

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND & WATER

SEAN PARNELL, GOVERNOR

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September 13, 2011

Southeast Roadbuilder's Inc.  
Roger Schnabel  
HC60 Box 4800  
Haines, AK 99827

Dear Mr. Schnabel:

Re: Material Sale Application ADL 108049 - DENIED

On August 31, 2010, the Alaska Department of Natural Resources (ADNR), Division of Mining Land and Water (DMLW) received your application requesting authorization to extract an amount of talus slope material not to exceed 10,000 cubic yards (cy) per year, from state-owned land located within Section 19, Township 30 S., Range 59 E., Copper River Meridian, near Haines, Alaska.



Fig. 1 DMLW Mapper satellite view of site area



Fig. 2 Aerial view of site area<sup>1</sup>

The proposed material extraction activity and construction of a road to access the site were submitted for consistency review to the Division of Coastal and Ocean Management (DCOM) under the Alaska Coastal Management Program (ACMP). On February 14, 2011, DCOM stopped the ACMP Consistency Review clock per 11 AAC 110.270(a)(3) in order to allow the applicant time to respond to the requests for information.<sup>2</sup> The U.S. Army Corps of Engineers (USACE) requires authorization for the proposed placement of fill for the access road under Nationwide Permit (NWP) 14, Linear Transportation Projects.<sup>3</sup>

<sup>1</sup> DMLW photo taken February 7, 2011

<sup>2</sup> DCOM ID No. AK 1101-02J

<sup>3</sup> POA-2010-569 Chilkat River

*"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."*

The Alaska Department of Fish and Game (ADFG) may also require an authorization associated with activities that may impact anadromous streams along the proposed access road.<sup>4</sup> In addition, Southeast Roadbuilder's Inc. would be required work with the Alaska Department of Environmental Conservation (ADEC) to develop and implement a Stormwater Pollution Prevention Plan (SWPPP) and obtain an APDES General Permit for Stormwater Discharges for Construction General Permit (Construction General Permit) from that agency which would help to avoid and minimize impacts to natural drainage patterns and the potential for sedimentation in anadromous waterways.

The proposed location for this material sale is within the Northern Region (Haines Area, Chilkat River) of the Northern Southeast Area Plan (NSEAP). Generally, for state owned land the management intent, land use designations, and management guidelines that apply to allowed uses at this location are determined by that area plan.<sup>5</sup> Within the Haines planning unit of the area plan, land classifications were established for all state owned lands not within the Haines State Forest Resource Management Area (Haines State Forest)<sup>6</sup>, including Federal lands under selection by the state.<sup>7</sup> The NSEAP does not include recommendations for the Haines State Forest.<sup>8</sup>

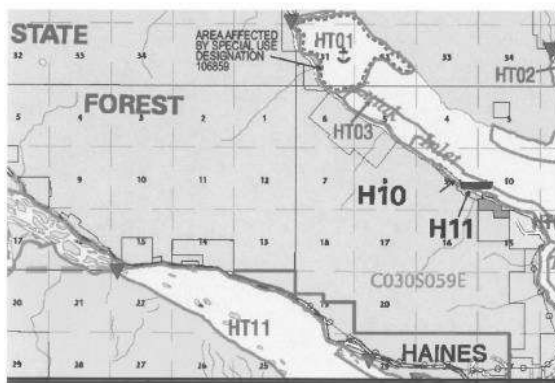


Fig.1 Area Plan Map Haines-Chilkat River<sup>9</sup>

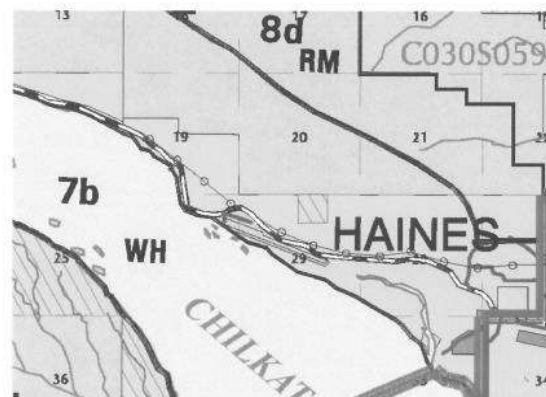


Fig. 2 Haines State Forest Plan Unit 7

The proposed material site is identified as being within the Haines State Forest. The Haines State Forest is managed for multiple uses which includes a mix of those uses identified under AS 38.05.112(c) and varying levels of use, depending on the results of the planning analysis.<sup>10</sup> The Haines State Forest Management Plan was originally adopted in 1985. The current plan, adopted in August 2002, is a revision of the 1985 management plan. The purposes of the plan are the utilization, perpetuation, conservation, and protection of land and water through multiple use management. The plan establishes state policy for the management of state lands in the Haines State Forest. All DNR decisions, including timber sales, road

<sup>4</sup> AWC Stream No. 115-32-10250-2008-3004

<sup>5</sup> Northern Southeast Area Plan (NSEAP), 2002

<sup>6</sup> On July 1, 1982, Alaska took the first step in the development of a system of State-owned lands legislatively dedicated to the multiple use management of forest resources. Alaska Statutes (AS) 41.15.300—41.15.330 established the Haines State Forest Resource Management Area (State Forest). The legislature intended the Haines State Forest to include timber harvest, recreation, mining, traditional uses, fish and wildlife habitat protection, tourism, and other uses. The type, intensity, and location of these uses was, under AS 38.04.005, to be derived from a planning process that would determine the best balance of these uses.

<sup>7</sup> Haines State Forest Plan, August 2002, ch. 1 p. 6

<sup>8</sup> NSEAP, Ch. 3 page 19

<sup>9</sup> Northern Southeast Area Plan, 2002, map 3-37

<sup>10</sup> Haines State Forest Plan, August 2002, ch. 1 p. 1-2

building, mineral leasing, land classifications, approval of commercial recreational activities, and other actions on state lands shall comply with the provisions of this plan.<sup>11</sup>

This material source is located within Management subunit 7a (Haines Highway) and is managed for its multiple use characteristics, none of which has been identified as being more important than another, and is classified Resource Management Land. Recreation is particularly important in the southern portion of the subunit, on Mt. Ripinski's hiking trails. Other resources include scenic values along the Haines Highway, and a transportation corridor.<sup>12</sup>

The three management guidelines<sup>13</sup> listed below would pertain to your project.

- *Scenic quality of the Highway Corridor.* Land along the Haines Highway will be managed to maintain its scenic qualities. Forest Land Use Plans should protect the scenic values of the highway.
- *Access and Utility Development.* Access across or along the corridor is allowed, including the widening or improving existing roads, but design and construction should be sensitive to the scenic values of the surrounding landscape.
- *Material Sales and Mineral Development.* **Material sales are not permitted** (emphasis added) 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.

Reasons for denial:

### 1. Not in the best interest of the State

The Haines State Forest Plan guidelines are clear that "Material sales are not permitted" at the proposed location. Therefore, absent a final decision by the Division of Forestry that an Amendment or Special Exception to the current plan's management guidelines that would allow a material sale at this location, DMLW's application must be denied.

### 2. Additional information required

Subsequent to receiving an application from Southeast Roadbuilder's Inc., this site was designated as a natural hazard area.<sup>14</sup> As such, DMLW would require evidence that the applicant has taken appropriate measures in the siting, design, construction, and operation of the proposed activity to protect public safety, services, and the environment from potential damage caused by the known natural hazards (landslide and snow avalanche).

<sup>11</sup> Haines State Forest Plan, August 2002, ch. 1 p. 11

<sup>12</sup> Haines State Forest Plan, August 2002, ch. 3 p. 51

<sup>13</sup> Haines State Forest Plan, August 2002, ch. 3 p. 51-52

<sup>14</sup> See AK1101-02J Chilkat River (Schnabel Material Sale and Access Road); DGGs Memorandum dated February 11, 2011; and ACMP Memorandum dated February 14, 2011

As a land owner, DMLW is concerned, particularly with multiple users at the site, by potential liability that may be incurred should an inadequate material extraction plan result in conditions causing damage or loss to the public or other operators at the site.

### 3. Acceptable Alternatives

The Haines State Forest Plan is not intended to be inflexible. Land use designations, the policies, and the management guidelines of this plan may be changed if conditions warrant. The Division of Forestry is responsible for coordinating periodic reviews of this plan. In addition to periodic review, modification of the plan or exceptions to its provisions may be proposed through amendments and minor modifications.<sup>15</sup>

The procedures for area plan changes that are specified in 11 AAC 55.030, have been adapted to and are to be applied to the revision process for the Forest Plan. There are three types of changes that may be made to the Forest Plan: Amendment, Special Exception, and Minor Change. An Amendment permanently changes the Forest Plan by adding to or modifying the basic management intent for one or more of the plan's units or subunits or by changing its allowed or prohibited uses, policies, or guidelines.

DNR, other agencies, municipalities, or members of the public may propose amendments or special exceptions. Requests for amendments or special exceptions are to be submitted to the Northern Southeast Area Office of Division of Forestry. The DNR Commissioner must approve amendments. The Northern Southeast Area Forester can approve special exceptions with a written finding. The finding identifies the extenuating circumstances that require a special exception, describes the course of action to be followed, and explains the basis for the determination is that the basic intent of the Forest Plan is not affected. Decisions of the Northern Southeast Area Forester involving special exceptions may be appealed to the DNR Commissioner.<sup>16</sup>

**IMPORTANT:** If you determine not to appeal this decision, you are advised that DMLW must receive written confirmation from either you or the Division of Forestry within 30-days of the issuance of this decision to indicate that you taken the actions necessary to request a change of the Haines State Forest Plan that would potentially accommodate your project otherwise your material sale application will be considered closed.

If you decide to pursue this alternative at some point in the future and are successful in obtaining a decision to modify the area plan in a manner that would allow a material sale at this location, then a new application may be submitted for consideration that includes satisfactory information must be received to evidence that the applicant has taken appropriate measures in the siting, design, construction, and operation of the proposed activity to protect public safety, services, and the environment from potential damage caused by the known natural hazards (landslide and snow avalanche). Similar to 11 AAC 112.210(d), this would mean that the proposed measures:

- (1) satisfy relevant codes and safety standards; or
- (2) in the absence of such codes and standards;

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<sup>15</sup> Haines State Forest Plan, August 2002, ch. 1 p. 11

<sup>16</sup> Haines State Forest Plan, August 2002, ch. 4 p. 8



- (A) the project plans are approved by an engineer who is registered in the state and has engineering experience concerning the specific natural hazard; or
- (B) the level of risk presented by the design of the project is low and appropriately addressed by the project plans.

4. Appeal Provision

A person affected by this decision may appeal it, in accordance with 11 AAC 02. Any appeal 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 Daniel S. Sullivan, 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](mailto:dnr.appeals@alaska.gov). If no appeal is filed by that date, this decision goes into effect as a final order and decision on the 31st day after issuance. An eligible person must first appeal 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.

If you have any questions you may contact Steve Winker at phone number (907) 465-3432 or email at [Steve\\_Winker@alaska.gov](mailto:Steve_Winker@alaska.gov).

Sincerely,



David L. Kelley  
Southeast Regional Manager

scw/dk

Enclosures

cc: Roy Josephson, Division of Forestry, Northern Southeast Area Forester  
Randy Vigil, US Army Corps of Engineers, Juneau  
Jackie Timothy, ADFG Habitat, Juneau  
Fred Thorsteinson, ADOT&PF, Juneau  
De Anne Stevens, ADNRR/DGGS, Fairbanks  
Sean Palmer, ADEC, Anchorage  
Roger Ramsey, Juneau ([rogerramsey@me.com](mailto:rogerramsey@me.com))