

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET DIVISION OF GOVERNMENTAL COORDINATION

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January 9, 2003

David Hunz
Hunz & Hunz Enterprises
P.O. Box 185
Skagway, Alaska 99840

Dear Mr. Hunz:

SUBJECT: SKAGWAY RIVER 5 (Gravel Extraction)
STATE ID NO. AK0211-07J
FINAL CONSISTENCY DETERMINATION

The Division of Governmental Coordination (DGC) has completed coordinating the State's review of your proposed project for consistency with the Alaska Coastal Management Program (ACMP). DGC issued a proposed consistency determination based on reviewers' comments on 12/30/02. Following a teleconference on 1/2/03,¹ the State issued a revised proposed consistency determination, with the result that we revised the previous alternative measure 9, as well as changed the project description (which was discussed in the teleconference).

Scope of Project Reviewed.

The proposed project is gravel extraction of exposed gravel bars in the Skagway River within USS 1805, at Skagway, north and upstream of the Skagway River Bridge, in a 4.44-acre site. Approximately 50,000 cubic yards of riverbed material will be excavated over a five-year period, with no more than 15,000 cubic yards being excavated in any given season in the five-year span. On 1/2/03 you met with the Departments of Fish and Game and Natural Resources and me in a teleconference and discussed the possibility of changing the original proposal to excavate 10,000 cy each year for five years, and on 1/2/03, I informed the Alaska Department of Environmental Conservation and coastal district through a draft of the revised proposed consistency determination. I also informed other agencies, especially and Corps of Engineers, of the change.

The work will occur during periods of low flow. The proposal includes temporary placement of the active channel through three five-foot diameter culverts.

¹ 1/2/03 teleconference: Dave Hunz; Chris Crenshaw, Agent, R&M Engineering; Ben Kirkpatrick, ADF&G; Ted Deats, ADNR; and Lorraine Marshall, ADGC.

Each year discharge material for constructing access roads, construction of a dike and temporary placement before truck loading would occur. Approximately 1,025 cubic yards of material would be discharged to construct two haul roads and up to 100 cubic yards of material would be used in construction of the dike. It is estimated that up to two acres of the proposed project area could be impacted with discharges in construction of the proposed work. The discharge of materials also includes the pushing/leveling of riverbed materials below the ordinary high water mark. Upon completion of seasonal work, the access roads and dike will be removed and the area contoured and sloped to not leave open pits in the riverbed.

The existing raised gravel bars will be removed to the bottom of the existing river channel. The temporary access roads will be 14' wide. Excavation and removal of the gravel material will begin in the southeast and middle of USS 1805 and proceed north. Extracted gravel materials will be stockpiled on upland property. All fueling and maintenance of equipment will be performed on the uplands. The site is at section 1, T. 28 S., R. 59 E. CRM.

Related project. The Skagway flood control project (Skagway River 10), which is currently in the State review process for consistency with the ACMP, overlaps in part with this proposed project area. The flood control project proposes excavating 17,900 cubic yards of material from within USS 1805 in the floodplain to fill and reclaim commercial and industrial land, as well as 17,700 cubic yards of excavated riverbed material for the dike and revetment structures. Much of the gravel was to come from USS 1805.

Consistency Determination.

This consistency determination applies to the following federal and State authorizations per 6 AAC 50:

U.S. Army Corps of Engineers
Section 404 Permit No. 4-1988-0093

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

Alaska Department of Fish and Game (DFG)
Fish Habitat Permit

Alaska Department of Natural Resources
Material Sale ADL 106953

No State or federal agency may issue an authorization before DGC issues a final consistency determination. Most State agencies should issue permits within five days after DGC issues a final consistency determination. You may not use any State land without DNR authorization.

The Alaska Departments of Environmental Conservation, Fish and Game, and Natural Resources and the Skagway Coastal District have reviewed your proposed project. Based on that review, the State concurs with your certification that the project is consistent with the ACMP with the following alternative measures, which will appear as stipulations on the State permits noted:

1. The excavation of the large vegetated island on the eastern edge of USS 1805 is not allowed. (*ADF&G T16, DNR Material Sale*)

Rationale: This stipulation is necessary to protect fish habitat by preventing removal of riparian habitat within the floodplain (6 AAC 80.130). This will also minimize changes to channel hydraulics (AMSA K-2) and minimize clearing of riparian vegetation and disturbance of natural banks (AMSA K-3b). The ownership of part of this island is in dispute between the applicant and the State of Alaska. This island also plays a key role in mitigation for the proposed Skagway Flood Control Project. To ensure there is no conflict between these two projects this island should not be mined until all issues with the flood control project are resolved. Additionally, this island contributes significantly to the habitat values of this portion of the Skagway River. Riparian vegetation contributes not only to fisheries values, but is also important for passerine and small mammal habitat.

2. In-water work shall occur in the Skagway River only between November 1 and April 30. This includes placing and removing temporary culverts. If work is to be performed outside of this window, prior written approval from ADF&G is required. DGC must be informed of the request for modification. (*ADF&G T16, DNR Material Sale*)

Rationale. This stipulation is needed to protect habitats by preventing erosion and destabilization, and providing for fish passage, per 6 AAC 80.130 Habitats.

3. You shall revise the mining plan, and submit it to ADF&G prior to the start of project construction in the Skagway River, to include the following requirements: (a) you must avoid the mining in the active channel; (b) you must maintain free passage and movement of resident and anadromous fishes; (c) you must stabilize disturbed areas affected by the project, such as slopes, fills and bank cuts; (d) you must maintain a stable channel configuration after the project is completed and (e) you must show that the excavation area will be free draining once the river reoccupies this area. (*ADF&G T16, DNR Material Sale*)

Rationale. This stipulation is needed to protect habitats by preventing erosion and destabilization, and providing for fish passage, per 6 AAC 80.130 Habitats and or AMSA policy I-2 River Channel Stability. The proposed gravel extraction plan you submitted does not meet the Habitats Standard. The proposed plan would skim off all the gravel bars within the floodplain, which would widen the channel of the Skagway River and could destabilize this portion of the riverbed. The revised plan will proscribe mining outside of the active channel and the mining area be left in a stable configuration that will be free draining once the river reoccupies this area. This is similar to how the Skagway Airport project river mining was completed.

4. The excavation area must be staked and available for inspection by ADF&G one week before instream work is to begin. ADF&G must be notified when the site is available for inspection. (*ADF&G T16, DNR Material Sale*)

5. Any foreign debris located in the mining area or accessible to the mining area without crossing an active river channel, must be removed from the project area and placed in an approved upland disposal site. (*ADF&G T16, DNR Material Sale*)

Rationale. Stipulations 4 and 5 are needed to protect habitats by improving existing conditions in the river by removing debris, per 6 AAC 80.130. If conducted in a responsible manner there should be acceptable unavoidable impacts to the Skagway River from this operation. However, there will be unavoidable impacts from placing the culverts for the access road, compaction of the riverbed in the location of the temporary roads, disturbance to the riverbanks where vehicle access is gained. To mitigate for these impacts ADF&G will require the applicant to remove any foreign debris accessible from the mining area without crossing the active river channel. This material must be removed to an approved upland location that will not impact fish habitat. If it is determined that some debris cannot be removed without creating more disturbance ADF&G must be notified.

6. 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. (*ADF&G T16, ADEC 401, DNR Material Sale*)
7. Excavation, temporary storage of excavated material, and fill placement must be conducted so that suspension of sediment in water is minimized. (*ADEC 401, DNR Material Sale*)
8. Precautions and controls must be used to prevent incidental and accidental discharge of petroleum products spilled as a result of construction activity. (*ADEC 401, DNR Material Sale*). Sorbent pads and other spill cleanup materials must be available on-site, and must be used to contain and cleanup any incidental

Rationale: Stipulations 6, 7 and 8 are necessary to protect riverine water quality and habitat by minimizing the disturbance of the river channel, and adjacent lands and minimizing the introduction of suspended material and petroleum products into waters, per 6 AAC 80.130 Habitats, 6 AAC 80.140 Air, Land, and Water Quality, and 18 AAC 70 Water Quality Standards.

9. The Skagway River project area conditions will be reevaluated by the Departments of Natural Resources, Fish and Game and Environmental Conservation in the fall following completion of the flood control project (Skagway River 10). The State resource agencies may request a modification to the consistency determination at that time if the Skagway River 5 project area is affected by the flood control project (Skagway River 10). The Fish Habitat Permit will only be issued for one season. (*ADF&G T16, ADNR*)

Rationale: The Skagway River flood control project, in part, overlaps with this Skagway River excavation site. The review of Skagway River 10 is currently ongoing, as the regional-level proposed consistency finding, with alternative measures, issued on November 13, 2002 was elevated by the City of Skagway. A portion of the Skagway River 10 proposal related to reclaiming land was not approved in the regional finding. A

final consistency has not yet been issued. Any long-term gravel extraction in the Skagway River will be tied to the flood control project and the maintenance of adequate storage capacity between the dikes. This stipulation is necessary to protect habitats, per 6 AAC 80.130, because the existing floodplain and flow dynamics of the Skagway River will be significantly altered by the flood control project.

Discussion of Rationale.

The Plan has identified this area as a known geophysical hazard area where there is a substantial possibility that geophysical hazards may occur. 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. AMSA policies K-1 through K-7, for mining and gravel extraction, apply to this project.

The Skagway River (ADF&G Stream #115-34-10300) has been specified as being important for the spawning, rearing or migration of anadromous fish pursuant to AS 16.05.870(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. During the Skagway Airport runway construction rearing coho salmon and Dolly Varden char were documented using the mainstem of the Skagway River just below the proposed project area. Eulachon eggs have also been documented in the Skagway River, indicating spawning occurs in the intertidal area of the river. The appropriate construction timing will minimize impacts during the most sensitive life stage of these fish: spawning, emergence from the gravel and smolt outmigration. Spawning is not expected to occur in the project area, the life stages that could be affected are migration of adult fish to spawning areas in late summer and fall, and outmigration of smolts in the spring.

AMSA Policy K-1 states that resource extraction activity “be limited to a single material site until this resource is exhausted.” During the review DNR advised there is a site below the Skagway River Bridge that could be available for use, according to the definition of an “active site” by DNR, which is “has been used within 10 years.” The policy that applies is a local coastal district policy. There are also provisions for exceptions when the use of an existing site is not feasible and prudent. You have submitted information advising it would not be feasible and prudent to use the excavation site downstream of the Skagway River bridge because (1) the process of applying and future review could conceivably cause you to miss this season's

Excavation; (2) per the City of Skagway’s letter dated 12/27/02, the council wanted to clarify that the area identified below the Skagway River Bridge as a state gravel source was closed after the last extraction permit to Hamilton Construction in 1998. Following that, the state exchanged the uplands for municipally owned land at Yakutania Point Park in order to accommodate the Skagway Airport Improvement Project. These new municipal uplands below the Skagway River Bridge are subject to the same recreational protection requirements as those lands at Yakutania Point Park, and would not allow for industrial gravel extraction. The downstream site was already eliminated.

The State has considered your information, as well as additional information provided by the City of Skagway on 12/27/02, to demonstrate lack of feasibility and prudence. Again, we emphasize that, per the local AMSA policy, the DNR site downstream of the bridge would be

unavailable for use while USS 1805 remains an active material extraction site. Also, you provided copies of the Municipal Code.

This project proposal and State consistency determination are based on the requirement in the AMSA, policy K-1, that only one excavation site within the Skagway River AMSA may be active at a time. The AMSA prohibits multiple sites.

Due to the AMSA policy K-1, the applicant, the City of Skagway and the public are informed that removal from AMSA Material Site No. 1, downstream of the bridge, may then be prohibited under the provisions of AMSA policy K-1 while the new site is active.

The City of Skagway provided a letter of concurrence that there is no objection to the establishment of this new material site.

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.

I previously sent a copy of relevant ACMP standard and approved coastal district policies.

Advisories.

DGC. For clarification, the activity is proposed for five years; thus, the consistency determination is valid for five years, unless at the time of reevaluation of the project site after completion of the flood control project, changes to the consistency determination are required. See stipulation #9.

DNR advisories: (1) Both the State and the applicant claim title to the lands involved. The proposed material sale is in the bed of the Skagway River within the boundaries of USS 1805. Dave and Pamela Hunz and the Department of Natural Resources will sign an Agreement to protect the State of Alaska, and/or Dave and Pamela Hunz from prejudicing title assertions to any of the lands involved. Nothing in this decision 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.

- (2) Mac Maclean of the Alaska Department of Fish and Game estimated that the Skagway River recruits between 10,329 and 17,195 cubic yards of gravel annually (MacLean 1998).
- (3) Under its Title 38 authority, DNR will settle any conflicts between the flood control project (which must have priority) and this material sale in favor of the flood control project. DNR intends to issue one 15,000 cubic yard material sale contract from this site per year if the applicant maintains all other necessary authorizations.

- (4) This consistency determination does not obligate DNR 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.

Your consistency determination may include reference to specific laws and regulations, but this in no way precludes your responsibility to comply with all other applicable State and federal laws and regulations.

This consistency determination is ONLY for the project as described. If you propose any changes to the approved project, including its intended use, prior to or during its siting, construction, or operation, you must contact this office immediately to determine if further review and approval of the revised project is necessary. Changes may require amendments to the state approvals this consistency determination or require additional authorizations.

If the proposed activities reveal cultural or paleontological resources, please 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.

By copy of this letter, I am informing the Corps of Engineers of DGC's determination. If you have any questions regarding this process, please contact me at 907-465-8790 or email lorraine_marshall@gov.state.ak.us.

Sincerely,

Lorraine Marshall
Project Review Coordinator

cc: Jim Powell – ADEC, Juneau*
Tim Rumfelt – ADEC, Anchorage*
Tim Stevens – ADEC, Anchorage*
Ben Kirkpatrick – ADFG, Douglas*
Ted Deats – ADNR, Juneau*
Bob Ward - City of Skagway*
John Klutz - USACE, Anchorage*
Chris Crenshaw - Agent for David Hunz*

* = Emailed, ** = Faxed