

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING, LAND AND WATER

Southeast Regional Land Office Regional Manager's Decision

ADL 109414 Roger Schnabel doing business as Highland's Estates, Inc. Application for Easement

AS 38.05.850

Executive Summary

On October 21st, 2024, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW) received an application for a private, non-exclusive easement from Roger Schnabel doing business as (dba) Highland's Estates, Inc., (applicant) for a proposed right of way (ROW) access road on State-owned, DMLW-managed land near Mile 5, Haines Highway in Haines, Alaska. The proposed ROW will provide alternate access to transport large equipment from the applicant's private residence to the applicant's private lots and onto the highway. The requested ROW is approximately 1,000-feet in length by 40-feet in width. The State of Alaska intends to authorize this easement. A diagram of the proposed easement is included in Attachment 1.

Proposed Action

DMLW will issue an Entry Authorization (EA) for a term of two years to allow for construction and completion of a DMLW-approved survey, which is a prerequisite for issuance of the final easement. The applicant's development diagram, included as Attachment 1, depicts and describes the location and construction of the requested easement. The applicant plans on using personal equipment such as Caterpillar Excavators, Volvo dump trucks, Caterpillar front loaders, Caterpillar Compactor, Caterpillar Dozer and one rock crusher for surfacing and culvert bedding. The goal of this authorization is to construct alternate access for the transport of large equipment from the applicant's private residence to the highway, and to provide a safer alternate route in case of need for emergency vehicles in winter months. The applicant has legal access from Mile 5 Haines Highway; however, the driveway cannot accommodate large equipment and trailers.

The applicant plans to reuse all material excavated from State land in the beginning phases of the project which will be reused for the construction and contouring of the proposed road. The organic materials include, but are not limited to, trees, dirt, grass, moss, logs, brush, rock, and mud. DMLW concludes that through application materials and comments received by DNR-Division of Forestry and Fire Protection (DOF) during Agency Review, environmental impacts are minimal for this project. The proposed corridor contains young trees, brush, and woody debris. In some areas, several large Spruce trees will be felled and cleared for a contoured route to be well-established. The road must be constructed in a way that minimizes tree removal.

With privately-owned construction equipment, the applicant will start construction from private Lot 11 (east side of project site, Mile 5 Haines Highway), and traverse west at approximately 160-feet elevation terminating at applicant's private Lot 4, near 5.3-mile Haines Highway. The *Haines State Forest Management Plan*, August 2002 (HSFMP), calls for 20-foot road widths,

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with 35-foot-width pull-off areas, if feasible. The easement corridor for the proposed project will be 40-feet, while the road width shall be 20-feet. The road will be constructed and contoured, bearing in mind the need for proper ditching on the uphill side of the road for culvert installation for proper drainage.

Continuing west along the tree line, at the base of the talus rock shelf, the applicant will cut a ROW using a cut/fill approach. The cut side will be on the right side (hillside) and the excavation material will be placed on the left-hand side (slope). Using the excavated material, the applicant will fill the cut side with any of the following natural ground materials listed. No excavated material will be removed from State land, and all natural materials will be reused during the construction phase. The cut slope that will be traversed is comprised of a talus rock, loose soils and brush. The applicant proposes using the talus rock obtained from private lots to fortify the ROW. The talus rock will be removed from the applicant's private lots, not from state land. According to the applicant, the material is considered to be well-packed, well-draining material, and suitable for road construction purposes. The applicant must be aware that per the *Haines State Forest Management Plan*, removing material from state land within the Haines State Forest is strictly prohibited.

Most of the road will progress through smaller (12-inch) trees and brush at the top of the shelf; however, several large spruce trees below the shelf will be encountered and are required to be felled. These trees, if marketable, are required to be salvaged for use and/or sale by the DOF. DOF does not recommend the on-site burning of brush and wood debris. DOF recommends the applicant distribute the brush and other wooded excavated materials on the uphill side of the road, as the debris will be quickly reclaimed by natural elements. If the applicant wishes to proceed with burning on-site, proof of correspondence and required permits from the Haines Borough/Haines Volunteer Fire Department will be included as a required item in the Entry Authorization (EA) before final authorization.

The terms of the EA shall be inclusive of the total easement term of 25 years. A draft EA is included as Attachment 2. A draft Private, Non-exclusive Easement is included as Attachment 3.

Statutory Authority

This easement application is being adjudicated pursuant to AS 38.05.850, the Alaska Land Act as amended, and AS 38.05.127.

Administrative Record

The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced herein, the *Haines State Forest Management Plan*, August 2002 (HSFMP) and other classification references described herein, and the case file for the application serialized by DNR-DMLW as ADL 109414.

Scope of Decision

The scope of this decision is to determine if it is in the State's interest to create an easement for the proposed use. The scope of administrative review for this authorization is limited to (1)

reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization is in the interest of the State of Alaska.

Location Information

Geographic Location: Haines, Alaska; more specifically, 1.25-miles northwest of Haines Airport, adjacent to Haines Highway, between Mile 5 and Mile 5.3.

Property Description: DMLW-managed land located in Township 30 South, Range 59 East, NW ¹/₄ Section 19, Copper River Meridian, 59.2595 N, 135.5529 W (WGS84)

Width: 40-feetLength: 1,000-feetApproximate Acreage: 0.92

Other Land Information

Municipality: Haines Borough Regional Corporation: Sealaska Corporation Village Corporation: Chilkat Indian Village and Chilkoot Indian Association Federally Recognized Tribe: Central Council of the Tlingit and Haida Indian Tribes of Alaska

Title

The State of Alaska received title to applicable lands within Section 19 of Township 30 South, Range 59 East, Copper River Meridian, Alaska via Lands Proper for Selection – Tentative Approval Given – AA-208 – Bureau of Land Management, dated October 22nd, 1980, which is serialized by DNR as GS 1540.

Planning and Classification

The proposed site is subject to the *Haines State Forest Management Plan*, August 2002 (HSFMP) and is located within Management Unit 7 – Haines Highway and Lower Chilkat River. The Land Use Classification of Subunit 7a is "Resource Management". (HSFMP 3-56)

According to 11 AAC 55.200, Resource Management Land: Land classified resource management is either:

- 1. "Land that might have a number of important resources but for which a specific resource allocation decision is not possible because of a lack of adequate resource, economic, or other relevant information, or is not necessary because the land is presently inaccessible and remote and development is not likely to occur within the next 10 years; or
- 2. Land that contains one or more resource values, none of which is of sufficiently high value to merit designation as a primary use" (HSFMP H-1).

According to 11 AAC 55.040(c), "A classification identifies the primary use for which the land will be managed, subject to valid existing rights and to multiple use."

Plan Implementation: "The Haines State Forest Management Plan establishes state policy for the management of state lands in the Haines State Forest. All Department of Natural Resources decisions, including timber sales, road building, mineral leasing, land classifications, approval of commercial recreational activities, and other actions on state lands shall comply with the provisions of this plan" (HSFMP 1-11).

The applicant must be aware that sand and gravel extraction is not allowed on State lands per the HSFMP Table 3-7 (HSFMP 3-56).

Management Policies

Fish and Wildlife

Goals: "Maintain or improve the level of water quality through sound land management, stream bank management, and silvicultural practice" (HSFMP 2-2).

1. Mitigation: "All land use activities should be conducted with appropriate planning and implementation to avoid or minimize foreseeable or potential adverse effects on fish and wildlife populations or their habitats. Mitigation should include the following:

B. Where habitat loss cannot be avoided, reduce loss and the need for habitat restoration or maintenance efforts. Procedures for this include the following:

- Include fish and wildlife habitat and use considerations in the early phases of project planning and design to minimize the spatial and temporal extent of impacts.
- Develop location and design criteria which will minimize wildlife-caused damage to life and property where conflicts between people and animals may arise.
- Provide information on best management practices to local, state, and federal resource and development agencies as well as to private individuals" (HSFMP 2-2).

Transportation

Management Guidelines for Road Construction include:

- 1. "Road Construction (Coastal Region Forestry Road Standards)
 - A. General Conditions

2. Road width: Roads shall be 20-feet, including ditch and 35-feet where designated turnouts are built.

3. Surfacing width: 14-16 feet

4. Surfacing: the minimum necessary to allow log trucking without surface deformation.

B. Clearing and Grubbing

1. The clearing boundary limits will be marked with pink ribbon on both sides except where the road passes through the harvest units.

2. Snags and trees leaning heavily over the roadway that are outside the clearing limits shall be felled. Snags will be felled in conjunction with cutting the regular right-of-way.

3. All stumps, any portion of which falls within the cut slopes, shall be removed.

4. All stumps that extend within three feet of the finished sub-grade or road shoulders shall be removed.

5. No debris resulting from the clearing and grubbing operation shall be permitted to remain under any portion of the embankment within the cleared right-of-way.

6. Debris will not be piled or pushed against any existing trees.

C. Grading

1. The roads shall be constructed according to the state's horizontal and vertical control profiles.

D. Drainage Structures

 Culverts will be galvanized corrugated metal pipe (not aluminum), minimum 18" diameter or the equivalent in plastic culverts.
Culverts will be buried at least 20 percent of the diameter or a minimum of 12", whichever is greater, and will project three feet beyond the fill on the inlet and outlet.

3. Culverts will be laid at a slope of two to six percent unless specified otherwise. Culverts will be placed at the natural stream gradient on anadromous fish streams. Bottomless crossing structures will be employed on anadromous fish streams where appropriate. All stream crossings that contain fish habitat must be approved and permitted by ADFG.

E. Location

1. Roads constructed within the State Forest boundary for the purpose of accessing private ownership, mineral claim sites, material lease sites, etc., will be to the location and quality specifications as designated by the Division of Forestry on a case-by-case basis.

2. Reasonable, timely and economically feasible access will be cooperatively determined with all parties concerned.

3. No land classification will prohibit construction of roads for access purposes.

- 2. Road Design.
 - A. Roads will be designed to maximize resource access while minimizing adverse environmental impact.
 - B. Design for roads through critical fisheries and wildlife areas should be done in consultation with the Alaska Department of Fish and Game. These areas may include moose and goat winter concentration areas, eagle nesting trees, bear denning areas, and salmon spawning and rearing habitat" (HSFMP 2-33-36).

Management Intent

<u>Unit 7 – Haines Highway and Lower Chilkat River</u> <u>Subunit 7a – Haines Highway</u>

"This subunit contains a variety of resources. Recreation is particularly important in the southern portion of this subunit, on Mt. Ripinski's hiking trails. Other resources include scenic values along the Haines Highway, and a transportation corridor. The subunit will be managed for its multiple use characteristics, none of which has been identified as being more important than another, and is classified: Resource Management Land" (HSFMP 3-51).

Management Guidelines

3. *Access and Utility Development:* "Access across or along the corridor is allowed, including pipelines, power lines, and the widening or improving of existing roads, but design and construction should be sensitive to the scenic values of the surrounding landscape. Future pipelines should be located in the same right-of-way as the existing unused pipeline, if feasible" (HSFMP 3-52).

4. *Material Sales and Mineral Development:* Material sales are not permitted and mineral development is subject to a Leasehold Location Order (LLO)...Maintaining the scenic view is the primary consideration in any authorization of mineral development under an LLO (HSFMP 3-52).

Responsibilities for Plan Implementation:

The responsibilities for implementation of the Forest Plan rest with two Department of Natural Resources divisions: Division of Forestry (DOF) and the Division of Mining, Land and Water (DMLW). DOF is generally responsible for the overall management of the Haines State Forest and, specifically, for the management of its forest resources. That management includes the administration of timber sales and enforcement of the Forest Practices Act and related regulations. DMLW is responsible for the management of those resources that are not directly related to the management of the timber resources...DMLW must consult with the Division of Forestry about decisions it intends to make, and must receive DOF concurrence with those decisions (HSFMP 4-4).

Road Construction and Maintenance

Under AS 41.15.315(c), DNR controls access within the State Forest, except that the Department of Transportation and Public Facilities (DOT&PF) is responsible for the repair and maintenance of public roads and highways...(HSFMP 4-4&5)

When considering ROW road projects in the Haines State Forest, it is DMLW policy to coordinate with DOF to ensure the protection and safety of the Haines State Forest in relation to the *Haines State Forest Management Plan* August 2002 (HSFMP). DMLW does not anticipate the proposed project to negatively impact the Haines State Forest and the surrounding wildlife and habitat. The applicant is required by DOF to ensure merchantable timber is set aside for use and sale by DOF and its contractors. DOF was included in the Agency Review period and offered informational comments, but did not offer any comments of concern relating to this

proposed project. The ROW will be privately maintained and would not require DOT maintenance for improvements and plowing in the winter season.

The area encompassing the proposed easement is classified as Resource Management Land. As defined by *11 AAC 55.200*, the Resource Management Land designation indicates the land contains one or more resource values, however, none of the resources are high enough value to merit a designation as a primary use. The proposed area does not have a single primary use and allows for multiple types of authorization. The HSFMP states: "...All Department of Natural Resources decisions, including timber sales, road building, mineral leasing, land classifications...other actions on state lands shall comply with the provisions of this plan" (HSFMP 1-11).

Stipulations regarding road building standards and culvert installation will be included in the Entry Authorization and Easement Agreement to ensure the applicant is following all guidelines laid out within the HSFMP. The proposed easement is consistent with the area plan and is allowed in the area per the "Resource Management Land" designation.

Third Party Information

- Glacier Construction (Adjacent landowner)
- Roger Ramsey (Adjacent landowner)

Background

DMLW received a private, non-exclusive ROW easement application submitted under Roger Schnabel dba Highland's Estates, Inc., on October 21st, 2024. A development diagram and development narrative were provided for the proposed route (Attachment 1). On January 6th, 2025, the application was sent for Public Notice and State Agency Review. The project is slated to begin in Summer 2025.

Public Notice & Agency Review

Agency Review Summary

An Agency Review was conducted January 6th, 2025, to February 5th, 2025. The following organizations were included in this review:

- Alaska Association of Conservation Districts (AACD)
- Alaska Department of Fish and Game (ADFG) Division of Habitat
- ADFG Division of Wildlife Conservation Access Defense Program
- Department of Environmental Conservation (DEC) Commissioner's Office
- DEC Division of Water Wastewater Discharge Authorization Program and Director's Office
- Department of Natural Resources (DNR) Division of Mining, Land and Water (DMLW) Director's Office, Public Access Assertion and Defense (PAAD), and Water Resources Section
- DNR Parks and Outdoor Recreation (DPOR) Office of History and Archaeology (OHA)

- Department of Transportation and Public Facilities (DOT&PF) Design and Engineering Right of Way Office, Environmental Office, and Planning and Program Development
- DNR Division of Forestry and Fire Protection (DOF) Southeast Region, Forest Practices Program, and Haines State Forest
- DNR Alaska Division of Geological and Geophysical Surveys (DGGS)

Agency Review Comment and Response

Alaska Department of Fish and Game – Habitat Section

Comment: ADFG biologists in the Habitat Section have reviewed the scoping documents and maps for Roger Schnabel's proposed road easement ADL 109414. The proposed road alignment is along a steep hillside and crosses several short tributaries to Waterfall Creek (ADFG Stream No. 115-32-10250-2008 which provides habitat for coho salmon, cutthroat trout, and Dolly Varden) and the Chilkat River (ADFG Stream No. 115-32-10250 which provides habitat for chum, coho, pink, sockeye, and Chinook salmon, steelhead, cutthroat trout, Dolly Varden, eulachon, Pacific lamprey, and whitefish). We recommend culverts be installed in natural drainages to ensure water flow and conveyance to the downstream anadromous and resident fish habitat. As planned, no Fish Habitat Permits are required. The proposed road is in proximity to areas that ADFG have deemed as important winter habitat for mountain goats. This habitat begins approximately 170 meters from the proposed road on the eastern end and extends into higher elevations. Winter goat habitat on the western edge of the proposed road is approximately 550 meters away at minimum, and also extends into higher elevations. At higher elevations, ADFG has found important habitat for brown bear denning. Therefore, we recommend that if approved, road construction does not occur during the winter when the habitat may be occupied.

DMLW Response: DMLW will include a stipulation in the easement requiring the applicant to install culverts in natural drainages to ensure water flow is maintained. To mitigate potential impacts to winter habitat, construction of the road will be prohibited from October 1st, through March 1st.

Division of Forestry and Fire Protection

Comment: DOF requests that all merchantable timber to a 6" inch top be decked along side the development (typically on the uphill side of the road) in a suitable loation for sale by the State to a local contractor. Reasonable access to the development by the State, and its' contractors, should be provided by the applicant to allow for the successful execution of the sale of the timber. DOF does not think it is necessary to burn brush within the project area. Dispersing the brush and debris along the road development forest edge or uphill in the rock slope would be acceptable. It will decompose on its own in a short time. If the applicant does choose to burn, he will need a permit from the Haines Borough.

DMLW Response: DOF will have reasonable access through applicant's Lot 4 at Mile 5.3, Haines Highway and will be included as a stipulation in the Easement Agreement. The applicant will be informed that DOF considers burning on-site unneccessary. The applicant will be required to submit proof of Haines Borough/Haines Volunteer Fire

Department permit(s), if the applicant proposes on-site burning, prior to issuance of the Entry Authorization (EA).

Alaska Department of Transportation & Public Facilities Comment: DOTPF offers no comments at this time.

DMLW Response: None required.

Public Notice Summary

Notice of this application was posted on the Alaska Online Public Notice System website from January 6th, 2025 to February 6th, 2025, and sent to the following known interested parties: Southeast Alaska Conservation Council (SEACC), Sealaska Corporation, Central Council of Tlingit and Haida Indian Tribes of Alaska (CCTHITA), US Army Corps of Engineers (USACE), Lynn Canal Conservation, Lynn Canal Fish and Game Advisory Committee, US Fish and Wildlife Service (USFWS), Haines Borough, US Post Office – Haines, Chilkoot Indian Association, and Chilkat Indian Village.

The following nearby landowners were notified during the Public Notice comment period:

Glacier Construction, Downstream, Inc., Elanor, Lucinda, or Karen Boyce, Jack Smith Jr., University of Alaska – Lands Department, Roger and Ann-Marie Ramsey, Brouillette Family, Cheryl Loomis, Ira and Alissa Henry, Jones Trust, Scott and Valina Hansen, Bureau of Land Management, Alaska Mountain Guides, John Floreske Jr., Steven Anderson, Tara Bicknell, Turner Construction, Alascom – AT&T Alaska, Jennifer Andrews, Lohr Trust, Chilkoot Lumber, Ruth Thompson, Barbara Mulford, Sue Chasen, Patrick Philpot, Jason Eson, Michael Ward, Yvette Lancaster, Scott and Mandy Ramsey, Sean Gaffney, Eben Sargent, Adam and Julia Billings, Charles Stewart, Erica Loomis, and Skookum Holdings, Inc.

General DMLW Response to Public Comments

DMLW management of state lands is guided and directed by Article VIII of the Alaska Constitution, Title 38 of the Alaska Statutes, Title 11 of the Alaska Administrative Code, state land management plans, and the Public Trust Doctrine. DMLW facilitates access, use, and development of state lands and waters for multiple purposes. The Division's mission follows directly from Article VIII, Section 1 of the Alaska Constitution: "it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

As the state's land manager, DMLW seeks to mitigate and limit potential resource impacts that may be associated with authorized access, uses, and development, particularly in areas where resource or environmental sensitivities have been identified. In some cases, where there is a preponderance of evidence to recommend it, DMLW may restrict or deny development or use in favor of identified resource sensitivities. However, excluding relatively uncommon cases where the applicable statutory, regulatory, or area management plan guidance is clearly prohibitive, there is tension between the stated policy of Article VIII, Section 1 and decisions which deny or restrict access and use of state land. As such, when assessing the risks or impacts a particular project may pose, due deference to the Alaska Constitution entails that said risks or impacts should not only outweigh potential project benefits, but also the plainly specified mandate articulated in Article VIII, Section 1.

DMLW recognizes some areas or locations of state land may possess characteristics (e.g., undeveloped) which, while contingent or incidental to management policy, may be valued as such by some members of the public and, on that basis, taken to be less compatible, or incompatible, with some land-use authorization types. This recognition does not preclude the authorization of an otherwise appropriate land-use authorization, however. Incompatibility, on this basis, does not constitute sufficient reason to deny an authorization.

On this point, three of five submitted public comments characterize the state land parcel encompassing proposed easement ADL 109414 as a wildlife (or habitat) corridor and recommend denying the application on that basis. While DMLW understands the sense in which commenters use the term (i.e., connective area of land, primarily undeveloped, available to wildlife use/activity), it should be noted that the term is a specified concept, tool, and, though more rarely, administrative designation utilized in conservation and wildlife management practice. Neither DMLW nor ADFG, the agency responsible for managing state wildlife resources, applies the term as a management concept or tool to the parcel in question. In terms of management designation, the HSFMP classifies the management unit encompassing the parcel as *Resource Management*. This land use classification is assigned to management units containing multiple resource values and/or uses and for which no single use or value is designated as primary or determinative of management intent.

Regarding the proposed easement's potential impact on the wildlife or habitat values of the parcel, ADFG comments noted the proposed easement 1) is adjacent to winter goat habitat and brown bear denning habitat and 2) traverses several tributaries which feed two water bodies providing habitat for several fish species, Waterfall Creek and the Chilkat River. ADFG estimated the proposed easement's proximity to winter goat habitat at approximately 170 meters on the east end and 500 meters on the west end. ADFG stated brown bear denning habitat exists at higher elevations but did not specify proximity to the proposed easement. Based on the available information, DMLW anticipates impacts to adjacent winter wildlife habitat to be minimal. However, if the application is approved, per ADFG's recommendations, the easement agreement will prohibit roadway construction during winter months (October 1st – March 1st). Additionally, if the application is approved, and per ADFG recommendations, the easement agreement will stipulate right-of-way construction to include installation of culverts at locations where the roadway intersects with natural drainages to ensure water conveyance downstream to anadromous and resident fish habitat in Waterfall Creek and the Chilkat River.

Public Notice Comment and Response

Roger and Ann-Marie Ramsey – Adjacent landowner

Comment: Let us be clear that we support Roger Schnabel towards his endeavors that are environmentally and economically healthy for the Haines community. However, we do not support ADL 109414 for the following reasons: Mr. Schnabel claims he needs new access because he was shut off from accress through Glacier Construction property to his property. This issue really is his own fault. He sold the property in 2018 and did not provide an easement for himself before he did. The people of the State and the Haines Borough should not be responsible to provide a solution at their expense for his error. Mr. Schnabel says he wants a safer winter route, in his application. The route he is applying for measures out to 2100-feet (per our measurements on parcel viewer, his current driveway is about 980-feet). When Haines gets a lot of snow, that is a lot of additional driveway to plow. Especially since he will maintain his current driveway, as it is the most direct and convenient route. Also, the alignment being applied for is at the base of an extreme avalanche slope. Activity in this area during snowfall events and rockslide events is very high risk (please see reason 2 from the denied application ADL 108049, also attached herein). There is a potential liability to the State if it allows this access. A better idea is to use the existing driveway by straightening it out a bit, placing a culvert in the one little stream, to access the spot where access from the Glacier Construction property to him in 2021 and 2022, as he actually subdivided his lot without providing any legal access, in Plat 2018-5 Haines Recording District. Pictured is the State land (bordered by blue) that borders private properties, all developed as rock resources, labeled in yellow. This strip is the only state land that provides a corridor from the river to the mountains that is not developed with a rock resource, or has the potential to be, in a three mile section of the slope. It needs to be maintained as is, to protect its nature as a wildlife corridor. All the above reasoning prohibits us, from supporting Mr. Schnabel's application, in this instance. Thank you very much for your time and consideration.

DMLW Response: DMLW concurs the state is not responsible for providing new access to landowners who may or may not have had prior opportunity to establish said access in the past. In this case, if the proposed easement is authorized, the applicant will be responsible for all construction, survey, and maintenance costs associated with the ROW. The applicant will be assessed annual fees as determined by 11 AAC 05.070(d)(2)(A)(i), required to submit a Performance Guaranty, and obtain insurance liability coverage for the life of the agreement. The proposed easement on state land measures 1,000-feet, approximately. Any additional constructed roadway will be located on the applicant's private property.

ADL 108049 was a material sale permit application submitted to DMLW by current applicant for easement ADL 109414 and located in the same general area. On September 13, 2011, DMLW issued a denial for ADL 108049, finding it was not in the best interest of the state to establish a material sale site at the requested location. The operative factor for the permit denial was specific HSFMP guidance prohibiting material sales within Management Subunit 7a.

What the commenters refer to as "reason 2" is found in the September 13, 2011, decision document under the heading, "Additional information required." It addresses 1) the natural hazard area designation of state lands encompassing the proposed material sale

site and 2) the DMLW request and requirement that the applicant provide additional information on site planning, operations, safety and mitigation measures in light of said designation.

There are two points which are directly relevant to the commenters' characterization of "reason 2." The first concerns the scope of the Department of Geological and Geophysical Service's (DGGS) assessment in proposing a natural hazard area designation (DGGS Memorandum, February 11, 2011). The DGGS Memorandum analyzes the potential impacts of excavation and material removal to already existing slope hazards and landslide probabilities for the proposed site. The Memorandum states, "Extraction of a sufficiently large amount of material to significantly increase the slope angle and/or undercut the toe of the deposit has the potential to trigger slope failure." It does not confer a blanket landslide hazard risk to be applied to any or all activity within the area encompassed by the designation. The designation and DGGS's assessment are both contingent on the potential impacts associated with extractive activity and material sale sites generally and the increased risk of slope destablization such activity would pose at the proposed site specifically.

The second point concerns the revocation of the administrative authority through which the natural hazard area designation originated. The designation was authorized under the auspices of the Alaska Coastal Management Program's (ACMP) consistency review process (ACMP Memorandum, February 14, 2011). However, on June 27, 2011, the Alaska State Legislature terminated the ACMP (House Bill 106). Thus, all ACMP-related statutes and regulations were subsequently repealed and the administrative authority derived from the Program, its regulatory implementation, procedures, associated management guidance, directives, and assessments, including those supporting and/or cited by the DGGS Memorandum and the ACMP Memorandum, was extinguished thereby.

To reiterate, the subject of this decision concerns the construction and use of a proposed right of way easement only. A material sale is not under consideration. Per HSFMP intent, material sale sites are not permitted within Management Subunit 7a or at the proposed site location.

Potential access modifications to a roadway on the applicant's private property are not within the scope of this decision or DMLW authority.

Tim Ward - Landowner in Haines

Comment: As a previous landowner adjacent to the proposed access road that Roger Schnabel wants an easement from his 5.5 mile pit to his residence is totally absurd. The corridor should not be distrubed. That area in question is part of the youth hunt area from 7 mile to town in my opinion should be left as is. The only reason for Roger's interest in the road is to mine the rock that naturally rolls off the slide areas. You have 100 years of rock product between SECON pit and Highland's Estates pit. I as a 70-year resident of Haines and lived on the existing house site for 27 years would like to see the buffer zone between the two pits stay untouched. It's totally unwarranted. Roger himself contested a permit request from Whiterock Nursery in 2009 and stated it was an unstable slide area. That permit was denied in 2011. Thank you for your attention in my request. **DMLW Response:** The proposed easement is within a ADFG-designated youth hunt area for mountain goat, Hunt Number RG025, and located within Game Management Unit (GMU) 1D. The RG025 portion of GMU 1D extends from Tukgahgo Mountain to the city of Haines (west to east) and the Chilkat River to Lutak Inlet (south to north). At lower elevations, the area encompassed by RG025 includes a range of mixed development, uses, and fixed infrastructure. DMLW does not anticipate the proposed easement will reduce hunting opportunities or limit access to the hunt area. ADFG comments note the proposed easement is adjacent to winter goat habitat. If approved, the easement agreement will include a stipulation prohibiting road construction during winter months (October 1st – March 1st) to minimize potential habitat impacts. Material sales and material extraction are strictly prohibited on state land within the Haines State Forest.

Suzy Waterhouse - Landowner in Haines

Comment: Please deny the mentioned proposed access road. In Mr. Schnabel's Environmental Risk Questionnaire, he stated he would like "to establish a safer all season access road to his home and shop." - yet common sense tells me (after looking at the diagrams) that he is requesting an easement to cross public land establishing a 1,500-foot long, 40-foot wide road to his own private land/rock pit. Destroying a natural corridor/public forest land - forever - for Mr. Schnabel's personal gains does not sit well with me. Additionally, signatures on applications and questionnaires attest statements to be true, however, I have to admit I am suspicious of Mr. Schnabel's statements regarding the proposed access road project and question whether material within the documents to be forthright. No doubt, Haines has a history for conflict in matters such as these. However, deception on applications creates a very poor foundation for community development and should not be tolerated. Lastly, the projected access parallels (in close proximity) Haines' "Alaska Scenic Byways" designated by the DOT&PF which connects Haines to Haines Junction. This stretch of highway with its undeveloped corridor is one of the few remaining that goes from the mountains to the river, providing access for wildlife – including goat – which can be seen on the mountains grazing from the airport. For years, nesting swans have been found close to this project and should not be disturbed. As owner and operator of a high-end Bed and Breakfast in Haines for the past 15 years, I would appreciate keeping our natural environment natural. Hard to find these days.

DMLW Response: The proposed easement and ROW on state land measures 1000 feet, approximately. Any additional roadway will be on the applicant's private property. While the commenter does not specify which statements or material in the application documents she believes suspicious, DMLW notes that it is the applicant's responsibility to ensure application materials are truthful and all statements contained therein are accurate. This is addressed in the conditional language of the application form where the applicant must sign to certify the submitted information is truthful.

Kathleen Menke – Landowner in Haines

Comment: Regarding Roger Schnabel's proposed request for an easement and permission to build a new road connecting his deforestation and excavation projects ADL 109414, I have some concerns and would urge DNR to reject this request. Though the

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applicant has roadbuilding experience as stated, the applicant also has a record of disregarding sensitive fisheries, wetlands, and waterfront environements regularly within the Haines Borough. This past year, deforestation and heavy equipment operations daily above the 5.5 mile Lily Pond and swan nesting habitat, have had significant impact on this critical fisheries and swan nesting area directly below and adjacent to his operations and activities. I regularly observe these swans and notice the impact of noise, rockfall, added silt, and encroachment onto these critical wetlands. No one is really monitoring an adequate buffer zone in this area that has already been deforested and excavated. Granting this permit would enable Mr. Schnabel to further degrade the habitat of this area with little or no oversight or constraint well into the future. The lily pond where these swan nests have documented salmon fisheries according to ADFG, birds, dragonflies and much other wildlife depend on this wetland area directly adjacent to and below Schnabel's deforestation and excavation and activities. Already the swans appear stressed as they rear their young with noise and impact of these excavation activities on their young. Expanding these operations, as this new easement and road development will lead to, will result in further erosion of silt into this wetland area, increased warming of this critical wetland area, and continual noise. No need has been established for this proposal within the community. DNR should reject this permit application. Below is an image of the swan family early last season. They didn't stay in the area for long. They left well before they could fledge. How safely, who knows? Please keep myself and the community apprised of your decisions.

DMLW Response: The applicant's activities on private land adjacent to the area identified as "5.5-mile lily pond" are outside the scope of this decision and DMLW authority. DMLW also notes the following state and federal agencies, ADFG, DEC, USFWS, and USACE, were provided opportunities to review and comment upon this application during Agency Review and Public Notice. No agencies submitted comments addressing potential wetlands or habitat degradation in relation to the proposed project. Commenter states the application should be rejected on the basis that no community need for the project was identified. If a proposed land-use authorization addresses a community need in some way, DMLW may consider this a factor, among others, which weighs favorably for its approval. The inverse, however, if an application doesn't address an established community then it shouldn't be considered for approval, is not the case. There is no statutory or regulatory requirement to consider community need as determinative in authorizing state land use, no management policy or guidance enabling DMLW to evaluate what qualifies as an established community need, nor is there a reasonable basis for DMLW to infer that the absence of an established community need must be considered a decisive factor against approval.

Patty Brown – Landowner in Haines Comment:

1. This is a fragile wildlife area which is bounded by heavy industrial area to the east and west. A previous application for an easement years ago was denied by Alaska Department of Fish and Game because of its consideration as a critical habitat. As this portion of the highway is a route for commuters, many

people bear witness frequently that it is used by wildlife including nesting swans.

- 2. Heavy use of the wetlands on both sides of the highway by young coho salmon is well-documented.
- 3. The recent major disturbance of substrate at the west end of the intended easement is likely impacting the rearing pond and potentially spilling into the pond/wetland. Though I don't believe it is intentional or without regard, there appears to be no mitigating structure to keep this from happening. Adding traffic through there will further impact the situation.
- 4. The application requests a "private" easement. Though conversation with Mr. Schnabel suggests he would be willing to let people use the new road, there is no public access to get to it. His two roads, east and west, that run north and south are not officially open to the public. Any permission would be conditional. There is heavy equipment commonly working the west side as it is.
- 5. It is stated that the east access that he owns cannot accommodate "a 30-foot unit". I thought this granting of an easement was for access to his residence described in the development narrative. Does he need to bring a unit 30-feet long? Or wide? If the purpose is to be able to bring rock in moving vehicles to the shop next to his house, doesn't this use of the new road constitute a commercial use?
- 6. I do not see a page 2 of the application, though the document says 1 of 2. Are there drawings available besides the photos? It is difficult to discern where the culverts would be. Is there a reference to the various waypoints?
- 7. When Mr. Schnabel built his house, did he expect that fire equipment that could need to respond to his house would enter through Glacier Construction/SE Roadbuilders property? Mr. Schnabel has been an enterprising developer for over 30 years in Haines. It is hard for me to accept that he needs to impact public land to meet private need when he has had so much experience in both roadbuilding and real estate transactions.
- 8. When Mr. Schnabel purchased property to be able to access the road that runs north/south from his residence, did he not expect to use it? If the problem was winter access, was the barricade on May 15th a problem? In speaking with the new manager of Glacier Construction, I learned there is another route that Mr. Schnabel is authorized to use, but he said it is unsatisfactory.
- 9. If there are seasonal concerns regarding use of the agreed-upon road through Glacier Construction/SE Roadbuilders property, shouldn't that have been anticipated by someone who has lived and worked here all his life? Can't these owners work something out without having to impeded on the rights of the general public?
- 10. Mathematically speaking disturbed surface may be less than an acre so the new road likely does not require a SWPP. But since it traverses a very steep slope which has loose material and the road requires removal of vegetation, downstream/downslope debris flow can be expected with heavy rains. Residents of the Chilkat Valley know this all too well. This may, at the very least, require frequent maintenance of this road if not substantial barriers. I

understand Mr. Schnabel has the equipment and know-how, but will it add to the impact on wildlife in the area?

- 11. Mr. Schnabel requested to have the rights to the road for perpetuity, but I see that the DNR response made that a 25-year term. Were there considerations that are not stated in the response?
- 12. The investment Mr. Schanbel is willing to make to cut a road through public land would more appropriately be made to improve the driveway he already has since this road would do nothing to improve circumstances for the collective owners of that public land.

DMLW Response:

- 1. Commenter states a previous easement application in the area was denied by ADFG. DMLW is not aware of an easement application submitted to ADFG by the applicant. DMLW is aware of an application submitted by the applicant, on December 13th, 2010, to ADFG for fill and culvert installation for applicant's private access road along the Haines Highway near Mile 5.3. This application was approved by an ADFG Fish Habitat Permit serialized as "FH11-I-0122" on October 13th, 2011.
- 2. ADFG comments noted the proposed easement traverses several tributaries feeding Waterfall Creek and the Chilkat River which provide habitat for multiple fish species. If the application is approved the easement agreement will stipulate installation of culverts at intersections with natural drainages to ensure water conveyance to downstream anadromous and resident fish habitat.
- 3. DMLW takes "disturbance of substrate" to refer to activities occurring on the applicant's private land which are outside the scope of this decision and DMLW authority. Neither ADFG nor USACE, agencies responsible for management of wetlands habitat, submitted comments or concerns on potential risks or impacts to wetlands habitat posed by the proposed easement. Material extraction on state land within the Haines State Forest is strictly prohibited.
- 4. The application for easement ADL 109414 is being adjudicated as a private, non-exclusive easement. The term "private" typically denotes the grantee is a private individual or entity and that the easement does not serve an expressly public purpose. The term "non-exclusive" means the easement does not convey sole or exclusive use rights to the grantee. If the application is approved and easement is granted, individuals other than the applicant may use ADL 109414. There is no statutory or regulatory requirement that DMLW ensure or provide for public access to private, non-exclusive easements.
- 5. The application states the purpose of the proposed easement is to provide alternate access from the Haines Highway as there are safety concerns with winter access for fire/emergency vehicles. The existing access from Haines Highway does not allow for trailers and/or equipment over 34-feet long due to obstacles and grades. The applicant is seeking alternate access for both winter safety and large equipment. DMLW-authorized ROW easements may serve multiple access functions or activities.

- 6. All pages of the development plan were included in the online Public Notice posting on Alaska Online Public Notices (OPN) website. A link to OPN was included in the Public Notice document which was distributed during the Public Notice period. If the application is approved, per ADFG recommendations, the easement agreement will stipulate right-of-way construction to include installation of culverts at locations where the roadway intersects with natural drainages to ensure water conveyance downstream to anadromous and resident fish habitat in Waterfall Creek and the Chilkat River. It is the applicant's responsibility to ensure adequate culverts are installed in the natural flows.
- 7. No response required.
- 8. No response required.
- 9. No response required.
- 10. If the application is approved, the easement agreement will stipulate ROW construction include installation of culverts at intersections with natural drainages to ensure water conveyance to downstream anadromous and resident fish habitat.
- 11. 25 years is the standard term length for easements. DMLW issues indefinite easements only in limited cases and under specific conditions. There are no unstated considerations with regard to the proposed easement's term length.
- 12. No response required.

Access

Physical and Legal Access: The site will be accessed via Haines Highway, near Mile 5.3 through applicant's private Lot 4, and the applicant's private property, at Mile 5 through Lots 11 and 12. This project does not intersect any navigable waters per AS 38.04.062. It also does not intersect any navigable and public waters per AS 38.05.127 as defined in AS 38.05.965 (14) and (21). This project is not near any known RS 2477 ROWs.

Environmental Considerations

DMLW considers the environmental factors directly related to authorizing the use of State lands as part of its determination of whether approving the authorization is in the State's interest. The purpose of this consideration is to identify any associated mitigation measures or other requirements necessary to protect the public interest, while informing the overall decision of whether to approve the authorization. The applicant is responsible for determining site suitability.

During construction, hazardous substances will be present in the form of diesel fuel, gasoline, motor oil and hydraulic oils used by heavy construction equipment. Oil/fuel storage, re-fueling, and maintenance of construction equipment will happen on the applicant's private lots. No hazardous material storage and/or refilling of fuel is allowed on state land.

There are no fish-bearing streams within the proposed project area. However, the proposed easement does cross several short tributaries that connect to Waterfall Creek (ADFG Stream No. 115-32-10250-2008), and Chilkat River (ADFG Stream No. 115-32-10250), both of which provide habitats for several anadromous and resident fish species common to Southeast Alaska.

Culverts will be installed in natural drainage areas to ensure water flow and conveyance to the downstream anadromous and resident fish habitats. The proposed authorization does not require a Fish Habitat Permit. An ADFG Fish Habitat Permit is required when a project's activity may disrupt or disturb fish bearding habitat. ADFG recommends that culverts be placed where the roadway intersects with the tributaries in order to maintain water flow to the fish rearing habitats below the project site, and also to prevent erosion and ponding. ADFG also offered comments regarding winter goat habitat and possible brown bear denning habitat adjacent to the proposed project. A stipulation will be included in the easement, as suggested by ADFG, to prohibit construction of the road during winter months (October-March), to minimize disturbance of adjacent winter goat habitat and brown bear denning sites.

Economic Benefit and Development of State Resources

In accordance with AS 38.05.850, DMLW considers three criteria to determine if this project provides the greatest economic benefit to the State and the development of its natural resources: direct economic benefit to the State, indirect economic benefit to the State, and encouraging development of the State's resources.

The proposed road will provide a direct economic benefit to the State in the form of annual fees. Furthermore, the applicant will set aside merchantable wood for the use and/or sale by DOF. An indirect benefit is facilitating access to the applicant's privately owned lots, as well as being a self-maintained road, not requiring DOT maintenance and plowing services. A non-exclusive easement benefits the residents of Haines in order to gain access to state land via the ROW.

Discussion

Based upon the information provided by the applicant, as well as review of relevant planning documents, comments from Agency Review, review of the applicable statutes, regulations, and environmental and economic considerations related to this application, DMLW finds that the proposed easement is in the best interest of the State.

According to the HSFMP, "The subunit will be managed for its multiple use characteristics, none of which has been identified as being more important than another, and is classified Resource Management Land." (HSFMP 3-51) The proposed ROW is allowable on State land and the Haines State Forest and will improve development opportunities within the Borough. The ROW is also a benefit to the public in accessing state land above the ROW corridor.

Performance Guaranty

Performance guarantees are means to assure performance and to provide ways to pay for corrective action if the permittee fails to comply with the requirements set forth in the permit document. They are also used to protect state land from damage and to make certain that improvements are removed and that the land is returned in a usable condition upon termination of the permit.

History of Compliance: DNR Land Administration System records indicate that the applicant is in a state of compliance with the terms of other DMLW-issued authorizations.

Performance Guaranty Narrative: The applicant is required to submit a performance guaranty in the amount of \$8,000.00 to ensure completion of EA requirements. These funds will also serve as a survey deposit (per AS 38.05.860) and may be reduced one time during the term of the EA by an amount equal to payments made by the applicant to a licensed surveyor under contract for completion of a survey of ADL 109414 in accordance with survey instructions issued by the DMLW Survey Section as described herein. This performance guaranty shall remain in place during the term of the EA and will be subject to release upon the acceptance of a DMLW-approved survey and the fulfillment of all conditions and stipulations of this decision and the EA. The guaranty may also be adjusted to reflect updates and changes in the associated project, and the applicant may be required to furnish an additional performance guaranty if DMLW determines there to be additional risk to the State. The guaranty may be utilized by DMLW to cover actual costs incurred by the State to pay for necessary corrective actions in the event the applicant does not comply with site utilization and restoration requirements and other stipulations contained in the EA. An additional performance guaranty may be required for an extension of the EA beyond the initial term proposed under this decision.

Insurance

Consistent with AS 38.05.850, to protect the State from liability associated with the use of the site, the applicant shall provide and maintain a comprehensive general liability insurance policy with the State of Alaska named as an additional insured party per the stipulations of the easement agreement. The applicant shall secure or purchase at its own expense, and maintain in force at all times during the term of this easement, liability coverage and limits consistent with what is professionally recommended as adequate to protect the applicant and the State, its officers, agents and employees from the liability exposures of all the insured's operations on state land. The insurance requirement may be adjusted periodically.

Survey

A DMLW-approved survey is required to determine the proper location and acreage of installed improvements and the associated easement on State-owned, DMLW-managed lands. The area shown on Attachment 1 is the basis for the survey. The applicant must acquire survey instructions and coordinate with the DMLW Survey Section during the survey process. A survey instruction fee may be applicable. A draft must be submitted to the Survey Section prior to the expiration of the EA and a final survey must be approved by DMLW before issuance of the final easement.

Fees

<u>Entry Authorization</u>: In accordance with 11 AAC 05.070(d)(2)(I), the fee for an Entry Authorization for an approved easement or right-of-way for site development is \$240.00 annually for up to two acres, and \$120.00 annually for each acre above two. <u>The annual</u> fee for this Entry Authorization will be \$240.00.

<u>Easement:</u> In accordance with 11 AAC 05.070(d)(2)(A)(i), the fee for a private easement or right of way containing approximately 0.92 acres is <u>\$480.00</u>.

According to 11 AAC 05.070(d)(2)(A)(i), Private easement or right of way for a non-exclusive use; for up to two acres, annually, the applicant will pay \$480.00.

As a measure of incentivizing applicants to complete the required As-built survey, both the Entry Authorization and the Easement fee will apply during the term of the Entry Authorization. <u>The annual total fee during the term of the Entry Authorization will be</u> <u>\$720.00</u>. After the Easement is granted, only the <u>annual Easement fee of \$480.00</u> will apply.

<u>Survey:</u> Fees for survey instruction, review, and recording will be required and administered through the DNR – Survey Section.

Entry Authorization

The Entry Authorization (EA) is an interim authorization that is issued when a survey is necessary prior to easement issuance. Staff recommend that the easement not be granted until the following deliverables have been provided to DMLW, as described or recommended above:

- Payment of the Entry Authorization fee, <u>\$240.00</u>
- Payment of the annual use fee, <u>\$480.00</u>
- Performance Guaranty, in the amount of <u>\$8,000.00</u>
- Certificate of Insurance
- Confirmation of having made a request for survey instructions to the DNR Survey Section
- Confirmation of correspondence and authorization for permits from Haines Borough/Haines Volunteer Fire Department for on-site burning
- Confirmation of correspondence with DOF to coordinate collection of merchantable timber gained from the initial construction

Easement Term

The authorization requested under ADL 109414 will be issued for a term of 25 years from the effective date of this decision.

Term Discussion

Easements issued under AS 38.05.850 may be revoked for cause if the area described is no longer used for the purpose intended or if a higher and better use of the land is established as determined by DMLW. Following termination an easement, whether by abandonment, revocation, or other means, a grantee shall restore the site to a condition that is acceptable to DMLW. A grantee's planned site restoration activities, including either removal or abandonment of installed improvements, must be described in writing and present to DMLW prior to termination of the easement. DMLW may require compliance with additional conditions specific to the site restoration effort that were not required for the construction, maintenance, or operation of described improvements. Should a grantee or refuse to perform approved site-restoration activities within the time allotted by DMLW, the improvements may become property of DNR. However, a grantee shall not be relieved of the cost of restoring the area to a condition that is acceptable to DMLW.

Recommendation

In consideration of all events and criteria described above, it is my determination that this project is consistent with the overall classification and management intent for this land and would be a benefit to the State of Alaska. Therefore, I recommend issuance of a private, non-exclusive easement to Roger Schnabel dba Highland's Estates pursuant to AS 38.05.850, upon satisfactory completion of the project in conformance with all the terms and conditions of this decision and the EA. The easement will be issued for a term of 25-years from the effective date of this decision that may be terminated if a higher and better economic use for the project area is established as determined by DMLW Director, if the land is no longer used for the above stated purpose, or is revoked for cause.

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Quinn McClurg, Natural Resource Specialist III

07/07/2025

Date

Regional Manager's Decision

When adjudicating an easement authorization pursuant to AS 38.05.850, DNR seeks to responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with the public interest. In consideration of all events and criteria listed above, DMLW has determined that the authorizations to be granted under ADL 109414 are consistent with DNR's mission. It is my decision that this project is consistent with the overall classification and management intent for this land. DMLW will issue a private, non-exclusive easement, pursuant to AS 38.05.850, once the applicant has conformed to all terms and conditions of this decision and the EA.

Mason Auger

Mason Auger, Natural Resource Manager II

7/7/2025

Date

Attachments: Attachment 1: Development Diagram Attachment 2: Draft Entry Authorization Attachment 3: Draft Easement Attachment 4: DMLW Material Sale Denial, September 13th, 2011 Attachment 5: DGGS Memorandum, February 11th, 2011 Attachment 6: ACMP Memorandum, February 14th, 2011

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. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to 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). Review of the applicable statutes regarding appeals can be found here: https://www.akleg.gov/basis/aac.asp#11.02