

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND AND WATER

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February 22, 2002

Brett Jokela
Project Manager
Montgomery Watson Harza
4100 Spenard Road
Anchorage, Alaska 99517-2901

Re: Application for Right-of-Way
ADL 106513, Skagway River Flood Control Dikes

Dear Mr. Jokela,

This letter follows our recent discussion regarding the revised right-of-way applications and the status of the OHW survey plat (EPF 20010003), along with several related topics.

Revised right-of-way application Your letter dated 12/17/01 submitted three applications for the single project as shown on Attachment 2A, 2B and 2C. These applications cover different segments of the proposed dike depending upon the ownership legend, i.e. Ownership Uncertain, State of Alaska, Private, City of Skagway and Private, subject to State ownership should river be found navigable by court of law. Our intentions have always been to issue one right-of-way for the project and we wish to continue in that direction unless the east and west side dikes are split into separate projects. In that scenario we would issue a second right-of-way. Based on the 2001 surveyed OHW line, we request that the riprap toe of the dike be moved in a westerly direction, within USS 1805, to the 2001 OHW line. Although this changes the linear design, there are several significant benefits. Relocation would: **(1)** eliminate construction of the dike within the active river channel 100-200 feet from the OHW line, **(2)** reduce the amount of fill necessary for the project since riprap could be placed along the existing westerly river bank, **(3)** prevent the permanent loss of several acres of river habitat and **(4)** reduce the amount of fill material since no filling behind the west bank will be necessary. Eliminating fill behind the west dike has been our stated position, a position supported by both DNR and ADF&G.

An additional request for Attachment 2 is to change the legend of the blue dashed line to read Approximation of Ordinary High Water Using 1982 Aerial Photography. Because ADF&G did not actually define the line and since the 1982 aerial photography represents an OHW line at that time to which the state claims ownership, a graphic depiction is important for all parties involved. Enclosed is a revised 1982 line depicted on Attachment 2A.

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The necessary revisions include: (1) Consolidate the changes for Attachment 2 into a single sheet. In earlier discussions DNR concluded that the application did not need to cover the area shown as “Ownership Uncertain” so this area can be deleted from the application. (2) Move the dike within USS 1805 westerly so that the toe of the riprap is at the surveyed 2001 OHW line. (3) Delete from the legend and the diagram all proposed fill behind the dike. (4) Within USS 994 and USS 1805, extend the blue diagonal hatching to cover the area between the 1982 and 2001 OHW lines. This is an **approximation** of where the OWH was, as evidenced in 1982 aerial photography, and is an area which the State claims ownership. The 1982, 1985 and 2001 photos show additional lands near the bridge within USS 1805 as being above the surveyed OHW line, which in the past have been diked and filled. (5) Extend the right-of-way application from roughly 21+50 to 31+00 and include reclaimed land above the 2001 OHW line from 43+00 to 50+50. (6) Revise the COE diagram to reflect these changes.

Regarding the width of the right-of-way, instead of establishing a continuous 200’ width, 100’ from centerline, the calculated acreage for the revised application should be based upon a width extending only 20’ out from the toe of slope on each side of the dike. This width should be sufficient for future maintenance. Movement of equipment necessary for future maintenance beyond the 20’ would not require a DNR permit. Attachment 2 should depict one continuous segment along the west bank and two segments along the east bank. After construction, the as-built easement diagram performed by a RLS will be used to issue the right-of-way easement.

Survey Completion As we discussed, ADF&G has raised some questions about the OHW line shown on the EPF. Our departments are having discussions and hope to have those issues resolved soon. The discussions do not involve the OHW line in the lower part of the river and therefore I do not see a need for the plat recording to hold up the requested revisions or the project.

Although Attachment 2A, 2B and 2C depict the OHW at different points in time, please be advised that these lines may not be dispositive of the actual property boundaries. The limit of state land ownership was determined by the OHW line at statehood, subject to change over time in accordance with state law governing ambulatory boundaries. Nothing in this letter, the below-noted agreement, or any permit that may be issued by the department should be interpreted as a waiver of the state’s right to assert ownership and jurisdiction over land belonging to the state. Specifically, nothing in the agreement, this letter, or other actions by the state should be understood to suggest state authorization or approval of, or acquiescence to any activity by Mr. Hunz on state land determined to be below the naturally-occurring and relevant OHW line prescribed under state law.

Agreement The agreement has been signed by all parties. With the agreement in place, the requested application revisions should not be an issue.

Fill Material The state resource agencies have always been under the impression that the fill material to build the dikes, with the exception of that which is removed from the area where riprap will be keyed into the streambed, will not come from the river. The COE notice dated 10/25/00 does not identify extraction areas, only quantities. Your 9/18/00 letter states that the fill for the larger area behind the western dike will be derived from private river bottom lands within USS 1805 which is land claimed by the state. By moving the dike westerly and eliminating the proposed fill, the quantities for this project will be significantly reduced. Please advise as to where the fill material will be obtained. A material

application is not necessary if the fill is removed from state land and used in the dike located on state and state claimed land.

Upon receiving the revised information, we would suggest a teleconference or meeting with you, the resource agencies, DGC and the COE to clarify the project and have any questions answered. If the issues are resolved to everyone's satisfaction, I will gladly recommend to DGC that they start the project review. Thank you for your attention to these issues.

Sincerely,

Ron Schonenbach
SE Regional Manager

Enclosure: Attachment 2A with revisions

cc: Lorraine Marshall, DGC
John Klutz, COE
Ben Kirkpatrick, ADF&G
David and Pamela Hunz
Bob Ward, City of Skagway