to 15’ in width for seismic studies); no remedy is required beyond the requirement for the posting of a performance guaranty to ensure compliance with the terms of the issued permit. The required performance guaranty is \$5,000 USD. The pursuit of damages (“punitive or compensatory damages”) for the clearing activity is unwarranted. Those cleared areas are now part of a permitted and authorized surface use and civil action would be subject to the principle of *de minimis non curat lex*<sup>1</sup>. Commercially valuable timber cleared (if any) prior to the issuance of the permit is now required to be salvaged according to the terms of the permit.

## **7. Project Review and Agency Notice**

The Division provided the application for review and the opportunity to comment for the activities considered for authorization under this summary. The following entities were notified on May 2, 2023, for comment on the application: The Alaska Department of Fish and Game (ADFG), Alaska Department of Environmental Conservation (ADEC), ADNR Water Resources Section (ADNR-Water), ADNR State Historic Preservation Office (AK SHPO), U.S. Army Corps of Engineers (USACE), Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (USFWS) and all interested parties that requested notification. Agencies were given an opportunity to review the application materials and submit comments for a 30-day period from May 2, 2023 through June 3, 2023.

### **Agency Review Comment and Issue Response**

Agency Comments were received from the Alaska Department of Fish and Game and the US Fish and Wildlife Service. See Attachments C & D for comments and response documents.

### **Public Notice:**

The Division issued a public notice of the application and supporting documents on June 9, 2023. Notice was distributed using the State of Alaska Online Public Notice System. During the Public Notice Period, 189 individual public comment letters were received, as well as 12,919 public comment form letters<sup>2</sup>. DMLW comment responses are located in Appendix B of this document.

## **8. Potential Environmental Risk**

This decision considers the environmental factors directly related to the authorization for use of state lands, specifically whether the approval of the authorization is in the State’s interest. The purpose of this consideration is to identify any associated mitigation measures

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<sup>1</sup> *De minimis non curat lex* or “principal that the law is not concerned with insignificant or minor matters”.

<sup>2</sup> Form letters are automatically submitted when the commenter puts their name and contact info into a website(s) that was created for the purposes of transmitting comments to DNR by an outside entity or stakeholder.

or other requirements necessary to protect the public interest while informing the overall decision of whether or not to approve the authorization.

**Fuel:**

The project proposes to fuel equipment from truck bed mounted fuel tanks at the Klehini site and via helicopter delivered 100 gallon fly tanks to the Plateau site. Fuel onboard during creek crossings will be limited the internal tanks of the equipment.

**Camp Reclamation, Remediation and Removal:**

Camp is located on private land is outside the scope of this decision.

**9. Performance Guaranty**

Pursuant to 11 AAC 96.060(b), a performance guaranty is determined “based on the scope and nature of the activity planned and the potential cost of restoring the permit site.”

Upon review of the scope and nature of the proposed activities which include the use of explosives, in combination with the applicants’ history compliance history<sup>3</sup>, the DNR has determined to requirement under 11 AAC 06.060 for a performance guaranty of **\$5,000 USD**. The DNR reserves the right to evaluate the performance guaranty at any time during the life of the permit, and at least annually. If a performance guaranty is required and not timely provided, the authorization will be nullified without further consideration.

**10. Insurance**

Insurance is a means to protect the state from liabilities incurred through the use of state property, or from damage to state property as a result of accidental or catastrophic events. This type of protection is necessary in the event of an accident or negligence that was consequentially connected to activities conducted on state land, and/or if the state is named in a lawsuit as a result of an accident or negligence.

In consideration of the requirements of 11 AAC 96.065, the DNR waives this requirement based on the scope and nature of the proposed activities. The DNR reserves the right to evaluate the insurance requirement at any time during the life of the permit, and at least annually. If insurance is required and not timely provided, the authorization will be nullified without further consideration.

**11. Discussion**

See the Division’s Response to Agency and Public Comments documents<sup>4</sup> for a comprehensive discussion on the issues and concerns raised during the adjudicatory process.

**12. Determination**

DNR has determined it appropriate to issue a stipulated miscellaneous land use permit to conduct hardrock exploration (geotechnical investigations) and reclamation activities on lands owned by the State of Alaska.

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<sup>3</sup> See Section 6 Permitting Background/ History of Applicant Compliance for more information.

<sup>4</sup> Attachments B, C, and D.

The applicant is advised to review authorization documents carefully as well as the regulations under AS 27.19 (Reclamation), AS 38.05 (Alaska Land Act), 11 AAC 86 (Mining Rights), 11 AAC 96 (Miscellaneous Land Use), and 11 AAC 97 (Reclamation).

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Michael LaDouceur  
Geologist III

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Date

*Dave Charron*

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08/07/2023

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David Charron  
Geologist IV

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Date

### 13. Appeal

An eligible person affected by this decision, and who provided timely written comment or public hearing testimony to the department, may appeal the decision to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department. Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7<sup>th</sup> Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). Appeals 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)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.

Attachment A- Map of the Permitted Permitted Area.

Attachment B- Public Comments and Responses

Attachment C- Response to Agency Comments (Dept of Fish and Game)

Attachment D- Response to Agency Comments (US Fish and Wildlife Service)

Attachment E- Airblast Attenuation Memo

Attachment F- Scaled PPV Worksheet (Peak Particle Velocity)

