

# STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

**DEPARTMENT OF NATURAL RESOURCES**  
**OFFICE OF PROJECT MANAGEMENT/PERMITTING**  
**ALASKA COASTAL MANAGEMENT PROGRAM**

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December 3, 2004

Mr. Brett Jokela  
Agent/City of Skagway  
Montgomery Watson Harza  
1835 S Bragaw St. Ste. 350  
Anchorage, Alaska 99508

Dear Mr. Jokela:

**Subject: Skagway River 10 Modification (Flood Control)**  
**State I.D. No. AK 0405-17J**  
**Final Consistency Determination – Concurrence**

The Office of Project Management and Permitting (OPMP) has completed coordinating the State's review of the City of Skagway's proposed Skagway River flood control project for consistency with the Alaska Coastal Management Program (ACMP).

OPMP has developed the enclosed consistency determination, in which the State proposed to concur with the City of Skagway's certification that the project is consistent with the ACMP and affected coastal district's enforceable policies. This will be the final ACMP decision on this particular project as proposed.

By copy of this letter, I am informing the U.S. Army Corps of Engineers and State review participants of OPMP's finding. If you have any questions, please contact me at 907-465-4664 or email [joe\\_donohue@dnr.state.ak.us](mailto:joe_donohue@dnr.state.ak.us).

Sincerely,

Joe Donohue  
ACMP Project Specialist

Enclosure

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

Distribution List:

Jim Powell – ADEC, Juneau \*  
Wayne Dolezal – ADFG, Anchorage \*  
Ben Kirkpatrick – ADFG, Haines \*  
Doug Sanvik – ADNR/DMLW, Juneau \*  
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Andy Hughes – ADOT/PF, Juneau \*  
Marj Harris – Coastal District, Skagway \*  
Bob Ward – Administrator, City of Skagway \*  
Dave Hunz – Adjacent Property Owner, Skagway \*  
John Klutz – USACE, Anchorage \* \*\*  
Chris Meade – USEPA, Juneau \*  
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Susan Walker – NMFS, Juneau \*  
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**ALASKA COASTAL MANAGEMENT PROGRAM  
FINAL CONSISTENCY DETERMINATION  
CONCURRENCE**

**DATE ISSUED: December 3, 2004**

**PROJECT TITLE: Skagway River 10 Modification (Flood Control)**

**STATE ID. NO.: AK 0405-17J**

**AFFECTED COASTAL RESOURCE DISTRICT: Skagway**

**APPLICANT: City of Skagway**

**DESCRIPTION OF PROJECT SUBJECT TO ACMP REVIEW:**

This description of what the City is proposing is based on revisions made in May 2004 by "Montgomery Watson Harza" of Anchorage (retained by the City as project agent) to improve the design to satisfy the primary objections that were keeping the project from being permitted, implemented and constructed. Proposed are flood control dikes to protect the City of Skagway in the event of a 100-year flood. The project will involve dike structures and revetments along both sides of the Skagway River from the Klondike Highway Bridge to about 5,300 feet upstream of the bridge. The City occupies the Skagway River delta at tidewater. Upstream, the river flows in a narrow valley that broadens at the townsite and empties into Taiya Inlet. Much of the project is located on state or state claimed lands. It includes dike construction, river excavation, a right-of-way (ROW) across state and private property, and providing fish passage and habitat enhancement in Dairy Creek. Specifically, the proposal includes:

**Dikes -**

The project will place dike and revetment structures along both sides of the river, from just upstream of the Klondike Highway Bridge to approximately 5,300 feet upstream, northeast of the Skagway city center.

The dikes will be 8' to 12' high and 40' to 50' wide at the base. The dike design is based on a scour depth of five feet below the thalweg depth. Since the existing grade in some areas will not allow excavation to that depth, Class III riprap will be placed at an elevation above total scour depth in those areas. Construction of the dikes and revetments will take place through low flow periods. Dikes on both sides of the river will be constructed as one project; the work will not be phased.

**An additional modification to the original project is the addition of five 14-foot wide maintenance access rock vane ramps (RVR's) at various locations.**

**The outer toe of the slope of the west side dike, from approximately Station 0+00 to Station 21+50 will be along the ordinary high water line as surveyed in 2001 (EPF 2001-0003). All other dikes and revetments will be located such that the new revetments and dikes overlay existing slopes and curtail**

any extension further into the active floodplain (this restriction does not apply to the launchable toe as described on sheet 5 nor to the new section of dike on the east bank between Station 0+00 to Station 9+80).

Excavation -

The project will import 34,000 cubic yards of riprap from a private source for the dike and revetment construction. The riprap will be used to anchor the toes of the dikes and revetments, including launch aprons, into the riverbed and to armor them from the river flow.

The project will excavate 20,000 cubic yards of in-place riverbed material for the dike and revetment construction, including dike core and riprap bedding. All this material will come from the footprint excavations of the dike and revetments. This includes the amount of riverbed material needed for dike core and riprap bedding.

A total of 54,000 cubic yards of material will be used in the dike and revetment structures for flood control.

Work will be done during the winter, low flows. If the river is flowing in the construction area, the City will isolate the construction area from the flowing waters of the river. The City intends to dig a diversion ditch within the floodplain and move the river away from the dike site. Other techniques such as dam and pump, or stream fluming, may be incorporated into the construction activity to insure that silt laden water is not carried into sensitive fish habitat. If a river diversion channel is constructed, it will be constructed such that the ends are left plugged until the main stem of the channel is completed, then the outlet end will be opened prior to the inlet end, to minimize the introduction of silty water into the river.

Right of Way -

The project utilizes or crosses parcels of land that may require rights of way, including USS 176 (Russell Metals), USS 1805 (riverbed lands where ownership is in dispute between David and Pamela Hunz and the State of Alaska), and portions of USS 5110 (claimed by the State of Alaska as riverbed of a navigable river).

The City of Skagway has contacted all parties to arrange for the necessary rights of way for the project. This includes a December, 2001, agreement between the City of Skagway, David and Pamela Hunz, and the State of Alaska to move forward with the project applications for permissions, authorizations and materials sales or leases without prejudice to any of the parties' assertions of title to the land at issue.

Dairy Creek Fish Passage -

To provide access into the flood plain for gravel mining and channel maintenance, vehicular crossing of Dairy Creek is required. The project proposes to use an arched creek crossing over Dairy Creek. The approximately 12' wide by 50' long span will be covered with gravel, and the sideslopes reinforced with riprap.

To mitigate unavoidable impacts to riparian habitat, the mouth of Dairy Creek will be re-established in a series of step pools at the confluence with the Skagway River to improve fish passage. The improvement to Dairy Creek will be constructed in consultation with OHMP.

Monitoring -

Water levels and flow will be monitored at the Klondike Highway bridge, with an intent to determine when a flow of 4,000 cfs has been exceeded. Channel changes will be documented at permanent cross-section locations to establish channel maintenance requirements. After dike construction, monitoring will be conducted every two years or after a flood event of 4,000 cfs or greater. Monitoring will consist of surveying elevations and distances across three cross-sections, from dike to dike. Based on comparisons of current and historic cross-section elevations, estimates of current channel flow capacity at two water surface elevations will be determined: 1/bankfull and 2/design 100-year flood stage (38,000cfs). Survey data will be used to estimate volume of channel aggradation and /or degradation.

Channel Maintenance -

The application states that “continued gravel mining from the channel is anticipated, to remove deposited material, maintain a flow channel, and assure the integrity of the dike structures.” The U.S. Army Corps application for this project describes a need for future maintenance dredging of the river, but Federal regulations do not allow authorization of such activities as part of the permitted construction project. If, based on the monitoring of the water flow and channel changes, mining is recommended for channel maintenance, the State of Alaska will review any proposed mining activities for permit authorizations and consistency with the ACMP at that time.

Proposed Mitigation Measures -

Minimization/mitigation efforts proposed to reduce impacts to the aquatic environment include: (1) realign Dairy Creek as stated above (2) the east side of the project has been designed to allow a break in the dike to allow some meandering of the river; and (3) the west dike above the Klondike Highway bridge will follow the existing line of ordinary high water (OHW), from approximately station 0+00 to station 20+50. The widening is expected to provide a slow flow area for fish to congregate prior to continuing upstream.

Additional Information -

Dry portions of the river bottom will be utilized for staging areas for storage of riprap, geotextile and other imported dike fill. Material storage will be restricted to short durations. Riprap materials will be obtained from local quarries within the Skagway area. The City of Skagway will establish work plans and methods of operation to minimize impacts to fisheries when dike construction and the flowing river are at the same location.

As of December 3, 2004 the City of Skagway has agreed to incorporate the following State-recommended alternative measures into the project description, as proposed by the Office of Habitat Management and Permitting (OHMP) for the flood control project to achieve consistency with the standards and policies of the ACMP:

Timing. In-water work shall occur in the Skagway River and Dairy Creek only between November 1 and April 30 and June 15 and August 15. If work is to be performed outside of this window, prior written approval from OHMP is required. This will be included as a stipulation in the Fish Habitat permit.

This alternative measure is required to minimize impacts during the most sensitive life stage of fish. The lifestages that could be affected are migration of adult fish to spawning areas in late summer and fall, and outmigration of smolts in the spring. The Skagway River (Stream #115-34-10300) and Dairy Creek (Stream #115-34-10300-2017) have been specified as being important for the spawning, rearing or migration of anadromous fish pursuant to AS 41.14.870(a). The proposed project site is located in or near essential chum and coho salmon, and Dolly Varden char spawning, rearing and/or migration habitat. Eulachon eggs have also been documented in the Skagway River, indicating spawning occurs in the intertidal area of the river. Spawning is not expected to occur in the project area.

Work Plan. A work plan shall be submitted to OHMP prior to start of project construction in the Skagway River and Dairy Creek. This plan must include details for how work will be accomplished to: (a) divert stream flows around the work area; (b) dewater the work area, if dry conditions are desired; (c) maintain free passage and movement of fishes; and (d) stabilize disturbed areas affected by the project, such as slopes, fills and cut banks. This will be included as a stipulation in the Fish Habitat permit.

Vegetated Island. Construction of the upper portion of the east dike, from station 7+00 to 16+91 is expected to cause scour of the vegetated island on which the lower end of this portion of the east dike ends. One purpose of the break in the dike is to provide a backwater for fish during high water events. If this island is lost to erosion much of the mitigation benefits may be diminished.

The city would provide additional protection for the island. Protection will include an additional rock vane ramp at the lower end of the upper portion of the east dike, installation of rock spurs as hard points at intervals of approximately 80 feet along the edge of ordinary high water on the western face of the island, and installation of dormant willow posts along the riverbank between the hardpoints, as described in the November, 2004 amendments to the project proposal.

This work will be included in the Fish Habitat permit.

Notification. OHMP, Juneau Area Office shall be notified at least one week before instream work is to begin on individual segments of this project. This will be included as a stipulation in the Fish Habitat permit.

Alteration of Streambanks. Alteration of streambanks must be minimized and restricted to that necessary to construct the project. Immediate and practicable measures must be taken to maintain water quality in and adjacent to anadromous fish streams. This will be included as a stipulation in the Fish Habitat permit.

Dairy Creek Improvements. As mitigation for unavoidable impacts to stream and riparian habitat, improvements will be made to instream habitat and fish passage in Dairy Creek. Work includes regrading and enhancement of the substrate, removal of two existing CMP culverts, and

improvements to the stream outlet to improve upstream fish passage. Improvements are based on a design used recently in Sawmill Creek in Haines, specifically: 1) spawning gravels will be placed in 30-foot long segments creating riffles that are separated by 30-40 foot pools; 2) these features will extend the length of the dikes; 3) fish passage at the perched stream outlet will be improved by creating a short series of step pools using hand tools. Because some maintenance of these improvements may be needed, access should be provided for at the confluence of the Skagway River.

The applicant has proposed substituting an arched culvert for a crossing of Dairy Creek in place of the bottomless arch detailed in the drawings. This is acceptable to OHMP provided it is of equivalent diameter, and it is bedded at least 6" below the channel bed, providing for retention and replenishment of bed material over the invert of the culvert.

**SCOPE OF PROJECT REVIEW:**

Except for the water quality issues addressed through the ADEC 401 Certification process, the scope of the project subject to the consistency review includes all activities that require an authorization from a Federal and State agency for the project to proceed.

**AUTHORIZATIONS:**

The project must be found consistent with the ACMP before the following Federal and State authorizations may be issued:

U.S. Army Corps of Engineers  
Section 404 Permit No. 4-910677

Alaska Department of Environmental Conservation (ADEC)  
Certificate of Reasonable Assurance (401)

Alaska Department of Natural Resources (ADNR)  
Right of Way Permit No. ADL 106513  
Title 41 – Fish Habitat Permit

**CONSISTENCY STATEMENT:**

Based on an evaluation of this project by the Alaska Departments of Environmental Conservation and Natural Resources (Division of Mining, Land and Water, and Office of Habitat Management and Permitting), and the Skagway Coastal District, and the applicant's acceptance of State recommendations for the proposed project to achieve consistency with the standards of the ACMP, the State of Alaska proposes to concur with the consistency certification submitted by the project applicant, City of Skagway and signed by Mr. Brett Jokela – project agent.

State permits. State agencies shall issue permits within five days after OPMP issues the final consistency determination that concurs with the applicant's consistency certification, unless the resource agency considers additional time necessary to fulfill its statutory or regulatory authority.

Please note that, in addition to their consistency review, State agencies with permitting responsibilities will evaluate this proposed project according to their specific permitting authorities. Agencies will issue permits and authorizations only if they find the proposed project complies with their statutes and regulations in addition to being consistent with the coastal program. An agency permit of authorization may be denied even though the State concurs with the ACMP. Authorities outside the ACMP may result in additional permit/lease conditions. If a requirement set out in the project description (per 6 AAC 50.265) is more or less restrictive than a similar requirement in a resource agency authorization, the applicant shall comply with the more restrictive requirement. Applicants may not use any State land or water without ADNR authorization.

This final consistency determination represents a consensus reached between you as the project applicant and the reviewing agencies listed above; regarding the conditions necessary to ensure the proposed project is consistent with the ACMP. We are informing the federal agency responsible for approving a federal authorization for your project that your original proposal has been modified subject to the conditions in this consistency determination.

This final consistency determination is a final administrative decision for purposes of Alaska Appellate Rules 601-612. Any appeal from this decision to the superior court must be made within 30 days of the date of this determination.

**ADVISORIES:**

Department of Natural Resources:

Division of Mining, Land and Water (Lands Section) – On October 19, 2004 OPMP received the following comments and recommendations:

"The Division has completed its consistency review of the amended plan submitted for the Skagway Flood Control Project. The City of Skagway seeks to construct a flood control project to protect the City in the event of a 100-year flood. The project will involve dike structures and revetments along both sides of the Skagway River from the Klondike Highway Bridge to about 5,300 feet upstream of the bridge and a minor buildup of the Dairy Creek banks upstream of the dike separation.

The river bed materials needed in the dike construction (20,000 cubic yards) will come from the footprint excavation of the dikes and revetments. No material sale will be required for the river gravels used in the dikes; the removal will be authorized as part of the dike and revetment construction.

The project will import 34,000 cubic yards of riprap from a private source for the dike and revetment construction. A total of 54,000 cubic yards of material will be used in the dike and revetment structures.

Much of the project is located on State or State-claimed lands, requiring issuance of a public easement. The Division will update the existing easement application with the amended plan drawings submitted on May 13, 2004. The easement application is referenced as follows:

ADL 106513 - City of Skagway - Flood Control Project

**Land Ownership:** There are ownership disputes over certain of the lands subject to this application. DNR asserts ownership and title to much of this area as it is in the bed of a navigable river.

For the sake of allowing the project to proceed, the City of Skagway, Dave and Pamela Hunz, and the Department of Natural Resources have signed an Agreement to protect the City of Skagway, the State of Alaska, and/or Dave and Pamela Hunz from prejudicing title assertions to any of the lands involved, especially within the river bed adjacent to USS 1805 and USS 994. Nothing in these comments or any authorization 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.

**Recommendation:**

We recommend that the project be found consistent with the Alaska Coastal Management Program contingent upon the recommended consistency determination of the Office of Habitat Management and Permitting (OHMP) and their recommended stipulations.

**Advisory:** Under its Title 38 authority, DNR will issue one easement authorization for all state lands, including disputed state lands, associated with the project. The purpose of the easement authorization is not to define ownership issues but to allow construction of the project. DNR recognizes that portions of the dikes are on private, municipal, State, and/or contested lands and will give consent for the project to be constructed on any State lands within the areas defined by the revised application and drawings submitted on May 13, 2004 by Montgomery Watson Harza as modified by the ACMP review stipulations.

The easement authorization will require that:

"The outer toe of the slope of the west side dike, from approximately Station 0+00 to Station 21+50 will be along the ordinary high water line as surveyed in 2001 (EPF 2001-0003). All other dikes and revetments will be located such that the new revetments and dikes overlay existing slopes and curtail any extension further into the active floodplain (this restriction does not apply to the launchable toe as described on sheet 5 nor to the new section of dike on the east bank between Station 0+00 to Station 9+80)."

This consistency determination does not obligate the Department to issue authorization pursuant to AS 38, nor does it supersede statutory obligations thereunder. The applicant may not proceed with any site specific land use activity on the subject State lands until so authorized by the Division of Mining, Land and Water. Authorities outside 6AAC 50 may result in additional permit conditions not contained in this consistency decision.

Office of Habitat Management and Permitting (OHMP) – On October 19, 2004 OPMP received the following written comments and recommendations from OHMP: "The Office of Habitat Management and Permitting has reviewed the City of Skagway proposal to construct a flood control project in the Skagway River. The project includes dike construction, river excavation, a right-of-way (ROW) across state and private property, and providing fish passage and habitat enhancement in Dairy Creek. This proposal is a modification of an earlier project reviewed in 2002 under State I.D. No. 0209-07J that was found not to be consistent with the standards of the Alaska Coastal Management Program. OHMP feels that the modified project substantially addresses the concerns raised in the earlier review. The modified project description incorporates most of the alternative measures identified in the earlier review. However, some of the earlier alternative measures that were not contested in the earlier review were not carried forward. These measures should be required for consistency with the ACMP and in some cases may be required for the Fish Habitat permit per AS

41.14.870. We have included those alternative measures below. We recognize that some of these alternative measures may not apply to this review because of the recent "DEC Carve-out".

#### Habitat Standard

Habitats in the project area that are subject to the Alaska Coastal Management Program (ACMP) and the Skagway Coastal Management Program (SCMP) standards include the Skagway River and Dairy Creek. The City of Skagway has developed an Area Meriting Special Attention (AMSA) Plan for managing the Skagway River. Under the ACMP and SCMP these habitats must be managed so as to maintain or enhance the biological, physical and chemical characteristics of the habitat that contribute to its capacity to support living resources (6 AAC 80.130 [a] and [b]). In addition, rivers, streams and lakes must be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural water flow. Projects that do not meet the habitat standards may be allowed if a significant public need is demonstrated; there is no feasible or prudent alternative; and all feasible and prudent steps to maximize conformance with the standards will be taken.

#### Alternative Measures

OHMP objects to the certification that the project as proposed is consistent with the Alaska Coastal Management Plan. However, the project can be found consistent provided the following alternative measures are incorporated into the project description and implemented as part of the project:

**(NOTE: The six alternative measures are included in the DESCRIPTION OF PROJECT SUBJECT TO ACMP REVIEW, under "Additional Information", above. )**

#### Recommendations for 401 Certification -

OHMP recommends that the following stipulations be required by the Department of Environmental Conservation Section in the Section 401 Certification of the COE Section 404 permit. These stipulations are necessary to limit water quality degradation in the Skagway River that could result from construction activities.

- Operate in footprint. During excavation and fill placement heavy equipment may not operate on the ground outside excavation and fill areas, roads, and logistical areas, unless written authorization is obtained from ADEC prior to this activity.
- Revegetation. Upon project completion, any upland ground presently vegetated, if disturbed by not covered with fill, must be stabilized and revegetated with endemic species, grasses, or other suitable vegetation, so that a durable vegetative cover is established before September of the year disturbance occurs. If it appears this condition will not be met, ADEC shall be notified immediately.
- Petroleum. Precautions and controls must be used to prevent incidental and accidental discharge of petroleum products. Sorbent pads and other spill cleanup materials must be available on-site, and must be used to contain and clean up any incidental petroleum products spilled as a result of construction activity."

This consistency determination may include reference to specific laws and regulations, but this in no way precludes an applicant's responsibility to comply with all other applicable State and federal laws and regulations.

This consistency determination is only for the project as described. If, after issuance of a final consistency determination or response, the applicant proposes any changes to the approved project, including its intended use, prior to or during its siting, construction, or operation, the applicant must contact this office immediately to determine if further review and approval of the modifications to the project is necessary. Changes may require amendments to the State authorizations listed in this determination or response, or may require additional authorizations.

If the proposed activities reveal cultural or paleontological resources, the applicant is to stop any work that would disturb such resources and immediately contact the State Historic Preservation Office (907-269-8720) and the U.S. Army Corps of Engineers (907-753-2712) so that consultation per section 106 of the National Historic Preservation Act may proceed.

**FINAL CONSISTENCY DETERMINATION PREPARED BY:**

Joe Donohue – ACMP Project Specialist  
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Office of Project Management and Permitting  
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Joe Donohue