

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Seward Highway MP 105-107 Windy Corner
Commissioner's Finding
ADL 232839 (DOT&PF)
ADL 232892 (ARRC)
ADL 233527 (Closure of Section Line Easement)
OSL 1632 (ARRC relinquished lands)

1. Proposed Action

The Alaska Department of Transportation and Public Facilities (DOT&PF) is proposing to improve the Seward Highway (highway) by relocating the rights-of-way and the railroad right-of-way of the Alaska Railroad Corporation (ARRC) between highway mileposts (MP) 105 and 107 also known as “Windy Corner,” (project) within Chugach State Park (CSP). The purpose of this project is to implement safety upgrades and improve traffic operations.

The highway segment within CSP proposed for improvement supports heavy commercial, recreational, and residential traffic and is located in one of five designated safety corridors in Alaska, due to the elevated rate of high-severity (e.g., fatal and major injury) crashes. As a popular area for viewing wildlife and recreating along the highway, traffic operations are frequently disrupted by motorists slowing and parking along the shoulder of the highway. This creates a high differential in speeds combined with limited sight distance and uncontrolled movements of traffic entering and exiting the highway that results in an elevated rate of severe crashes in the highway corridor.

The objective of the project is to address long-standing traffic safety concerns. This will be done by realigning and dividing the highway to meet current design standards, in addition to adding auxiliary lanes for accelerating, decelerating and turning traffic, and constructing a recreational and parking area. The ARRC’s railroad tracks will be realigned to accommodate the new road, improve safety of train operations, and allow for the construction of park facilities on the mountain side of the highway. DOT&PF proposes to:

- realign the rights-of-way for the highway, railroad tracks, and related utilities;
- separate the highway from CSP facilities, creating safer conditions for visitors;
- straighten the railroad and highway segments;
- construct CSP facilities on the mountain side of the highway right-of-way with greater parking capacity and recreational amenities;
- construct CSP facilities on the water side of the highway with parking facilities;
- construct a pedestrian tunnel under the highway including a trail connecting the two parking areas;
- construct a grade separated (undercrossing) emergency response access ramp for water rescues;

- extract material, for this project only, primarily from a temporary location near MP 109 of the highway and, if needed, a secondary location near MP 104 of the highway.

2. Authority

The authorities undertaken by this project include:

Alaska Constitution Article VIII, Section 7

Article VIII, Section 7 of the Alaska Constitution authorizes the legislature to reserve areas of state land and water from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people. The legislature has exercised this authority by enacting laws creating Chugach State Park and providing for its administration, including the relocation and widening of the Seward Highway within the park.

Session Law

Provided that the Commissioner determines that the following grants would not significantly adversely affect the purposes for which CSP was established, sections 5 and 6 of chapter 116, Session Laws of Alaska 2000 (Ch. 116 SLA 2000, Attachment A) authorize the Department of Natural Resources (DNR) to grant a highway right-of-way easement and management authority of the easement to DOT&PF, convey a property interest in land to the ARRC, and receive land or interests in land in exchange for land or interests in land conveyed to these entities. Land received by DNR in exchange shall be designated as part of CSP. These purposes are described in AS 41.21.121 and are discussed below with respect to this project.

Section 6(b) of the Ch. 116 SLA 2000 also supports the use of material for this project, sourced from within the CSP to construct this relocation and widening of the highway. Authorization(s) for the use of material from sources within CSP for this project will be subject to a reclamation plan consistent with AS 27.19 and will require approval from DNR.

Chugach State Park

Alaska Statutes (AS) 41.21.120-41.21.125 created CSP, define CSP purposes, identify the state land included in the CSP, and establish DNR's and DOT&PF's management responsibilities within it. The CSP's purposes are described in AS 41.21.121:

The park is established to protect and supply a satisfactory water supply for the use of the people, to provide recreational opportunities for the people by providing areas for specified uses and constructing the necessary facilities in those areas, to protect areas of unique and exceptional scenic value, to provide areas for the public display of local wildlife, and to protect the existing wilderness characteristics of the easterly interior area. The eastern area of the park shall be operated as a wilderness area, the central area as a scenic area, and the periphery areas as recreational areas.

Alaska Statute 41.21.122 assigns land and water within the park to DNR “for control, development and maintenance, except that the Department of Transportation and Public Facilities is responsible for the repair and maintenance of all existing public roads within the park.”

Alaska Constitution Article VIII, Section 14 and AS 38.05.127

Article VIII, Section 14 of the Alaska Constitution establishes the right of Alaskan residents and United States’ citizens to access public water. This right, along with the State’s Public Trust Doctrine responsibility, is implemented, in part, by AS 38.05.126 (establishing the State’s power and control of all navigable or public water of the state), and AS 38.05.127, which recognizes the public’s constitutional right to access navigable and public water. This statute requires that the Commissioner reserve “easements or rights-of-way necessary to ensure free public access to and along the water body, unless the Commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes.” Alaska Statute 38.05.965 defines “public water” to mean “navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest.” Turnagain Arm is public water.

Section Line Easement (SLE)

Alaska Statute 38.04.058 allows the commissioner of DNR, upon a written finding, to restrict the use of an easement, such as an SLE, in order to protect public safety or property. A restriction must be narrowly tailored to achieve the protection of public safety and property while preserving access to the maximum extent practicable.

Chugach State Park Management Plan (CSPMP)

The CSPMP guides DNR’s management and development of state-owned land and water within the legislatively designated boundary of CSP. The CSPMP is based on an analysis of CSP’s natural and cultural environment, current and anticipated trends in use, and human demands on resources in keeping with CSP’s enabling legislation and guiding principles. The primary purposes of the CSPMP are to provide a land use plan that allows for optimum recreational use of the area while protecting the natural and cultural resources, and to provide a consistent set of principles and policies for park management and a listing of development projects to facilitate future funding requests and project phasing. The CSPMP can be found online at: http://dnr.alaska.gov/parks/plans/chugach/finalplan/cspmp_2016_complete.pdf

3. Scope of Findings

The scope of this DNR Commissioner’s finding (Finding) is limited to the following items:

- Findings under the Session Law:
 - Consistency with CSP purposes;
 - Authorizing the grant of easements to DOT&PF, and utilities;
 - Authorizing the conveyance of a property interest in land to ARRC;

- Authorizing the acceptance of relinquished rights-of-way from DOT&PF and property interest in land from ARRC; and
- Authorization(s) for the use of material;
- Consistency with CSPMP;
- Findings under Alaska Constitution Article VIII, Section 14 and AS 38.05.127, Access to Navigable or Public Water; and
- Closure of a SLE.

4. Administrative Record

The administrative record for the proposed action consists of the applicable session law, statutes and regulations referenced herein, the casefiles are the administrative record and serialized by DNR as:

- ADL 232839 DOT&PF easement;
- ADL 232892 ARRC property interest ;
- OSL 1632 relinquished rights-of-way and property interests; and
- ADL 233527 closure of SLE.

5. Legal Description

The proposed project location and the temporary material locations are located within:

- Sections 2 and 3 of Township 10 North, Range 2 West; and
- Sections 32 and 33 of Township 11 North, Range 2 West; and
- Section 1 of Township 10 North, Range 2 West; and
- Section 6 of Township 10 North, Range 1 West.

6. Agency Review Summary

Agency review of the applications was conducted from December 4, 2019 to December 30, 2019. An updated agency review was re-sent on December 6, 2019 based on input from DOT&PF, in which the legal description was updated. The notice was sent to the following recipients:

- DNR Division of Mining, Land, & Water (DMLW)-Realty Services Section
- DNR DMLW Survey Section
- DNR DMLW Water Section
- DNR DMLW Mining Section
- DNR DMLW Public Access Assertion & Defense Section
- DNR DMLW Resource Assessment & Development Section
- DNR DMLW Land Sales Section
- DNR Division of Parks and Outdoor Recreation (DPOR)
- DNR Division of Agriculture
- DNR Division of Forestry
- DNR Division of Oil & Gas
- DNR Alaska Mental Health Trust Land Office
- Alaska Department of Commerce, Community & Economic Development
- Alaska Department of Fish and Game (ADF&G)

- Alaska Department of Environmental Conversation (DEC) Division of Environmental Health
- DEC Division of Water
- DOT&PF
- U.S. Army Corps of Engineers (USACOE)
- U.S. Coast Guard
- U.S. Fish & Wildlife Service
- U.S. Forest Service, Chugach National Forest
- Bureau of Land Management
- Environmental Protection Agency
- National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS)
- ARRC

A total of 9 comments were received during the agency review and are summarized below along with responses from DNR:

Agency Comment #1: On December 5, 2019, the U.S. Coast Guard District 17 Bridge Program inquired if there was any bridge construction or modification associated with this project.

DNR Response #1: As indicated in the initial response to the U.S. Coast Guard, there is no planned bridge construction or modification to an existing bridge for the highway project. The U.S. Coast Guard indicated that they had a permit application for planned bridges on the Seward Highway MP 75-90. The commenter was referred to the DOT&PF’s website which would have more information regarding construction activities. DNR asked for clarification on “modification,” to which the U.S. Coast Guard responded that a permit is sometimes required when a bridge restricts travel by boat on a waterway. If construction limited travel clearance under the bridge or between pilings, it might be a modification that would require a permit.

Agency Comment #2: On December 6, 2019, the NOAA, NMFS requested a phone call.

Response #2: DNR spoke with NOAA, NMFS, who requested a follow-up from DOT&PF regarding the letter that NMFS issued in 2015, and asked if it was still current to DOT&PF’s proposed construction activities for the project. DNR reminded NMFS of the comment deadline and instructions, and that their NMFS Environmental Site Assessment Section 7 consultation with the Federal Highway Administration and DOT&PF received a Letter of Concurrence from NMFS on October 28, 2015 and that the consultation request by the Federal Highway Administration (FHWA) or DOT&PF agreed to the project descriptions and mitigation measures. DOT&PF was included on this correspondence.

Agency Comment #3: On December 10, 2019, the DEC, Division of Environmental Health, Drinking Water Program, commented that the easement is near an active registered public water system (PWS) source, and requested that the applicant adhere to the “Recommendations for General Construction Projects”, where applicable. A map of the PWS source and a copy of the “Recommendations for General Construction Projects” were attached.

Response #3: DNR forwarded this comment with attachments to DOT&PF.

Agency Comment #4: On December 16, 2019, the Alaska Mental Health Trust Land Office submitted a comment specific to the conveyance of portions of legislatively designated park land (Chugach State Park-AS 41.21.120) to the ARRC. The comment notes that the legislature has withdrawn CSP from the public domain and questions whether it is lawful to convey a portion of the park to the Alaska Railroad without amending the enabling legislation to allow for the conveyance.

Response #4: Conveyance of a property interest in land to the ARRC to allow relocation of the railroad right-of-way is specifically authorized by section 6, chapter 116 SLA 2000. This law also authorizes DNR to receive land or interests in land in exchange and provides that any land or interest in land received by the commissioner in exchange shall be designated as part of CSP.

Agency Comment #5: On December 19, 2019, the Alaska Mental Health Trust Land Office stated their office has no objections to the proposals along the highway project as ADL 232839 and ADL 232892 do not impact Alaska Mental Health Trust lands.

Response #5: DNR acknowledges this comment.

Agency Comment #6: On December 23, 2019, the DNR, DMLW, Realty Services Section recommended a full title report for the project area.

Response #6: DNR acknowledges this comment and a formal title report has been requested. The Realty Services Section has created a series of current ownership maps for the entire Turnagain Arm area, including the project site.

Agency Comment #7: On December 30, 2019, ARRC submitted a comment requesting DNR to act on the 2017 application submitted by ARRC under the Alaska Railroad Corporation Act (ARCA) AS 42.40.370(a), which states that “*Within 90 days after receiving a request under AS 42.40.360(b) the commissioner of natural resources shall by written decision*” take action on the request. ARRC states there has been no formal response regarding the adjudication of this request.

ARRC stated that DNR’s action on the 2017 application would temporarily provide ARRC with the minimum necessary right-of-way instrument required to move the railroad right-of-way track through the project area, and that further action under Ch. 116, SLA 2000 involving the transfer of land right to or from ARRC should be struck from these proposed ADLs until they can be more thoughtfully administered in a time-frame that suits DNR and DOT&PF. ARRC also commented that the 2000 session law “has been nonfunctional” because the 2001 Memorandum of Agreement (MOA) between DNR, DOT&PF, and ARRC that described how the three entities would manage the transfer of property rights for Seward Highway alignment projects expired in 2011.

ARRC further commented that it will not agree to an exchange of unequal property interests, that the SLEs in the new railroad alignment must be vacated, and not merely closed, and that any

disposition of railroad lands or right-of-way will require an administrative process that would at a minimum require action by ARRC's Board of Directors. ARRC emphasized their concern of the timeline for this proposed administrative action and again requests that DNR act on the application submitted by ARRC under ARCA.

Response #7: The legislature enacted Chapter 116 SLA 2000 to provide specific legal authority for the land management and property interest conveyances required for the project, and other highway and railroad rights-of-way realignment projects along Turnagain Arm. The expired MOA does not affect the validity or applicability of the session law. For the new railroad rights-of-way alignment, DNR will convey to ARRC an equivalent property interest to what ARRC conveys to DNR, which will not be less than ARRC received for the existing railroad corridor from the United States under the Alaska Railroad Transfer Act (ARTA), 45 U.S.C. § 1201 et seq. In exchange, ARRC will convey an equivalent property interest to DNR for the original corridor, which will become part of CSP. Due to safety concerns, DNR will close any SLE that cross the new railroad corridor, and any SLEs will remain closed as long as the land is used for railroad purposes and other purposes listed in AS 42.40.

Agency Comment #8: On December 30, 2019, the ADF&G provided comments that largely reiterated ADF&G's March 2013 comments to DOT&PF regarding this project.

ADF&G acknowledged that the highway is a federally recognized National Scenic Byway (NSB), and that the mission of the NSB Program is to "provide resources to the byway community to create unique travel experiences and enhance local quality of life through efforts to preserve, protect, interpret, and promote the intrinsic qualities of designated byways." The scenery and wildlife viewing opportunities are important characteristics of the highway and are what secured its status as an NSB. In addition to providing important habitat for Dall sheep, Windy Corner is also the most popular viewing area for Dall sheep in Southcentral Alaska. ADF&G recommends that the proposed realignment and associated amenities seek to preserve the wildlife viewing opportunities along the highway and limit wildlife movement onto the highway to the extent possible.

Given the public safety concerns along this portion of the highway, ADF&G supports DOT&PF's effort to improve highway safety. ADF&G provided information of the variety of wildlife species within CSP and recommendations for reducing impacts to fish and wildlife and their habitats. These are as follows:

The mountainous terrain of the project area is important year-round habitat for sheep, and repeated exposure to adverse stimuli such as helicopter over-flights, construction noise and associated light, may result in increased stress on wildlife. ADF&G further acknowledged that DOT&PF proposes to extract material through blasting from an area that is occupied by sheep throughout most of the year. Disturbances, notably blasting activities, should be limited to the extent possible during lambing (May 15-June 15) and the rutting period (November 10-December 10) when it is more likely to have negative population-level impacts. The parking lots and wildlife viewing areas should be constructed in such a way as to promote ethical wildlife viewing and to not encourage wildlife harassment or habitat degradation in the area.

Bear and moose can be found within the project area, and all food and food trash must be contained within bear-resistant canisters or within a secured vehicle to avoid bear conflicts during the construction, operation, and maintenance of this project. The design of parking lot facilities should include permanent bear-resistant trash cans. Moose give birth during the same timeframe as sheep (May 15-June 15) and should be avoided and not disturbed if encountered within the project area.

Lastly, there are no known specified anadromous waterbodies or resident fish populations within the project area, and no Fish Habitat permit will be required for the project as currently proposed. The project area lies within an area that is federally designated as critical habitat for Cook Inlet beluga whales, and that the project should be completed in consultation with the NOAA, NMFS.

Response #8: DNR followed up with ADF&G to clarify what their agency was responding to in March 2013. ADF&G submitted comments in response to a Scoping Summary Report that was administered by DOT&PF. This report was published in May 2013 and is available on DOT&PF's website at <http://www.windycorner.info/documents/SSR.pdf>

DNR acknowledges the supplemental information provided by ADF&G, such as the highway being listed as an NSB and how wildlife viewing opportunities at Windy Corner, particularly for Dall sheep, is the most popular viewing area for these animals in Southcentral Alaska. Per DOT&PF's application (ADL 232839), improvements such as parking areas and public viewing areas are planned for construction and would offer safer viewpoints along Turnagain Arm than what is currently available.

ADF&G's comment and recommendations for reducing impacts to fish and wildlife and their habitats has been forwarded to DOT&PF for consideration for this project. It should be recognized that DOT&PF has previously solicited agency comments and feedback for the 2013 Scoping Summary Report, in addition to on-going efforts of securing the necessary documentation and authorizations for this project.

As noted by ADF&G, a Fish Habitat permit is not required for the project as it is currently proposed. ADF&G recommended consultation with the NOAA, NMFS, who was sent the agency notice for ADL 232839 and ADL 232892. While NOAA, NMFS did not submit a formal comment, NOAA, NMFS sought separate follow-up with DOT&PF on whether the letter their office issued in 2015 was current with the proposed activities.

Agency Comment #9: On December 5, 2019, the USACOE stated that the Corps ID for the Windy Corner project is POA-2017-00035 and that there is currently no open action, but any impacts proposed to aquatic resources will require a Corps permit.

Response #9: DNR acknowledges this comment and has forwarded to DOT&PF.

No other comments were received.

7. Findings

Ch. 116, SLA 2000 and CSP purposes found in AS 41.21.121

The Legislature has determined that:

- (1) the highway within the CSP from Potter Station to Girdwood is the sole highway link between the Kenai Peninsula and the rest of this state, an interstate highway on the national highway system, and a national scenic byway;
- (2) the highway within the CSP is affected by avalanches and other potential operational problems;
- (3) relocation or widening of the highway to avoid some of the operational problems will require relocation of some adjacent railroad and utility facilities; and
- (4) relocation of railroad facilities within the CSP will allow some areas of the railroad track to be straightened.

Based on these findings, the Legislature determined that “[i]t is the policy of the state that relocation or widening of the Seward Highway or relocation of railroad facilities within the Chugach State Park is appropriate and may be accomplished without significantly adversely affecting the purposes for which Chugach State Park was established.”¹

Below are the primary purposes of CSP, as described in AS 41.21.121, and how these purposes are affected by the proposed project.

1. Protect and supply a satisfactory water supply.
 - The project area does not serve as a public water supply, and no public water supply will be affected by this project.
2. Provide recreational opportunities for the people by providing areas for specified uses and constructing necessary facilities in those areas.
 - The project area is currently used for hiking, sightseeing, wildlife viewing, photography, rock and ice climbing, cycling, and water access to Turnagain Arm. The project will provide a new and much larger recreational facility on the mountain side of the highway as well as a new parking area on the water side of the highway with safer access and new amenities. Proposed amenities include paved parking spaces, handicap accessible spaces, an overflow gravel parking lot, pedestrian paths, a pedestrian undercrossing of the highway, improved trailhead access, viewing platforms, benches, signage, restrooms, spotting scopes, and interpretive panels. These facilities increase access to and opportunity for CSP visitors to participate in the primary recreational activities in the area. Many visitors experience CSP from the

¹ Sec. 5, ch. 116 SLA 2000

highway, and the project would improve user safety by providing facilities separated from the highway. In addition, the project will enhance the CSP visitor experience by providing a more relaxed setting for viewing wildlife, the scenery of Turnagain Arm, and participating in recreational activities compared to the current setting adjacent to congested traffic. CSP visitors are anticipated to spend longer periods of time enjoying these activities in the new setting. The need for improved safety for traveling in both directions will be accommodated by the new recreational and parking facilities.

- This project will eliminate rock-climbing routes, however, these sites see little use because of their poor quality, according to the *Alaska Rock Climbing Guide*, 2nd Edition. The project will improve climbing area conditions by providing improved access, with greater separation from the highway, to the remaining higher quality rock-climbing routes.

3. Protect areas of unique and exceptional scenic value.

- The new CSP facilities on the mountain side of the highway and separation from the roadway are expected to transform the location from an unimproved pullout with limited parking capacity to a scenic destination for CSP visitors. The proposed new parking areas, interpretive panels, spotting scopes, viewing platforms, pathways, pedestrian undercrossing, restrooms, and benches will provide a focal area for visitors to experience the unique and exceptional scenic values of CSP and Turnagain Arm, reducing visitor impacts—such as soil compaction and litter—on undeveloped natural areas. The project will enhance CSP visitor appreciation of the scenic views of CSP in the Windy Corner area by providing a safe and relaxing place for motorists to observe the scenic views (e.g. landscape, bore tide, Dall sheep and other wildlife).
- The proposed material location at MP 109, will be designed to include a vegetated topographic screen, consisting of a buffer of intact earth between the proposed material extraction and much of the adjacent highway. This screen would be approximately 100 feet wide, and would limit visual impacts for northbound traffic except at the access point for the material location. It would also minimize the visual impacts for southbound traffic except for approximately 0.5 miles (approximately 30 seconds) prior to the material location. The proposed material location at MP 104 would only be utilized if material located at MP 109 did not provide sufficient quality and quantity for material for this project.

4. Provide areas for the public display of local wildlife.

- The proposed park facilities will enhance the visitor viewing experience of local wildlife, specifically Dall sheep, by providing convenient vantage points with spotting scopes, viewing platforms, and interpretive panels. The proposed project provides a larger viewing area that is separated from traffic and designed to discourage users from

crossing the highway and railroad tracks in search of better viewing points of Turnagain Arm. There will be new parking areas on both sides of the highway. Visitors will be able to cross the highway through a pedestrian tunnel to access both viewing areas.

- The project will provide a high quality and safe public wildlife viewing experience in a unique location that consistently attracts Dall sheep. This rugged area is suitable to raising and sheltering lambs from predators and provides a high value mineral lick. According to the CSPMP, Windy Corner provides one of the best Dall sheep viewing opportunities in Alaska. In addition, the ADF&G claims this “is the only place in the world where Dall sheep can be seen at sea level from a nearby road.”²
5. Protect the existing wilderness characteristics of the easterly interior area.
- The easterly interior area of CSP will not be impacted by this project and shall continue to be operated as a wilderness area and the central area continue to be operated as a scenic area.
6. The eastern area of the CSP shall be operated as a wilderness area, the central area as a scenic area, and the periphery areas as recreational areas.
- The eastern area of the CSP shall continue to be operated as a wilderness area as this project will not impact the eastern area of the CSP.
 - The central area of the CSP shall continue as a scenic area as the project will not impact the central area of the CSP.
 - The proposed project will protect and enhance the recreational purpose of the CSP periphery by protecting and creating recreation facilities and providing for increased and safer access as described above. The proposed new CSP facilities are anticipated to improve recreational opportunities and protect CSP values by transforming the location from an unimproved pullout with limited parking capacity to a scenic destination for CSP users.

Based on the analysis above, DNR finds that the proposed project will not significantly adversely affect the purposes for which CSP was created. While the proposed project would eliminate three low-value climbing routes along the two-mile project corridor, other measures would substantially enhance the CSP visitor experience, improve safety, and concentrate visitor impacts within a developed facility, resulting in an overall net benefit to the purposes of the CSP.

Chugach State Park Management Plan

² <https://www.adfg.alaska.gov/index.cfm?adfg=viewinglocations.windycorner>

The CSPMP management objectives for the Windy Corner Sheep Viewing Area, are to “[u]pgrade existing pullout to create a safe sheep viewing area. Expand parking to a large lot with a buffer between the highway and the parking area. Include interpretive displays and spotting scopes. Coordinate development with highway upgrades. Consult with ADF&G and the Board of Game to establish management practices that may lead to enhanced wildlife viewing.” The stated justification is “[t]his area of the highway poses safety concerns as visitors try to view the sheep that congregate in the area. Parking is limited and there is significant traffic congestion when animals are present” (CSMP p. 116).

Use of Material

The CSPMP recognizes the use of material within the park for highway construction, repair, and maintenance: “as safety upgrades are made to the Seward Highway material is needed and usually found locally by creating a quarry using park resources” (page 115). The CSPMP outlines several sites that may be suitable as a material location for highway safety-related upgrades and makes recommendations for new facilities and facility upgrades that are consistent with this project, including the site selected by DOT&PF for this project:

- MP 109 - Rainbow Point Group Recreation Site: Create a group use site in the quarry area that is established for highway upgrades. Include latrines, pavilions, and parking. As safety upgrades are made to the Seward Highway material is needed and usually found locally by creating a quarry using park resources. A group use site can be sited in this quarry site. The size and shape of this site would be dependent on the reclamation area (page 115).

The plan recognizes that the extraction and use of gravel, rock, sand, and minerals from within the park is a compatible use within the Recreation Development zone, if the material is used within CSP for projects that benefit park purposes and enhance public safety. Construction of a group use site is not within the scope of this project, due to funding limitations and the absence of nearby support facilities (i.e., parking, toilets, water), therefore the proposed material location will be closed in a manner that protects public safety and deters unauthorized access.

If there is not enough material in the MP 109 location, DNR may also authorize the use of material from a temporary material location (only to provide materials for this specific project) near MP 104. Use of the MP 109 and the MP 104 (if needed) locations would be subject to the following conditions:

- DOT&PF will sign a material use agreement that incorporates the following conditions and reclamation plans, which require approval from DNR, prior to material extraction:
 - All material removed from a temporary material source must remain in state ownership.
 - All material removed from the MP 109 (and MP 104, if applicable) source must be used solely for this project at Windy Corner.

- DOT&PF will require any DOT&PF contractors to post performance bonds for construction of a state highway project, and those performance bonds shall include reclamation conditions that will require prior approval from DNR.
- Material may not be extracted from outside the boundaries of the locations approved by DNR.
- Any temporary material location(s) must be reclaimed upon completion of this project, consistent with AS 27.19 and reclamation plans which must be approved by DNR. Any modification of the reclamation plan(s) requires the written approval of DNR.
- Reclamation plans would include measures to deter public access to the material location(s).
- DOT&PF will require any contractors or subcontractors extracting the material to agree to these conditions.

Access to Navigable Water: Alaska Constitution Article VIII, section 14, and AS 38.05.127

Article VIII, section 14 of the Alaska Constitution authorizes the legislature to regulate and limit access to the navigable or public waters of the state for other beneficial uses or public purposes. Alaska Statute 38.05.127(a)(2) authorizes DNR to restrict free access to navigable or public water when the commissioner finds that limiting access is necessary for other beneficial uses or public purposes. Turnagain Arm is a navigable water body, and access to it already is limited within the project area by the highway and railroad corridors. The railroad and the high volume of traffic on the existing highway alignment limit the opportunities for pedestrians to safely access the tidelands or engage in watersports. As recognized in section 5 of the session law, the highway is the sole highway link between the Kenai Peninsula and the rest of the state and an interstate highway on the national highway system. Similarly, the Alaska Railroad corridor in the project area provides a vital transportation, tourist, and commercial freight link between Anchorage and the communities and ports on the Kenai Peninsula. The highway rights-of-way and the railroad rights-of-way corridors constitute a beneficial use of the tidelands and waters of Turnagain Arm and serve a vital public purpose. DNR finds that continued access limitations are necessary in this area to ensure the safe operation of the Seward Highway and the railroad.

Section Line Easement

DNR finds that an indefinite closure of the SLE that runs across the project area, more specifically described as Sections 2 and 3 of Township 10 North, Range 2 West, Seward Meridian, is in the State's best interest because closure is necessary to protect public safety while also protecting railroad property. As described above, the Alaska Railroad corridor along Turnagain Arm provides essential transportation and freight services between Anchorage and ports on the Kenai Peninsula. Closure of the SLE will protect ARRC's property and operational interests in the rail corridor through the project area. Additionally, the SLE closure is entirely within CSP, which has been set aside for public enjoyment of its natural resources and recreation opportunities. Public access is generally unrestricted on lands surrounding the project area. Therefore, the underlying land ownership, land management policies, current use patterns, and practicality of use all indicate that closure of the SLE is appropriate. Therefore, the SLE will be closed for an indefinite period of time concurrent with the use of the property for the operation of the railroad.

Survey

A DNR-approved pre-construction survey and an as-built surveys are required to establish the final location and acreage of installed improvements and the associated easements or rights-of-way for this project. Pre-construction mean high water details must be included in the surveys. Easements or rights-of-way will not be issued until the survey has been approved by DNR. DOT&PF will be responsible for providing the required surveys. The survey of the ARRC's property interests will be subject to the ARRC's approval.

8. Related Actions

Land and Water Conservation Fund (LWCF) Act, Section 6(f)

Section 6(f) refers to a section in the 1965 LWCF Act, codified as Public Law 88-578, 78 Stat. 897.³ The state portion of the LWCF program provides matching grants to states and local governments for the acquisition and development of public outdoor recreation areas and facilities. The conversion of outdoor public recreation areas to a non-recreation use triggers a requirement to replace the converted land with land of equal or greater value. The goals of this program include creating and maintaining high quality recreation areas and facilities with the hope of stimulating non-federal investment in recreation sites across the country.

Section 6(f)(3) of the LWCF Act prohibits the conversion of property acquired or developed with grants from this fund to a non-recreational purpose without the approval of the National Park Service (NPS). Importantly, Section 6(f) applies to all transportation projects that involve possible recreation site conversions (including protected parks, such as CSP), regardless of whether federal funding is being utilized for the project. Because this project will convert existing encumbered recreational land to a non-recreational use, replacement land of equal or greater value has been identified for acquisition. The Environmental Assessment and the Finding of No Significant Impact indicating this Section 6(f) requirement has been met and was approved by the NPS on May 30, 2019 for the partial conversion of CSP, protected under the LWCF. (Attachment B)

National Historic Preservation Act (NHPA), Section 106

Section 106 of the NHPA⁴ requires the project lead federal agency to consider the effects of their undertakings on historic properties. At the time of consultation for the Seward Highway MP 105-107, Windy Corner Safety Improvements Project, No. NH-0A3-1(34)/56631, DOT&PF had assumed certain NEPA responsibilities of the FHWA under 23 U.S.C. § 326 and consulted the Alaska State Historic Preservation Office (SHPO) pursuant to Section 106 of the NHPA, 36 CFR 800, and the 2014 Programmatic Agreement for the Federal-Aid Highway Program in Alaska.

³ 54 U.S.C.A. § 100101 note.

⁴ 54 U.S.C.A. § 306108.

In 2013 the DOT&PF, in consultation with the SHPO, deemed Reger's 2001 survey⁵ sufficient for identification of historic properties for the proposed area of potential effects (APE). Further identification of historic properties was carried out in 2015 for the Turnagain Arm District of the Alaska Railroad (ANC-04057) by Cultural Resource Consultants⁶. The DOT&PF found ANC-04057 eligible for the National Register of Historic Places (letter to SHPO dated January 15, 2015) along with a finding of no historic properties adversely affected for the project. The APE attached to DOT&PF's letter included the highway, ARRC tracks, and cut and fill limits (pullout and parking area at Gorilla Rock) from approximately MP 105-107 as well as material site 1 (at MP 109). The SHPO concurred (letter to DOT&PF dated February 6, 2015) that ANC-04057 is eligible and with DOT&PF's finding of no historic properties adversely affected. In December of 2015, the APE for the project was expanded to include material site 6 (near MP 104) and a supplemental survey was completed by DOWL⁷ for the expansion. DOT&PF further identified the Historic Camp (SEW-1579) site and found it not eligible for the National Register with a finding of no historic properties adversely affected for the project (letter to SHPO dated December 16, 2015). The SHPO concurred that SEW-1579 is not eligible and with DOT&PF's finding of no historic properties adversely affected for the project (letter to DOT&PF dated January 4, 2016). At this time, DNR understands that DOT&PF has fulfilled their obligations under the implementing regulations of Section 106 of the NHPA and provided documentation in support of their findings to the SHPO, as required at 36 CFR 800.11(e).

⁵ Reger, Douglas R. 2001 Archaeological and History Site Survey Along the Seward Highway, Mile 105 to Mile 115, for the Alaska Department of Transportation and Public Facilities, Seward Highway Bird Point to Potter Marsh Passing Lanes and Pathway Project (FHWA No. NH-0A3-1(25). Cultural Resource Consultants, LLC and URS. Reger Archaeological Consulting, Anchorage, AK.

⁶ Yarborough, Michael R., Aubrey L. Morrison, Catherine L. Pendleton, and Lawrence J. Mishkar 2014 Determination of Eligibility for the Turnagain Arm District of the Alaska Railroad (ANC-04057). DOWL HKM and the Alaska Department of Transportation and Public Facilities. Cultural Resource Consultants LLC, Anchorage, AK.

⁷ Zuccotti, Lucy F., and Caitlin L. Kennedy 2015 Cultural Resources Investigation for the Seward Highway MP 105-107, Windy Corner Safety Improvements, Material Site 6 (DOT&PF Project No. 56631). State of Alaska Department of Transportation and Public Facilities. DOWL, Anchorage, AK.

9. Authorizations & Acceptances

DOT&PF Easement

DNR will grant a highway easement to DOT&PF consistent with the Session Law and DOT&PF's certification requirements to FHWA. The location of this easement will be within Sections 2 and 3 of Township 10 North, Range 2 West, Seward Meridian. The highway easement will be 150 feet on each side of the centerline of the relocated highway.

ARRC Property Interest

For the new railroad alignment, DNR will convey to ARRC an equivalent property interest to what ARRC received for the existing railroad corridor from the United States under the Alaska Railroad Transfer Act (ARTA), 45 U.S.C. §§ 1201 et seq. The location of this property interest will be within Sections 2 and 3 of Township 10 North, Range 2 West, Seward Meridian. This corridor will be up to 150 feet on each side of the centerline of the relocated railroad. In exchange, ARRC will convey an equivalent property interest to DNR for the original corridor, which will become part of CSP.

Utility Easement(s)

For utilities that need to be relocated or installed and cannot be collocated within the DOT&PF and ARRC rights-of-way, DNR may grant utility easements necessary to complete this project because they will not adversely affect the purpose for which CSP was created.

Relinquished Rights-of-Way and Property Interests

DNR will accept relinquished rights-of-way and property interests in land from DOT&PF, ARRC, and utilities. Prior to final acceptance of the relinquishments, DNR will require that the relinquished rights-of-way or property interests be in or returned to a condition that facilitates DPOR management consistent with the statutory purposes of the park and the CSPMP.

Use of Material

DNR will authorize DOT&PF's use of state-owned materials from a temporary, project-specific material location near Seward Highway MP 109. If needed, DNR also may authorize the use of material from a temporary, project-specific material location near MP 104 subject to the conditions outlined above.

10. Public Notice, Comments, and Process

The public was invited to review and comment on a proposed version of this Commissioner's Finding, which is Attachment C. The Proposed Commissioner's Finding was advertised for a total of a 60-day public comment period. Notice was posted on the State of Alaska's Online Public Notice System at <http://aws.state.ak.us/OnlinePublicNotices/Default.aspx> and sent to the post offices located in Girdwood, Hope, Anchorage (Huffman), and Whittier. Courtesy notices were also mailed or emailed to the Municipality of Anchorage, property owners in Rainbow, Bird, and Indian, third parties, and other interested parties on February 26, 2020. On March 27, 2020 DNR extended the public comment period for an additional 30 days, through April 27, 2020.

DNR received 19 comments during the public comment period. All comments are attached to this finding as Attachment D. The comments raised many topics; a summary of each topic raised and responses from DNR are below. Comments on a particular subject are grouped together.

Comment Subject: Cyclists, Pedestrians, and Hikers

Comment Topic #1: Several commenters suggested that there should be a pedestrian and bicycle trail parallel to the new highway and railroad alignments. Commenters specifically cited the CSPMP, page 111, which calls for the highway corridor to be “accessible and safely useable by bicyclists and pedestrians.” Commenters cited use by cyclists, a form of outdoor recreation, as one of the legislatively designated objectives for Chugach State Park.

Response #1: Cyclists currently use the Seward Highway shoulder between Anchorage and Indian. There are currently no cycling trails in or near the project area. The only pedestrian trail in the area is the Turnagain Arm trail, a hiking trail which parallels the highway, generally a few hundred feet uphill with connections to four trailheads including the small trailhead currently located at Windy Corner. The proposed expanded parking area will provide improved access to the Turnagain Arm trail. The proposed improvements will increase highway safety for cyclists and pedestrians, by improving the shoulders and sight lines. The proposed improvements include pedestrian trails in the new wildlife viewing and parking area as well as a connection to the Turnagain Arm Trail. The new highway and railroad alignments accommodate a future mountainside pathway within the limits of the project area. Neither the highway nor the railroad would need to be relocated if a pathway were to be constructed on the mountainside of the highway at a later date. The current design would accommodate less than 1 mile of pathway with no connection to existing trails. A parking area on the water side of the highway, a pedestrian tunnel under the highway, and a path connecting the two parking areas through this tunnel have been added to the proposed improvements and will provide further benefit to cyclists and pedestrians.

Comment Topic #2: The project design does not appear to include a bike path along the highway. If highway safety is a key factor in this project, then a path must be constructed. I believe when federal funds are involved, a path must be included.

Response #2: Compliance with federal conditions applicable to the use of federal funds for highway projects is beyond the scope of this finding and is the responsibility of DOT&PF. As described above the currently proposed improvements in highway safety will increase the safety of the highway for cyclists and pedestrians.

Comment Topic #3: Commenters questioned whether the new wildlife viewing and parking area on the mountain side of the highway at Windy Corner would connect with the Turnagain Arm Trail.

Response #3: The existing Turnagain Arm Trail descends to the current parking area on the mountain side at Windy Corner and will connect to the new wildlife viewing area and improved parking area. Hikers will benefit from the improved parking area and trailhead for the Turnagain Arm Trail.

Comment Subject: Material Location & Material Use

Comment Topic #4: Many commenters objected to the use of materials from the proposed locations at MP 109 and MP 104. Multiple comments questioned DNR's authority to grant use of materials from the MP 109 and MP 104 material locations.

Response #4: As described in section two ("Authority") of this finding, use of materials for this project is consistent with state law, including the Legislature's findings and policy for this stretch of the Seward Highway articulated in Sec. 5, Ch. 116 SLA 2000, and AS 41.21.122. The project features also promote the legislatively designated purposes of CSP found in AS 41.21.121 and are consistent with the CSPMP. The authorization to be issued by the DNR commissioner for use of the materials is needed to construct the new highway alignment, and is authorized by Sec. 6, Ch. 116 SLA 2000. The material will be used only for this project and not for ongoing highway maintenance.

Comment Topic #5: Commenters observed that Section 6(b) of Ch. 116 SLA 2000 makes no mention of material use from CSP and that Ch. 116 SLA 2000 states that the conveyances may not exceed the interest needed to relocate or widen the Seward Highway. Commenters asserted that material use from Chugach State Park is not necessary for this project.

Response #5: Section 6(b) of the session law allows property interests to be granted or conveyed to the extent necessary to relocate or widen the highway and relocate the railroad, and to construct the relocated or widened highway. No reasonable alternative exists for sourcing the material necessary for this project, therefore the use of materials from CSP is necessary to build the highway improvements and therefore is authorized by Sec. 6, Ch. 116 SLA 2000.

Comment Topic #6: Commenters recommended that a site outside of CSP be used for materials instead of the proposed temporary material locations at MP 109 and MP 104.

Response #6: DOT&PF evaluated other material sources for this project as described in reports attached to their Section 4(f) analysis and determined those options to be cost prohibitive or unreasonable for other reasons, such as the quality of the material and infeasible transportation options. Additional information and analysis was done after DNR requested additional information regarding alternate material sources. No reasonable alternative exists for sourcing the material for this project.

Comment Topic #7: Some commenters questioned the decision to use materials from the MP 109 location rather than using material in the existing highway right-of-way. Some commenters suggested that this would reduce danger due to rock and ice fall.

Response #7: DOT&PF's Section 4(f) analysis considered the possibility of using material from within the right-of-way and concluded that it was not reasonable. DNR concurs with this conclusion. This alternative would have required greater visual impacts than the MP 109 material location and greater impacts to highway users due to construction. DOT&PF is working on a separate project to mitigate rockfall hazards along the Seward Highway which will have a much smaller visual impact while still reducing the risk of rock or ice falling on the highway.

Comment Topic #8: One commenter stated that creating rock quarries at mile 104 and 109 would be "absolutely incompatible with the values, vision, and purpose of Chugach State Park. ... [T]he heart of Chugach State park is the drive along Turnagain Arm." Other commenters also opined that the use of materials from within the park was incompatible with CSP's purpose, mission, or values.

Response #8: The proposed material use is authorized by Ch. 116 SLA 2000, which also establishes the policy for managing Chugach State Park to include mitigating operational hazards and realignment of the Seward Highway. The material will be used only to improve the highway, to realign the railroad to accommodate highway improvements, and to provide visitor facilities, which will enhance the experience for park visitors along Turnagain Arm. The site(s) will be closed in a manner that minimizes impact on the view along the Arm.

Comment Topic #9: Several commenters noted that the proposed material locations will negatively impact the viewshed within the Seward Highway National Scenic Byway, Chugach State Park, from the air, or from the Hope area across Turnagain Arm.

Response #9: The material location design minimizes visibility of the MP 109 proposed material location from vantage points along the highway. Alternative 2B, use of materials from within the existing right-of-way considered as part of DOT&PFs Section 4(f) Alternatives Analysis was not recommended in part because of the viewshed impact of this source of materials. Use of material from sources within CSP for this project will be subject to a reclamation plan consistent with AS 27.19 and will require approval from DNR. The reclamation plan, which will be required prior to material extraction, will require that the material locations be reclaimed to minimize viewshed impacts. Alternative 2B, use of materials from within the existing right-of-way would have greater impacts to the viewshed from Hope and from the air than Alternative 2A, the use of the temporary material locations. The use of materials from sources outside the area would eliminate these viewshed impacts but this is not a reasonable alternative due to the costs and the impacts of transporting this volume of materials for as discussed in the Section 4(f) analysis.

Comment Topic #10: Several commenters stated that the MP 104 material site was not adequately evaluated.

Response #10: The MP 104 material location will only be utilized if the quality or quantity of material obtained from the MP 109 material location is insufficient. Based on geotechnical work, DOT&PF estimates that there are 2.3 million cubic yards of useable material at the MP 109 location. The preferred alternative is expected to require 2.06 million cubic yards of material to construct. It is not possible to confirm the material quality with sufficient precision to confirm that the MP 104 location will not be needed until some material extraction occurs at the MP 109 location. As a result, the quantity and type of materials needed from the MP 104 material location cannot be ascertained until material extraction from the MP 109 material location is nearly complete. If DOT&PF determines that the use of materials from the MP 104 material location is necessary and determines the quantity and type of materials needed, they will develop a plan for use of the MP 104 material location. DNR will not approve the use of the MP 104 material location until DOT&PF submits a reclamation plan detailing their planned use of the location. DOT&PF will also be required to obtain a conditional use permit from the Municipality of Anchorage prior to use of the MP 104 material location.

DOT&PF estimates, based on geotechnical investigations, in the unlikely event that MP 104 was fully utilized as a material location the total volume of material available would be approximately 1.6 million cubic yards. While use of the entire MP 104 location is unlikely, if the entire location were used, the length of proposed excavation site along roadway would be 2,700 feet, the maximum height of rock wall would be approximately 160 feet, and the northernmost portion of the excavation (bottom of the rockface) would be approximately 600 feet from the Seward Highway. It is unlikely that this volume of material will be needed from the MP 104 material location and a smaller impacted area is possible.

Comment Topic #11: Several commenters questioned the cost comparisons between the various possible sources of materials. Commenters felt that the analysis did not seem to give alternative material sources outside of the park a fair comparison.

Response #11: The cost comparisons between the possible material sources were part of the Section 4(f) alternative analysis produced by DOT&PF. DNR reviewed DOT&PF's analysis and believes that the analysis provided a realistic assessment of other material sources and concurs that no reasonable alternative exists to use of the MP 109 and 104 sites.

Comment Topic #12: A comment noted that the CSPMP allows for material extraction for state park use within the park, but not for material use for a highway project.

Response #12: The CSPMP anticipates Seward Highway improvements and does not reduce DNR's authority under Ch. 116 SLA 2000 to authorize DOT&PF to use materials for those highway improvements. The Legislature has determined that relocation of the Seward Highway within the park is appropriate, upon a finding by the DNR commissioner that the relocation would not significantly adversely affect the purposes for which CSP was established. Section 6(b) of the session law authorizes providing DOT&PF the necessary authorizations to construct the relocated highway and railroad.

Comment Topic #13: Commenters felt that closing the MP 109 material location to public use once construction is completed goes against the purposes of CSP. Commenters noted that the CSPMP recommends creation of a picnic area including latrines, pavilions, and parking at a quarry area anticipated at Rainbow Point (at or near the MP 109 material location); it does not anticipate closing the site to public access after reclamation. Commenters felt the intention to close the proposed site to public access "is also unacceptable as the CSP is explicitly for public use and the lack of accessibility for public use further degrades the CSP."

Response #13: Post reclamation, the material location will be surrounded by steep rock walls on three sides. There will be limited scenic views, and the site will not be a desirable location for a picnic area. Though reclamation measures will be employed to minimize the hazards, some rock fall hazard will remain at the location. For these reasons, DNR believes that the location would require more resources to maintain safely than is warranted by the public benefits of the possible picnic area. Restricting public access to the MP 109 (and potentially MP 104) material site will be offset by the increased public access opportunities being constructed as part of this project.

Comment Topic #14: One comment said, "The quarry would be a huge opportunity for crime, hidden from view." Several other commenters felt that the material location would attract crime.

Response #14: A reclamation plan will be required prior to material extraction, and as part of the reclamation measures will include provisions to keep the public out of the area. As discussed, the material location will not be a desirable area for public use. After reclamation, access to the material site will be blocked and the site filled with large rocks that will minimize the use of the area for undesirable activities.

Comment Topic #15: Commenters suggested that DNR should charge DOT&PF the market rate for materials.

Response #15: DNR generally does not charge DOT&PF the market rate for materials used for highway projects. In other circumstances, DNR charges DOT&PF a reduced fee to cover DNR's cost for administering the site during the course of the DOT&PF's use of it. Because the material for this project will be used only within CSP and will not leave state ownership, DNR has determined that it will not charge the usual administrative fee for administering material sites used by DOT&PF.

Comment Topic #16: One commentor notes that a letter from Ricky Gease, the Director of DNR's Division of Parks and Outdoor Recreation (DPOR), said that DOT&PF would pay DNR for materials based on Title 38, which governs state public domain lands and which generally does not apply to legislatively designated parks which are managed under Title 41. The commentor notes that the letter from Director Gease said, "any material sale portion of the project will be handled by the Division of Mining, Land & Water (DMLW) as they are the experts on the subject within DNR."

Response #16: The use of materials from CSP is authorized for this project by Ch. 116 SLA 2000, not Title 38. As discussed in the response to Comment Topic #15, above, DNR generally charges DOT&PF an administrative fee for the use of materials to cover DNR's costs for administering a material site during its use, and its authority to administer material sites and charge a fee for doing so lies in Title 38. For this project, however, DNR will not charge a fee to DOT because the material will be used within CSP and will not leave State ownership.

Comment Topic #17: The letter from the CSPCAB said, "We recommend that the Commissioner's Finding include specific reclamation requirements from the Alaska Department of Environmental Conservation 2012 best management practices for gravel/rock aggregate extraction guidance." The letter went on to recommend reclamation measures and reclamation over time to useable habitat or pond creation.

Response #17: The details of the reclamation plan are beyond the scope of this finding. DNR will require that the reclamation plan address these items in detail.

Comment Topic #18: Commenters requested additional information on the proposed MP 109 material location, specifically figures, drawings, or renditions of what the site would look like after material extraction.

Response #18: This information has been supplied by DOT&PF as part of the EA, Section 4f, and related documents. DNR will require details of the excavation limits as part of the reclamation plan.

Comment Subject: Property Interests and Conveyance Authority

Comment Topic #19: A commentor indicated that if a state park land conveyance is necessary, DNR should request an AG legal review and deliver an opinion that clarifies that a conveyance of Alaska State Park land, established by the legislature, can be conveyed to another commercial enterprise, by a DNR Commissioner, without action by the Alaska State Legislature.

Response #19: The Legislature authorized conveyance of park land within the legislatively designated boundaries of CSP for the purpose of improvements to the Seward Highway and the Alaska Railroad in Ch. 116 SLA 2000, the session law which has been discussed extensively in the finding. The Alaska Railroad is a state-owned corporation, and its land is managed pursuant to the Alaska Constitution and legislative direction. The conveyances authorized under Ch. 116 SLA 2000 will be made to other state entities, i.e., DOT&PF and the ARRC. No conveyances will be made to private commercial enterprises. The Department of Law has been consulted on this project.

Comment Topic #20: A commenter wanted a definition of what, if any, property interest Chugach State Park would receive in exchange for property conveyed, if any, within the scope of this project? This should be public information and be made available before any project authorization.

Response #20: As discussed above and authorized by Ch. 116 SLA 2000, DNR will receive property interests which are comparable or greater value than the property interests to be conveyed. DNR will convey a highway easement to DOT&PF for the new alignment, and DOT&PF will relinquish the existing highway easement to DNR. The relinquished easement will be managed by DNR as part of the park. Similarly, DNR will convey a property interest to the ARRC for the new railroad alignment and will receive in exchange a comparable interest from the ARRC which will be managed by DNR as part of CSP.

Comment Subject: Park Budget & Maintenance Impacts

Comment Topic #21: A commenter opined that the Commissioner's Finding fails to analyze the budget impacts to Chugach State Park. Fiscal analysis of management and maintenance costs is necessary to ensure that this project will not weaken other recreation services and resource protection by siphoning funds into management of the abandoned quarries as well as the toilets, trash, illegal camping, and nuisance behavior at this new magnet site for motorists.

Response #21: The new facilities will benefit park visitors by providing a safe location to appreciate the scenery, observe wildlife, and access the Turnagain Arm trail system. Providing these opportunities furthers the statutory purposes for which CSP was created. Many visitors to CSP experience the park while driving along Turnagain Arm. DNR anticipates a net benefit to the park visitor experience along Turnagain Arm and does not anticipate that the new facilities and closed material sites will have a negative impact to other park services. The material locations will be reclaimed in a manner that deters public access. DNR anticipates minimal maintenance needs in the material locations.

Comment Topic #22: A commenter stated that "included in secondary costs should be the additional cost of law enforcement and visitor management incurred by the new development."

Response #22: DNR does not expect an increase in law enforcement costs due to the new development. DNR expects that additional revenue from parking fees at the new facilities will offset the costs associated with providing services to visitors of the new facilities.

Comment Subject: Wildlife and Wildlife Viewing

Comment Topic #23: A commenter indicated that Windy Corner has been a hazard because people slow down and will even stop in the roadway to view wildlife. The realignment of the roadway for the construction of a park with ample parking, trails and viewing stands is a wonderful idea. This will not only enhance the enjoyment of both Alaskan citizens and visitors it will make that section of the highway much safer.

Response #23: DNR believes that the new facilities for viewing the scenery and wildlife at Windy Corner, along with the highway safety improvements, will significantly benefit Alaskans and visitors.

Comment Topic #24: The Rabbit Creek Community Council was concerned that the proposed Windy Corner project “does not fully account for impacts to wildlife, specifically Dall sheep and a current consultation for beluga whales.”

Response #24: DOT&PF has analyzed impacts to wildlife as part of the Environmental Assessment that includes the Section 4(f) analysis in Appendix E. DOT&PF has consulted with the National Marine Fisheries Service (NMFS) regarding beluga whales. On October 28, 2015, the NMFS concurred with the determination that the project is not likely to adversely affect beluga whales. The commenter has not provided any reason to believe that the facts which were the basis of the NMFS concurrence have changed since 2015. The ADF&G has reviewed the project and is not concerned about the impacts to Dall sheep or other wildlife. DNR concurs with the conclusion of DOT&PF’s EA that the impacts to wildlife will be minimal.

Comment Topic #25: A commenter requested that DNR, “Secure a review and comment from USFWS regarding possible eagle nesting sites within the scope of the project area and all associated areas that may be effected [sic].”

Response #25: The USFWS (U.S. Fish and Wildlife Service) was sent notification of this project as part of the agency review as discussed above. No comments were received from the USFWS regarding eagle nesting sites. DOT&PF will be responsible for following USFWS regulations which protect eagle nesting sites if nesting sites are identified later.

Comment Subject: Seward Highway Planning and Priorities

Comment Topic #26: Rabbit Creek Community Council indicated that they wanted a review of the Windy Corner project in the context of the entire Seward Highway Corridor along Turnagain

Arm to better address safety and access concerns, cost-effectiveness, and adverse impacts. They felt that the safety evaluation area for the Windy Corner project should be extended to include safe park access at McHugh Creek and Rainbow. They felt that DNR should take a pro-active role with DOT&PF to design safe, high-value, affordable access to CSP and that DOT&PF should produce a conceptual plan for overall Seward Highway improvements that prioritizes maximum safety and minimizes environmental impact. The Council felt that the selected plan is based on a design criteria of 65 mph in a highway safety corridor, immediately adjacent to two areas of heavy public use in Chugach State Park and that higher vehicle speeds will increase hazards associated with slowing, stopping, and turning at these locations. They also felt that the 65 mph criteria was not appropriate without due consideration of these impacts. They requested reconsideration of the project alternatives that will improve safety but have smaller footprints and lower costs as presented in the January 2011 URS Value Engineering Study Report. The Council also indicated that the Seward Highway Corridor plan should include paved-trail connectivity between Anchorage and Girdwood. Specifically, the DNR Commissioner's Finding, in accordance with the Chugach State Park Management Plan, should require DOT&PF to incorporate a separated and paved, multi-use pathway into all segments of the highway affected by the Windy Corner project.

Response #26: This project will realize an incremental improvement to the Seward Highway corridor and facilitate future improvements. Lead responsibility for the overall sequencing and scope of improvement projects rests with DOT&PF, and their decisions turn in part on the availability of funds and the relative priority of other projects statewide. As discussed above, this project will improve highway safety by increasing lane width, reducing corner radii, and providing a turn lane for southbound traffic. The project also will benefit the park by providing a dedicated area for visitors to view the scenery and wildlife and expanding parking and facilities at the Turnagain Arm trailhead.

Comment Topic #27: Commenters questioned the timing of the project in light of the state's budget situation and suggested that the project should wait for the state's financial situation to improve.

Response #27: DOT&PF is responsible for the management, scheduling, and funding of highway improvement projects. The timing and funding of this project are outside the scope of this finding.

Comment Subject: Highway Safety

Comment Topic #28: Several commenters noted that the Seward Highway Safety Corridor Accident data used included motor vehicle crashes which predate the safety corridor designation and highway safety improvements. Commenters argued that these statistics do not accurately reflect the current level of risk on the Windy Corner area relative to other areas of the Seward Highway.

Response #28: As discussed in the comment about Seward Highway planning, DOT&PF has responsibility to evaluate various possible highway improvements and to determine project priorities.

Comment Topic #29: Several comments were received that the proposed design requires motorists to turn across two lanes of traffic moving at 65 mph and higher, since there will be two lanes in each direction to allow for passing. The project does not provide a way for motorists to turn south from the Windy Corner site unless all four lanes of traffic are free. In addition, there will be vehicles turning in and out at the quarry sites, even if they have gated driveways

Response #29: See above responses regarding DOT&PF's mission and role in this project. DNR concurs with DOT&PF's assessment that the project will improve highway safety and that the new highway alignment will represent an improvement to the safety of using the Windy Corner parking area. There will be very little traffic from the material locations because they will be blocked off and not used after construction.

Comment Topic #30: A commenter suggested that DNR should, "Secure a review and comment from APD Traffic Division, who currently patrol this Highway, on the project and related safety issues."

Response #30: See above responses regarding DOT&PF's mission and role in this project. DNR will share this suggestion with DOT&PF.

Comment Subject: Rainbow Valley Impacts

Comment Topic #31: From a letter from the Rainbow Valley Homeowner's Association (RVHA), "The proposed finding entirely ignores the effects of community disruption at Rainbow Valley during the project."

Response #31: Construction will cause disruptions to the Rainbow Valley community, which DOT&PF must balance against the limited construction season, disruption to highway traffic, and the project improvements in highway safety and traffic operations. DOT&PF standard construction specifications require the contractor to notify property owners before using explosives. DOT&PF and the contractor will also create a safety plan that will include plans for notifications and protection of public and private property. Standard blasting techniques are designed to avoid fly rock. Blast mats and other measures to further mitigate the potential for fly rock may be utilized. DOT&PF specifications also require that the appropriately designed delay sequences and charge weights per delay are used to minimize ground vibration and prevent damage to buildings, structures, utilities, sensitive fish and wildlife habitat and other facilities. In addition to the noise from the blast, DOT&PF state regulations require a warning sound before and after each blast. Drinking water impacts are not anticipated as DEC identified Drinking Water Protection Areas are over 3,000 feet away.

DOT&PF will reach out to the Rainbow Valley Homeowner's Association during final design to further discuss the project and impacts to their community.

Balancing impacts to Rainbow Valley residents with other project considerations is the responsibility of DOT&PF and is beyond the scope of this finding.

Comment Subject: Project Size and Complexity

Comment Topic #32: RVHA also commented that Windy Corner is over-sized and for now the State should focus on a simpler upgrade of the highway in the Windy Corner project area.

Response #32: As explained above, lead responsibility for the overall sequencing and scope of improvement projects rests with DOT&PF, and their decisions turn in part on the availability of funds and the relative priority of other projects statewide. DNR concurs that the project will result in a net benefit to the park by providing a dedicated area for visitors to view the scenery and wildlife and expanding parking and facilities at the Turnagain Arm trailhead.

Drinking Water

Comment Topic #33: The Department of Environmental Conservation's Drinking Water Program noted that there is a drinking water source just east of the proposed MP 104 material location and requested that DNR and DOT&PF employ measures to protect the water quality.

Response #33: The MP 104 material location, if used, will be located outside of the protected area. DNR will require DOT&PF to consider this water source if they use the MP 104 material location.

Comment Subject: Section 4(f) and Environmental Assessment

Several comments were received related to the Section 4(f) analysis and associated Environmental Assessment (EA) prepared by DOT&PF. DNR has forwarded these comments to DOT&PF for consideration. DNR concurs that there is a net benefit to the park.

Comment Topic #34: The Chugach State Park Citizen's Advisory Board (CSPCAB) submitted a comment that the Board finds the EA to be illogical and untrue regarding the sub-alternatives of Alternative 2. If 2B is consistent with the CSPMP, then all of the sub-alternatives of Alternative 2 are consistent with the CSPMP and must be examined as such. CSPCAB also requested to expand parking to a large lot with a buffer between the highway and the parking area, including interpretive displays and spotting scopes.

Response #34: As described in the EA on Alternative 2A (using materials from the MP 109 and MP 104 temporary material locations) includes the construction of the wildlife

viewing area including trails, parking, restrooms, and other facilities in the relinquished highway right-of-way. The facilities included in Alternative 2A are consistent with the CSPMP and represent a benefit to CSP. Alternatives 2B (material from within the existing right-of-way) and 2C (materials from distant sources) include a basic parking area adjacent to the new highway at Windy Corner but no other facilities. As such, alternatives 2B and 2C do not meet the CSPMP's recommendation for the Windy Corner Sheep Viewing Area on page 116.

Comment Topic #35: The MP 104 temporary material location was not addressed properly in the development process or in the EA.

Response #35: The MP 104 material location will only be utilized if the quality or quantity of material obtained from the MP 109 material location is insufficient. Based on geotechnical work, DOT&PF estimates that there are 2.3 million cubic yards of useable material at the MP 109 location. The preferred alternative is expected to require 2.06 million cubic yards. The MP 104 material location will only be needed if the quantity or quality of material at MP 109 is considerably lower than expected. It is not possible to confirm the material quality with sufficient precision to confirm that the MP 104 location will not be needed until some material extraction occurs at the MP 109 location. As a result, the quantity and type of materials needed from the MP 104 material location cannot be ascertained until material extraction from the MP 109 material location is nearly complete. If DOT&PF determines that the use of materials from the MP 104 material location is necessary and determines the quantity and type of materials needed, they will develop a plan for use of the MP 104 material location. DNR will not approve the use of the MP 104 material location until DOT&PF submits a reclamation plan detailing their planned use of the location. DOT&PF will also be required to obtain a conditional use permit from the Municipality of Anchorage prior to use of the MP 104 material location.

DOT&PF estimates, based on geotechnical investigations, in the unlikely event that MP 104 was fully utilized as a material location the total volume of material available would be approximately 1.6 million cubic yards. While use of the entire MP 104 location is unlikely, if the entire location were used, the length of proposed excavation site along roadway would be 2,700 feet, the maximum height of rock wall would be approximately 160 feet, and the northernmost portion of the excavation (bottom of the rockface) would be approximately 600 feet from the Seward Highway. It is unlikely that this volume of material will be needed from the MP 104 material location and a smaller impacted area is possible.

Land and Water Conservation Fund (LWCF) Section 6(f)(3)

Comment Topic #36: The National Park Service (NPS) should not have approved the LWCF Section 6(f)(3) conversion.

Response #36: NPS has sole authority to approve LWCF conversions. DNR supports the conversions associated with this project because the highway improvements will also improve visitor safety. Additionally, the project includes park facilities that will enhance the visitor experience and trailhead access for outdoor recreation. Furthermore, CSP will receive lands appraised with a higher value than the land that is being converted for this project, and the replacement land is desirable acreage that will consolidate park property and simplify park management.

Comment Topic #37: CSPCAB commented that, “NPS did not make the Finding of No Significant Impact (FONSI) publicly available for 30 days as it should have per CEQ guidance. The FONSI was dated February 2019, but as evidenced, was not released to the public until February 2020 as part of the Finding. The CSPCAB exhaustively searched regulations.gov, the National Park Service using many different search words and a wide date range but was unable to find any notice or submission to the public. The FONSI in this case should have been made available for public review per 40 CFR 1501.4(e)(2) as the [CSPCAB] would argue that the development of an EIS is rational regarding the legality under State Law, location, and use of the materials site and that the materials site involves a high degree of public controversy. ”

Response #37: A FONSI must be noticed for a 30 day public review prior to making the decision final if the proposed action is similar to one that would normally require the preparation of an Environmental Impact Statement or if the nature of the proposed action is one without a precedent under 40 CFR 1501.4(e)(2). The Windy Corner proposed action meets neither of these criteria. DOT&PF has made the FONSI and the LWCF Section 6(f) conversion documents including the associated Environmental Assessment (EA) available on the project website at <http://windycorner.info/documents.html>. The LWCF EA Notice of Availability was published on January 8, 2017 with the comment period ending February 20, 2017 and the document was finalized in February 2019. The LWCF FONSI, dated February 2019 and signed on May 30, 2019 is included as Appendix F of the draft NEPA EA currently in progress. Notice of Availability of the NEPA EA was posted on March 4, 2020. NPS is the lead agency for NEPA compliance of LWCF conversions and is responsible for providing the required public notices of the FONSI.

Comment Topic #38: NPS FONSI describes the pits as temporary even though they will be in use for 2 years, which exceeds NPS’s own impact criteria of 180 days.

Response #38: The temporary material locations are being converted from outdoor recreation use, which removes them from the LWCF Section 6(f) protected area of Chugach State Park. As a result, the provisions of the LWCF program which allow temporary use of LWCF Section 6(f) protected areas for uses other than outdoor recreation for up to 180 days no longer apply to these locations. It appears that the NPS’s use of the term “temporary” in the FONSI was echoing DNR’s description of these quarries as “temporary material locations” rather than a reference to the temporary use allowed within

a LWCF Section 6(f) protected area. The material locations are temporary and are limited to use on this project, which may take up to 2 years to complete.

Comment Subject: Comment Period

Comment Topic #39: Commenter requested additional time for public comments.

Response #39: This request was made before the original public comment deadline. The comment period was extended for an additional 30 days, for a total comment period of 60 days.

Comment Subject: Alaska Railroad

Comment Topic #40: A commenter requested that, “The Alaska Railroad should remove the public safety hazard, a concrete bunker, at MP 112, just north of McHugh Creek park entrance. This is located on the ocean side of the railroad. It is a visual eye sore and often spray painted by vandals.”

Response #40: This is beyond the scope of this finding and outside of the project area. DNR will forward this comment to ARRC for their consideration.

Approval

In consideration of the authorities and criteria listed above, I hereby determine that the authorizations to be granted by this decision are consistent with DNR’s mission, that this project is consistent with legislative direction and administrative management intent for this land and that issuance of the authorizations described above is in the interest of the State of Alaska. The Department assumes no responsibility for maintenance or liability for injury or damages attributable to these authorizations.

As Commissioner of DNR, I find that there is no significant adverse effect of this project to Chugach State Park and therefore, I approve this Finding.



Corri A. Feige, Commissioner
Alaska Department of Natural Resources



Date

A person affected by this decision may request reconsideration, in accordance with 11 AAC 02. Any reconsideration request 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 the 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. Under 11 AAC 02.030, requests for reconsideration filed under 11 AAC 02 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) and (b).

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on their own motion, this decision goes into effect as a final order and decision on the 31st calendar day after the date of issuance. Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of 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.

Attachments

- Attachment A: The Session Law (Chapter 116, Session Laws of Alaska 2000)
- Attachment B: Land and Water Conservation Fund Finding of No Significant Impact
- Attachment C: Proposed Commissioner's Finding
- Attachment D: Public Comments

Chapter: CH116

Source: CSSB 235(FIN) am H

Action Date: June 6, 2000

Effective Date: June 7, 2000

00

AN ACT

Authorizing the exchange of land between the Alaska Railroad Corporation and Eklutna, Inc., between the Alaska Railroad Corporation and the United States Department of the Army and the United States Department of the Air Force, between the Alaska Railroad Corporation and Chugach Alaska Corporation, and between the Alaska Railroad Corporation and the Municipality of Anchorage; authorizing the transfer of land between Alaska Railroad mileposts 133 and 134 from the Alaska Railroad Corporation to certain named individuals; relating to transfers of public land or grants or conveyances of interest in public land among the Alaska Railroad Corporation, the Department of Transportation and Public Facilities, and the Department of Natural Resources to relocate or widen the Seward Highway, to relocate railroad facilities, and to relocate adjacent utility facilities from Potter Station to Girdwood; and providing for an effective date.

Article 1. Land Exchanges Between Alaska Railroad

Corporation and Eklutna, Inc., Department of Army and

Department of Air Force, Chugach Alaska Corporation, and

Municipality of Anchorage; Transfer of Land to Certain Individuals.

* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPROVAL OF THE TRANSFER OF REAL PROPERTY TO EKLUTNA, INC. (a) The Alaska Railroad Corporation is authorized to convey the corporation's entire interest in approximately 384 acres of rail land within Tract 39 of Dependent Resurvey of Rectangular Survey of Township 15 North, Range 2 West, Seward Meridian, officially filed November 10, 1992, to Eklutna, Inc., in exchange for the conveyance to the corporation by Eklutna, Inc., of approximately 65 acres of land adjacent to the railroad utility corridor at railroad mileposts 129, 130, 133, 140, 142, 146, and 151 and sufficient additional acreage east of Birchwood Airport and adjacent to the railroad between miles 134.5 and 136.3 to equalize the value of lands exchanged.

(b) The conveyances described in this section are made for the purpose of realignment of railroad track to improve operating efficiency and enhance safety.

(c) The land conveyed by Eklutna, Inc. to the Alaska Railroad Corporation shall be held and managed by the corporation in accordance with AS 42.40.

(d) This section constitutes legislative approval under AS 42.40.285 (1) for the Alaska Railroad Corporation to convey its entire interest in the land described in (a) of this section.

* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPROVAL OF THE TRANSFER OF REAL PROPERTY TO THE UNITED STATES DEPARTMENT OF THE ARMY AND THE UNITED STATES DEPARTMENT OF THE AIR FORCE. (a) The Alaska Railroad Corporation is authorized to convey the corporation's entire interest in approximately 229 acres of railroad utility corridor between railroad mileposts 118 and 127.5, within Township 13 North, Range 3 West, Seward Meridian, Township 14 North, Range 3 West, Seward Meridian, and Township 14 North, Range 2 West, Seward Meridian to the United States Department of the Army and the United States Department of the Air Force in exchange for the conveyance of approximately 227 acres of land in the same vicinity to the corporation by the United States.

(b) The conveyances described in this section are made for the purpose of realignment of railroad track to improve operating efficiency and enhance safety.

(c) The land conveyed by the United States to the Alaska Railroad Corporation shall be held and managed by the corporation in accordance with AS 42.40.

(d) This section constitutes legislative approval under AS 42.40.285 (1) for the Alaska Railroad Corporation to convey its entire interest in the land described in (a) of this section.

* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPROVAL OF THE TRANSFER OF REAL PROPERTY TO CHUGACH ALASKA CORPORATION. (a) Contingent upon the conveyance to the Alaska Railroad Corporation by the Chugach Alaska Corporation of an equivalent interest in real property onto which the railroad utility corridor may be relocated, the Alaska Railroad Corporation is authorized to convey the corporation's entire interest in approximately 6.4 acres of railroad utility corridor between railroad mileposts 14 and 15, within Township 2 North, Range 1 East, Sections 6 and 7, Seward Meridian, to the Chugach Alaska Corporation.

(b) The conveyances described in this section are made for the purpose of realignment of the railroad to allow relocation of the Seward Highway by the Department of Transportation and Public Facilities to improve highway operations and enhance safety.

(c) Land conveyed by the Chugach Alaska Corporation to the Alaska Railroad Corporation shall be held and managed by the Alaska Railroad Corporation in accordance with AS 42.40.

(d) This section constitutes legislative approval under AS 42.40.285 (1) for the Alaska Railroad Corporation to convey its entire interest in the land described in (a) of this section.

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPROVAL OF THE TRANSFER OF CERTAIN REAL PROPERTY WITHIN THE MUNICIPALITY OF ANCHORAGE. (a) Contingent upon the approval of the conveyance of affected municipal park land by the voters of the Municipality of Anchorage, the Alaska Railroad Corporation is authorized to convey the corporation's entire interest in

(1) approximately 4.5 acres of railroad utility corridor between railroad mileposts 133 and 134, within Township 15 North, Range 2 West, Sections 13 and 24, Seward Meridian, to the Municipality of Anchorage in exchange for the conveyance of approximately 13.6 acres of land in the same vicinity to the corporation by the Municipality of Anchorage;

(2) approximately 5.1 acres of railroad utility corridor between railroad mileposts 133 and 134, within Township 15 North, Range 1 West, Sections 18 and 19, Seward Meridian, to Richard and Carol Drebert, Harry and Simone Thomson, and Richard Moore or their personal representatives, successors, or assigns; each to receive that portion of the railroad utility corridor immediately adjacent to their respective parcels of land.

(b) The conveyances described in this section are made for the purpose of realignment of railroad track to improve operating efficiency and enhance safety.

(c) The land conveyed by the Municipality of Anchorage to the Alaska Railroad Corporation shall be held and managed by the corporation in accordance with AS 42.40.

(d) This section constitutes legislative approval under AS 42.40.285 (1) for the Alaska Railroad Corporation to convey its entire interest in the land described in (a) of this section.

Article 2. Potter Station to Girdwood.

* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

FINDINGS AND POLICY REGARDING CHUGACH STATE PARK. (a) The legislature finds that

(1) the Seward Highway within the Chugach State Park from Potter Station to Girdwood is the sole highway link between the Kenai Peninsula and the rest of this state, an interstate highway on the national highway system, and a national scenic byway;

(2) the Seward Highway within the Chugach State Park is affected by avalanches and other potential operational problems;

(3) relocation or widening of the Seward Highway to avoid some of the operational problems will require relocation of some adjacent railroad and utility facilities; and

(4) relocation of railroad facilities within the Chugach State Park will allow some areas of the railroad track to be straightened.

(b) It is the policy of the state that relocation or widening of the Seward Highway or relocation of railroad facilities within the Chugach State Park is appropriate and may be accomplished without significantly adversely affecting the purposes for which Chugach State Park was established.

*** Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CHUGACH STATE PARK LAND TRANSFERS AND CONVEYANCES. (a) Notwithstanding AS 41.21.120 - 41.21.125, the commissioner of natural resources may, for the purpose of relocation or widening of all or portions of the Seward Highway or relocation of railroad facilities within the Chugach State Park, and upon a finding by the commissioner that any grant or conveyance for that purpose would not significantly adversely affect the purposes for which the Chugach State Park was established,

(1) grant a highway easement to the Department of Transportation and Public Facilities;

(2) convey a property interest in land to the Alaska Railroad Corporation to allow relocation of the Alaska Railroad;

(3) grant utility easements; and

(4) receive land or interests in land in exchange for land or interests in land granted or conveyed under (1), (2), or (3) of this subsection.

(b) A grant or conveyance made under (a) of this section may not exceed the interest needed to relocate or widen the Seward Highway or relocate railroad facilities within the Chugach State Park and to construct, repair, and maintain the relocated or widened highway and the relocated railroad or utility.

(c) A property interest conveyed to the Alaska Railroad Corporation under (a)(2) of this section shall be held and managed by the corporation in accordance with AS 42.40.

(d) Land or an interest in land received by the commissioner under (a)(4) of this section shall be designated as part of Chugach State Park.

*** Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to read:

ALASKA RAILROAD LAND TRANSFERS AND CONVEYANCES. Notwithstanding AS 42.40.285, the Alaska Railroad Corporation may, for the purpose of the relocation or widening of the Seward Highway or relocation of Alaska Railroad facilities within the Chugach State Park, and relocation of adjacent utility facilities, transfer land or convey interests in land in exchange for land or interests in land conveyed to the corporation.

*** Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to read:

IDENTIFICATION OF STATE PARK LAND OR INTERESTS IN LAND BEING TRANSFERRED OR CONVEYED UNDER SECTIONS 5 - 7 OF THIS ACT. By the first day of the First Regular Session of the Twenty-Second Alaska State Legislature, or as soon as possible after that date, the governor shall

(1) identify any land being transferred under secs. 5 - 7 of this Act that requires amendment to statutes describing the Chugach State Park; and

(2) submit to the legislature any legislation needed to make those statutory amendments.

* **Sec. 9.** This Act takes effect immediately under AS 01.10.070 (c).



United States Department of the Interior



NATIONAL PARK SERVICE
Alaska Region
240 West 5th Avenue
Anchorage, Alaska 99501

**Seward Highway Mileposts 105-107, Windy Corner Improvements
A Partial Conversion of Land Subject to Section 6(f)(3)
of the Land and Water Conservation Fund Act, Public Law 108-198
Chugach State Park, Anchorage, Alaska
Environmental Assessment
Finding of No Significant Impact**

February 2019

This Finding of No Significant Impact (FONSI) documents the decision of the National Park Service (NPS) to adopt the preferred alternative in the Windy Corner Environmental Assessment. Alternative 2, the Selected Alternative, includes partial conversion at Chugach State Park by transferring Land and Water Conservation Fund (LWCF) 6(f)(3) requirements from 39.56 acres of land that is currently in park use to 14.7 acres of land currently in transportation use that will be redeveloped for park use. There will remain at Chugach State Park more than 430,000 acres to be managed subject to LWCF requirements.

This alternative was evaluated against Alternative 1, No Action. Both alternatives were described and analyzed in the February 2019 "Seward Highway Mileposts 105-107, Windy Corner Improvements: A [Partial] Conversion of Land Subject to Section 6(f)(3) of the Land and Water Conservation Fund Act, Public Law 108-198 Environmental Assessment" (EA). This EA was prepared by the Alaska Department of Transportation (ADOT) on behalf of the Federal Highway Administration (FHWA) and in cooperation with the Alaska Department of Natural Resources (AKDNR) and NPS.

The LWCF Act is now codified at 54 U.S.C. Section 200305(f)(3). The request to adopt the preferred alternative is made to NPS by the AKDNR, who both administers the LWCF program in Alaska on behalf of NPS and owns and manages Chugach State Park. Chugach State Park is located east of Anchorage, Alaska. The replacement parcel is currently part of the Seward Highway right-of-way where it runs through Chugach State Park.

PURPOSE AND NEED

In 1970, the U.S. Department of the Interior (DOI) Bureau of Outdoor Recreation (now the NPS LWCF AKDNR and Local Assistance Program) awarded grant #02-00057 for development of water wells at a number of AKDNR parks, including Chugach. Overall, there have been awarded fifteen LWCF grants for acquisition and development projects at Chugach. The AKDNR accepted the terms of the grant agreements with full knowledge that those terms include maintaining the park for public outdoor recreation purposes unless those responsibilities are otherwise transferred to an alternate location and approved by the Secretary of the DOI as delegated to the NPS. This LWCF program "conversion" process is described more fully in NPS regulations at 36 C.F.R. 59.3.

Seward Highway travels through Chugach State Park, connecting the City of Anchorage to important points of interest to the south, including the City of Soldotna and Kenai Fjords National Park. ADOT has determined that numerous design issues along Seward Highway contribute to significant public safety concerns and has concluded that reconfiguration of this section of road is needed in order to decrease the number of high-severity injury motor vehicle crashes and also to improve traffic flow. The realignment of the highway would be permanent. In order to complete these safety improvements, ADOT has also determined

the need to gather some construction materials onsite. Although the impact in that area of the park will be temporary, it will be in excess of how NPS currently defines "temporary" for the purposes of LWCF. For LWCF purposes, "temporary" is currently defined as 180 days. The impacts at the borrow site area may last up to two years before they are returned to park use.

While the transportation project itself is not subject to NPS review, NPS must approve the request to convert AKDNR LWCF responsibilities from one section of Chugach State Park to the portion of Seward Highway that will be added to Chugach State Park. The areas to be converted from recreation to transportation use are currently valued as open space, mostly mudflat accessible to the public at low tide. The two materials borrow sites are steeply sloping vegetated banks with bedrock outcroppings, also valued as open space but with no developed public access points. The replacement property will be developed with a new scenic overlook taking advantage of views that include Turnagain Arm and the Kenai Mountains. New recreation developments will include vehicle access, parking, and interpretive signage.

The scope of the NPS review is limited to: 1) assessing equivalency between the area proposed for removal from LWCF related public outdoor recreation use restrictions and the proposed replacement properties as further described in 36 C.F.R. 59.3; 2) determining whether the 430,000 acres at Chugach State Park that remain subject to Section 6(f)(3) requirements will constitute a viable outdoor recreation unit; and, 3) determining whether there are any potential significant environmental impacts associated with developing the replacement park for public outdoor recreation use.

ALTERNATIVES CONSIDERED

1. No Action Alternative

NPS does not approve the AKDNR's proposal to convert a portion of Chugach State Park pursuant to the LWCF conversion regulations. This would not prevent ADOT from moving forward with reconstruction of Seward Highway, but it could subject the AKDNR to penalties including freezing grant funding to other agencies within the state of Alaska. It would also prevent the old Seward Highway alignment from being added to the LWCF estate.

2. Proposed Action Alternative (Selected Alternative)

NPS approves the AKDNR's request to convert LWCF requirements from 39.56 acres at Chugach State Park to 14.7 acres that will be added to Chugach State Park. This will result in a net loss of 24.86 acres from the LWCF estate but a net gain of 10.54 acres to the public recreation estate.

SELECTED ALTERNATIVE

The NPS has selected for implementation the Proposed Action Alternative as described in the EA.

Under the selected alternative, 430,000 acres +/- will continue to be managed consistent with LWCF requirements and will continue to provide public outdoor recreation opportunities for park users. The slightly reduced Chugach State Park will continue to include camping, hiking, trails, and open space for the recreating public. A 39.56 acre section of Chugach State Park will be removed from LWCF requirements. This represents approximately 0.0092% of the LWCF acreage at Chugach State Park.

ADOT will develop a 14.7 acre property as a scenic overlook and trail head and then transfer it to AKDNR where it will become part of the acreage administered for LWCF purposes. The 35.4 acre temporary impact area will remain in AKDNR ownership and be restored for public outdoor recreation use, but will be permanently removed from the LWCF estate.

Based on the analysis provided in chapters three and five of the EA, along with a Biological Assessment and other appendices, NPS concludes the environmental impacts of the conversion are as follows:

Land Use and Recreation: The LWCF Act requires replacement property to be equivalent fair market value, location, and recreation usefulness. It does not require there to be no net loss in total LWCF acreage. While this conversion will result in a net loss of LWCF acreage, the net gain to public recreation infrastructure results in an equivalent exchange. The location is almost identical and the fair market equivalency has been established by appraisals that meet Uniform Appraisal Standards for Federal Land Acquisitions. The impact to land use and recreation as a whole (beyond LWCF) is both a net gain in recreation acreage and a net gain in recreation infrastructure.

Circulation and Transportation: Circulation and transportation through Chugach State Park should improve as a result of the ADOT project that is prompting this conversion request. While that project is outside the scope of the NPS NEPA action, approval of the conversion will result in a safe overlook and trailhead, reducing the potential for people to stop their vehicles in unsafe locations in pursuit of recreation purposes.

Site Aesthetics: For the two years that they are in use, the borrow pits have the potential to negatively impact site aesthetics. Given the slope of the terrain, the existing vegetation cover, and the distance between the borrow pits and the two closest trails, it is believed they will not be visible to trail users. If recreation users choose to hike off trail to a point where they can see the borrow pits, it is possible their experience of site aesthetics will be negatively impacted. As the impacts will be temporary in nature and not affecting a developed recreation amenity, adverse impacts are likely to be minor.

Surface Waters, Floodplains, and Wetlands: Although approval of the conversion and development of the replacement site for park purposes will have no effect on water resources (the conversion approval is administrative and the replacement site is currently in road use), the Seward Highway project itself may impact these resources. Although the referenced EA includes some analysis of those potential impacts, assessment of significance lies with FHWA and should be addressed in their decision document.

Plants, Animals, and Federally Listed Species: Although approval of the conversion and development of the replacement site for park purposes will have no effect on plants or animals, federally listed species, or sensitive habitat (the conversion approval is administrative and the replacement site is currently in road use), the Seward Highway project itself may impact these resources. Although this EA includes some analysis of those potential impacts, assessment of significance lies with FHWA and should be addressed in their decision document.

Historic Properties: Although approval of the conversion and development of the replacement site for park purposes will have no effect on properties listed on or eligible for listing on the National Register of Historic Properties (the conversion approval is administrative and the replacement site is currently in road use - the road itself is not an historic property), there is an historic property within the Area of Potential Effect for the Seward Highway Project and impacts have been assessed by ADOT on behalf of FHWA in consultation with the State Historic Preservation Officer (SHPO).

PRELIMINARY ALTERNATIVES AND ACTIONS CONSIDERED BUT DISMISSED

NEPA allows for alternatives to be eliminated from detailed study based on criteria described in 40 CFR 1504.14 (a). In the case of LWCF conversions, NPS has only two options available: 1) approve the conversion if the criteria are met; or, 2) request additional materials of the AKDNR until the criteria for approval are met. This is also described as the no action alternative and the selected alternative as discussed above.

However, ADOT also considered a smaller conversion footprint alternative that would have required them to locate the materials borrow sites outside the park. Had NPS been forwarded the [Smaller] Conversion Alternative as the selected option instead, it could also have been approved. A choice between the Proposed

Action Alternative and the [Smaller] Conversion Alternative is not with the authority of NPS to select but lies solely with AKDNR and ADOT.

WHY THE SELECTED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT

After considering the environmental consequences described in the EA, the NPS has determined that the Selected Alternative and its associated actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. This finding is based on the following:

- The Selected Alternative will include both beneficial and adverse effects. The Selected Alternative will not have adverse impacts to geological resources, air quality, noise level, water quality/quantity, natural resources such as floodplains, wetlands, and species habitat; land use and planning, circulation such as transportation and accessibility, recreation, aesthetics, historical and cultural resource and socio economic resources, or economic justice for minority and low income populations. The finding of no significant environmental effects is not biased by the beneficial effects of the action.
- The Selected Alternative will not adversely affect public health or safety.
- The Selected Alternative will not result in significant adverse effects to the unique natural resource characteristics of the area, including prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- The effects on the human environment are known, and there were no controversial impacts or aspects of the proposed project that surfaced during the environmental analysis process. There is no scientific controversy over the impacts of the project.
- The Selected Alternative will have no effect on historic properties. There will be no adverse effect to historic properties within the area of potential effect.
- The Selected Alternative would have no effect on species listed or proposed for listing as endangered or threatened or their critical habitat as determined under the Endangered Species Act of 1973. There are no relevant species or critical habitat in the project area.
- No significant cumulative effects and no highly uncertain, unique or unknown risks were identified during preparation of the EA or during the public review period. The Selected Alternative was evaluated under the standard conversion process criteria in 36 C.F.R. 59.3. Thus, the Selected Alternative neither establishes a precedent for future actions with significant effects nor represents a decision in principle about a future consideration. Conversion proposals are evaluated independently on a case by case basis without reliance on prior decisions.
- The Selected Alternative will not violate federal, state, or local laws or requirements for the protection of the environment.

AGENCY COORDINATION

The public outreach called for by Section 106 of the NHPA was integrated into the NEPA process. Consultation was delegated by FHWA as the lead federal agency to ADOT. The SHPO concurred with a finding of no adverse effect to historic properties in a letter dated February 6, 2015.

This proposal was developed by ADOT on behalf of FHWA in consultation with the AKDNR and the National Park Service, State and Local Assistance Programs.


PUBLIC INVOLVEMENT

The public was invited to participate throughout the scoping process as documented in the "Public Involvement" appendix to the EA. The EA was released for a 30-day public comment period. Substantial comments were addressed by ADOT. Those relevant to NPS review include concerns raised about the potential for aesthetic impacts related to the borrow sites and the equivalency of the replacement land as compared with what is being proposed for conversion.

FINDING

Based on the information provided in the EA and summarized above, the NPS has determined that implementation of the Selected Alternative is not a major federal action and does not require an Environmental Impact statement (EIS). The Selected Alternative will not have a significant effect on the human environment. There are no significant impacts on public health, public safety, or threatened or endangered species. The Selected Alternative will have minor adverse impacts to recreation, which will be mitigated through acquisition and development of the replacement site. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the Selected Alternative is also consistent with 36 C.F.R. 59.3. Therefore, in compliance with the National Environmental Policy Act, an EIS will not be prepared, and the selected project may be implemented immediately.

Recommended by:
Raymond Murray,



Chief, Partnership Programs
State and Local Assistance Programs
Pacific West Region
National Park Service

5/13/19

Date

Approved:
Bert Frost,



Regional Director
Alaska Region
National Park Service

30 May 2019

Date

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Seward Highway MP 105-107 Windy Corner
Proposed Commissioner's Finding
ADL 232839 (DOT&PF)
ADL 232892 (ARRC)
ADL 233527 (Closure of Section Line Easement)
OSL 1632 (ARRC relinquished lands)

1. Proposed Action

The Alaska Department of Transportation and Public Facilities (DOT&PF) is proposing to improve the Seward Highway (highway) by relocating the rights-of-way and the railroad rights-of-way of the Alaska Railroad Corporation (ARRC) between highway mileposts (MP) 105 and 107 also known as “Windy Corner,” (project) within Chugach State Park (CSP). The purpose of this project is to implement safety upgrades and improve traffic operations.

The highway segment within CSP proposed for improvement supports heavy commercial, recreational, and residential traffic and is located in one of five designated safety corridors in Alaska, due to the elevated rate of high-severity (e.g., fatal and major injury) crashes. As a popular area for viewing wildlife and recreating along the highway, traffic operations are frequently disrupted by motorists slowing and parking along the shoulder of the highway. This creates a high differential in speeds combined with limited sight distance and uncontrolled movements of traffic entering and exiting the highway that results in an elevated rate of severe crashes in the highway corridor.

The objective of the project is to address long-standing traffic safety concerns. This will be done by realigning and dividing the highway to meet current design standards, in addition to adding auxiliary lanes for accelerating, decelerating and turning traffic, and constructing a recreational and parking area. The ARRC’s railroad tracks will be realigned to accommodate the new road, improve safety of train operation and allow for the construction of park facilities on the mountain side of the highway. DOT&PF proposes to:

- realign the rights-of-way for the highway, ARRC, and related utilities;
- separate the highway from CSP facilities, creating safer conditions for visitors;
- straighten the railroad and highway segments;
- construct CSP facilities on the mountain side of the highway right-of-way with greater parking capacity and recreational amenities;
- construct an emergency response access ramp for water rescues;
- extract material, for this project only, primarily from a temporary location near MP 109 of the highway and, if needed, a secondary location near MP 104 of the highway.

2. Authority

The authorities undertaken by this project include:

Alaska Constitution Article VIII, Section 7

Article VIII, Section 7 of the Alaska Constitution authorizes the legislature to reserve areas of state land and water from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people. The legislature has exercised this authority by enacting laws creating Chugach State Park and providing for its administration, including the relocation and widening of the Seward Highway within the park.

Session Law

Provided that the Commissioner determines that the following grants would not significantly adversely affect the purposes for which CSP was established, sections 5 and 6 of chapter 116, Session Laws of Alaska 2000 (Ch. 116 SLA 2000, Attachment A) authorize the Department of Natural Resources (DNR) to grant a highway right-of-way easement and management authority of the easement to DOT&PF, convey a property interest in land to the ARRC, and receive land or interests in land in exchange for land or interests in land conveyed to these entities. Land received by DNR in exchange shall be designated as part of CSP. These purposes are described in AS 41.21.121 and are discussed below with respect to this project.

Section 6(b) of the Ch. 116 SLA 2000 also supports the use of material for this project, sourced from within the CSP to construct this relocation and widening of the highway. Authorization(s) for the use of material from sources within CSP for this project will be subject to a reclamation plan consistent with AS 27.19 and will require approval from DNR.

Chugach State Park

Alaska Statutes (AS) 41.21.120-41.21.125 created CSP, define CSP purposes, identify the state land included in the CSP, and establish DNR's and DOT&PF's management responsibilities within it. The CSP's purposes are described in AS 41.21.121:

The park is established to protect and supply a satisfactory water supply for the use of the people, to provide recreational opportunities for the people by providing areas for specified uses and constructing the necessary facilities in those areas, to protect areas of unique and exceptional scenic value, to provide areas for the public display of local wildlife, and to protect the existing wilderness characteristics of the easterly interior area. The eastern area of the park shall be operated as a wilderness area, the central area as a scenic area, and the periphery areas as recreational areas.

Alaska Statute 41.21.122 assigns land and water within the park to DNR "for control, development and maintenance, except that the Department of Transportation and Public Facilities is responsible for the repair and maintenance of all existing public roads within the park."

Alaska Constitution Article VIII, Section 14 and AS 38.05.127

Article VIII, Section 14 of the Alaska Constitution establishes the right of Alaskan residents and United States' citizens to access public water. This right, along with the State's Public Trust Doctrine responsibility, is implemented, in part, by AS 38.05.126 (establishing the State's power and control of all navigable or public water of the state), and AS 38.05.127, which recognizes the public's constitutional right to access navigable and public water. This statute requires that the Commissioner reserve "easements or rights-of-way necessary to ensure free public access to and along the water body, unless the Commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes." Alaska Statute 38.05.965 defines "public water" to mean "navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest." Turnagain Arm is public water.

Section Line Easement (SLE)

Alaska Statute 38.04.058 allows the commissioner of DNR, upon a written finding, to restrict the use of an easement, such as an SLE, in order to protect public safety or property. A restriction must be narrowly tailored to achieve the protection of public safety and property while preserving access to the maximum extent practicable.

Chugach State Park Management Plan (CSPMP)

The CSPMP guides DNR's management and development of state-owned land and water within the legislatively designated boundary of CSP. The CSPMP is based on an analysis of CSP's natural and cultural environment, current and anticipated trends in use, and human demands on resources in keeping with CSP's enabling legislation and guiding principles. The primary purposes of the CSPMP are to provide a land use plan that allows for optimum recreational use of the area while protecting the natural and cultural resources, and to provide a consistent set of principles and policies for park management and a listing of development projects to facilitate future funding requests and project phasing. The CSPMP can be found online at: http://dnr.alaska.gov/parks/plans/chugach/finalplan/cspmp_2016_complete.pdf

3. Scope of Findings

The scope of this DNR Commissioner's finding (Finding) is limited to the following items:

- Findings under the Session Law:
 - Consistency with CSP purposes;
 - Authorizing the grant of easements to DOT&PF, and utilities;
 - Authorizing the conveyance of a property interest in land to ARRC;
 - Authorizing the acceptance of relinquished rights-of-way from DOT&PF and utilities and property interest in land from ARRC; and
 - Authorization(s) for the use of material;
- Consistency with CSPMP;

- Findings under Alaska Constitution Article VIII, Section 14 and AS 38.05.127, Access to Navigable or Public Water; and
- Closure of a SLE.

4. Administrative Record

The administrative record for the proposed action consists of the applicable session law, statutes and regulations referenced herein, the casefiles are the administrative record and serialized by DNR as:

- ADL 232839 DOT&PF easement;
- ADL 232892 ARRC easement;
- OSL 1632 relinquished rights-of-way; and
- ADL 233527 closure of SLE.

5. Legal Description

The proposed project location and the temporary material locations are located within:

- Sections 2 and 3 of Township 10 North, Range 2 West; and
- Sections 32 and 33 of Township 11 North, Range 2 West; and
- Section 1 of Township 10 North, Range 2 West; and
- Section 6 of Township 10 North, Range 1 West.

6. Agency Review Summary

Agency review of the applications was conducted from December 4, 2019 to December 30, 2019. An updated agency review was re-sent on December 6, 2019 based on input from DOT&PF, in which the legal description was updated. The notice was sent to the following recipients:

- DNR Division of Mining, Land, & Water (DMLW)-Realty Services Section
- DNR DMLW Survey Section
- DNR DMLW Water Section
- DNR DMLW Mining Section
- DNR DMLW Public Access Assertion & Defense Section
- DNR DMLW Resource Assessment & Development Section
- DNR DMLW Land Sales Section
- DNR Division of Parks and Outdoor Recreation (DPOR)
- DNR Division of Agriculture
- DNR Division of Forestry
- DNR Division of Oil & Gas
- DNR Alaska Mental Health Trust Land Office
- Alaska Department of Commerce, Community & Economic Development
- Alaska Department of Fish and Game (ADF&G)
- Alaska Department of Environmental Conservation (DEC) Division of Environmental Health
- DEC Division of Water
- DOT&PF

- U.S. Army Corps of Engineers (USACOE)
- U.S. Coast Guard
- U.S. Fish & Wildlife Service
- U.S. Forest Service, Chugach National Forest
- Bureau of Land Management
- Environmental Protection Agency
- National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS)
- ARRC

A total of 9 comments were received during the agency review and are summarized below:

Agency Review Comment & Response

1. Comment: On December 5, 2019, the U.S. Coast Guard District 17 Bridge Program inquired if there was any bridge construction or modification associated with this project.

Response: As indicated in the initial response to the U.S. Coast Guard, there is no planned bridge construction or modification to an existing bridge for the highway project. The U.S. Coast Guard indicated that they had a permit application for planned bridges on the Seward Highway MP 75-90. The commenter was referred to the DOT&PF’s website which would have more information regarding construction activities. DNR asked for clarification on “modification,” to which the U.S. Coast Guard responded that a permit is sometimes required when a bridge restricts travel by boat on a waterway. If construction limited travel clearance under the bridge or between pilings, it might be a modification that would require a permit.

2. Comment: On December 6, 2019, the NOAA, NMFS requested a phone call.

Response: DNR spoke with NOAA, NMFS, who requested a follow-up from DOT&PF regarding the letter that NMFS issued in 2015, and asked if it was still current to DOT&PF’s proposed construction activities for the project. DNR reminded NMFS of the comment deadline and instructions, and that their NMFS Environmental Site Assessment Section 7 consultation with the Federal Highway Administration and DOT&PF received a Letter of Concurrence from NMFS on October 28, 2015 and that the consultation request by the Federal Highway Administration (FHWA) or DOT&PF agreed to the project descriptions and mitigation measures. DOT&PF was included on this correspondence.

3. Comment: On December 10, 2019, the DEC, Division of Environmental Health, Drinking Water Program, commented that the easement is near an active registered public water system (PWS) source, and requested that the applicant adhere to the “Recommendations for General Construction Projects”, where applicable. A map of the PWS source and a copy of the “Recommendations for General Construction Projects” were attached.

Response: DNR forwarded this comment with attachments to the applicants.

4. Comment: On December 16, 2019, the Alaska Mental Health Trust Land Office submitted a comment specific to the conveyance of portions of legislatively designated park land (Chugach State Park-AS 41.21.120) to the ARRC. The comment notes that the legislature has withdrawn CSP from the public domain and questions whether it is lawful to convey a portion of the park to the Alaska Railroad without amending the enabling legislation to allow for the conveyance.

Response: Conveyance of a property interest in land to the ARRC to allow relocation of the railroad right-of-way is specifically authorized by section 6, chapter 116 SLA 2000. This law also authorizes DNR to receive land or interests in land in exchange and provides that any land or interest in land received by the commissioner in exchange shall be designated as part of CSP.

5. Comment: On December 19, 2019, the Alaska Mental Health Trust Land Office stated their office has no objections to the proposals along the highway project as ADL 232839 and ADL 232892 do not impact Alaska Mental Health Trust lands.

Response: DNR acknowledges this comment.

6. Comment: On December 23, 2019, the DNR, DMLW, Realty Services Section recommended a full title report for the project area.

Response: DNR acknowledges this comment and a formal title report has been requested. The Realty Services Section has created a series of current ownership maps for the entire Turnagain Arm area, including the project site.

7. Comment: On December 30, 2019, ARRC submitted a comment requesting DNR to act on the 2017 application submitted by ARRC under the Alaska Railroad Corporation Act (ARCA) AS 42.40.370(a), which states that “*Within 90 days after receiving a request under AS 42.40.360(b) the commissioner of natural resources shall by written decision*” take action on the request. ARRC states there has been no formal response regarding the adjudication of this request.

ARRC stated that DNR’s action on the 2017 application would temporarily provide ARRC with the minimum necessary right-of-way instrument required to move the railroad right-of-way track through the project area, and that further action under Ch. 116, SLA 2000 involving the transfer of land right to or from ARRC should be struck from these proposed ADLs until they can be more thoughtfully administered in a time-frame that suits DNR and DOT&PF. ARRC also commented that the 2000 session law “has been nonfunctional” because the 2001 Memorandum of Agreement (MOA) between DNR, DOT&PF, and ARRC that described how the three entities would manage the transfer of property rights for Seward Highway alignment projects expired in 2011.

ARRC further commented that it will not agree to an exchange of unequal property interests, that the SLEs in the new railroad alignment must be vacated, and not merely closed, and that any disposition of railroad lands or right-of-way will require an

administrative process that would at a minimum require action by ARRC's Board of Directors. ARRC emphasized their concern of the timeline for this proposed administrative action and again requests that DNR act on the application submitted by ARRC under ARCA.

Response: The legislature enacted Chapter 116 SLA 2000 to provide specific legal authority for the land management and property interest conveyances required for the project, and other highway and railroad rights-of-way realignment projects along Turnagain Arm. The expired MOA does not affect the validity or applicability of the session law. For the new railroad rights-of-way alignment, DNR will convey to ARRC an equivalent property interest to what ARRC conveys to DNR, which will not be less than ARRC received for the existing railroad corridor from the United States under the Alaska Railroad Transfer Act (ARTA), 45 U.S.C. § 1201 et seq. In exchange, ARRC will convey an equivalent property interest to DNR for the original corridor, which will become part of CSP. Due to safety concerns, DNR will close any SLE that cross the new railroad corridor, and any SLEs will remain closed as long as the land is used for railroad purposes and other purposes listed in AS 42.40.

8. Comment: On December 30, 2019, the ADF&G provided comments that they acknowledged largely reiterated ADF&G's March 2013 comments to DOT&PF regarding this project.

ADF&G acknowledged that the highway is a federally recognized National Scenic Byway (NSB), and that the mission of the NSB Program is to "provide resources to the byway community to create unique travel experiences and enhance local quality of life through efforts to preserve, protect, interpret, and promote the intrinsic qualities of designated byways." The scenery and wildlife viewing opportunities are important characteristics of the highway and are what secured its status as an NSB. In addition to providing important habitat for Dall sheep, Windy Corner is also the most popular viewing area for Dall sheep in Southcentral Alaska. ADF&G recommends that the proposed realignment and associated amenities seek to preserve the wildlife viewing opportunities along the highway and limit wildlife movement onto the highway to the extent possible.

Given the public safety concerns along this portion of the highway, ADF&G supports DOT&PF's effort to improve highway safety. ADF&G provided information of the variety of wildlife species within CSP and recommendations for reducing impacts to fish and wildlife and their habitats. These are as follows:

The mountainous terrain of the project area is important year-round habitat for sheep, and repeated exposure to adverse stimuli such as helicopter over-flights, construction noise and associated light, may result in increased stress on wildlife. ADF&G further acknowledged that DOT&PF proposes to extract material through blasting from an area that is occupied by sheep throughout most of the year. Disturbances, notably blasting activities, should be limited to the extent possible during lambing (May 15-June 15) and the rutting period (November 10-December 10) when it is more likely to have negative population-level impacts. The parking lots and wildlife viewing areas should be constructed in such a way

as to promote ethical wildlife viewing and to not encourage wildlife harassment or habitat degradation in the area.

Bear and moose can be found within the project area, and all food and food trash must be contained within bear-resistant canisters or within a secured vehicle to avoid bear conflicts during the construction, operation, and maintenance of this project. The design of parking lot facilities should include permanent bear-resistant trash cans. Moose give birth during the same timeframe as sheep (May 15-June 15) and should be avoided and not disturbed if encountered within the project area.

Lastly, there are no known specified anadromous waterbodies or resident fish populations within the project area, and no Fish Habitat permit will be required for the project as currently proposed. The project area lies within an area that is federally designated as critical habitat for Cook Inlet beluga whales, and that the project should be completed in consultation with the NOAA, NMFS.

Response: DNR followed up with ADF&G to clarify what their agency was responding to in March 2013. ADF&G submitted comments in response to a Scoping Summary Report that was administered by DOT&PF. This report was published in May 2013 and is available on DOT&PF's website at <http://www.windycorner.info/documents/SSR.pdf>

DNR acknowledges the supplemental information provided by ADF&G, such as the highway being listed as an NSB and how wildlife viewing opportunities at Windy Corner, particularly for Dall sheep, is the most popular viewing area for these animals in Southcentral Alaska. Per DOT&PF's application (ADL 232839), improvements such as parking areas and public viewing areas are planned for construction and would offer safer viewpoints along Turnagain Arm than what is currently available.

ADF&G's comment and recommendations for reducing impacts to fish and wildlife and their habitats has been forwarded to DOT&PF for consideration for this project. It should be recognized that DOT&PF has previously solicited agency comments and feedback for the 2013 Scoping Summary Report, in addition to on-going efforts of securing the necessary documentation and authorizations for this project.

As noted by ADF&G, a Fish Habitat permit is not required for the project as it is currently proposed. ADF&G recommended consultation with the NOAA, NMFS, who was sent the agency notice for ADL 232839 and ADL 232892. While NOAA, NMFS did not submit a formal comment, NOAA, NMFS sought separate follow-up with DOT&PF on whether the letter their office issued in 2015 was current with the proposed activities.

9. Comment: On December 5, 2019, the USACOE stated that the Corps ID for the Windy Corner project is POA-2017-00035 and that there is currently no open action, but any impacts proposed to aquatic resources will require a Corps permit.

Response: DNR acknowledges this comment and has forwarded to DOT&PF.

No other comments were received.

7. Findings

Ch. 116, SLA 2000 and CSP purposes found in AS 41.21.121

The Legislature has determined that:

- (1) the highway within the CSP from Potter Station to Girdwood is the sole highway link between the Kenai Peninsula and the rest of this state, an interstate highway on the national highway system, and a national scenic byway;
- (2) the highway within the CSP is affected by avalanches and other potential operational problems;
- (3) relocation or widening of the highway to avoid some of the operational problems will require relocation of some adjacent railroad and utility facilities; and
- (4) relocation of railroad facilities within the CSP will allow some areas of the railroad track to be straightened.

Based on these findings, the Legislature determined that “[i]t is the policy of the state that relocation or widening of the Seward Highway or relocation of railroad facilities within the Chugach State Park is appropriate and may be accomplished without significantly adversely affecting the purposes for which Chugach State Park was established.”¹

Below are the primary purposes of CSP, as described in AS 41.21.121, and how these purposes are affected by the proposed project.

1. Protect and supply a satisfactory water supply.
 - The project area does not serve as a public water supply, and no public water supply will be affected by this project.
2. Provide recreational opportunities for the people by providing areas for specified uses and constructing necessary facilities in those areas.
 - The project area is currently used for hiking, sightseeing, wildlife viewing, photography, rock and ice climbing, cycling, and water access to Turnagain Arm. While safety concerns require removal of the existing southbound pullout and its associated access, the project will provide a new and much larger recreational facility on the mountain side of the highway with safer access and new amenities. Proposed amenities include paved parking spaces, handicap accessible spaces, an overflow

¹ Sec. 5, ch. 116 SLA 2000

gravel parking lot, pedestrian paths, improved trailhead access, viewing platforms, benches, signage, restrooms, spotting scopes, and interpretive panels. These facilities increase access to and opportunity for CSP visitors to participate in the primary recreational activities in the area. Many visitors experience CSP from the highway, and the project would improve user safety by providing facilities separated from the highway. In addition, the project will enhance the CSP visitor experience by providing a more relaxed setting for viewing wildlife, the scenery of Turnagain Arm, and participating in recreational activities compared to the current setting adjacent to congested traffic. CSP visitors are anticipated to spend longer periods of time enjoying these activities in the new setting. The need for improved safety for traveling in both directions will be accommodated by the new mountain side recreational and parking facilities.

- This project will eliminate rock-climbing routes, however, these sites see little use because of their poor quality, according to the *Alaska Rock Climbing Guide*, 2nd Edition. The project will improve climbing area conditions by providing improved access, with greater separation from the highway, to the remaining higher quality rock-climbing routes.

3. Protect areas of unique and exceptional scenic value.

- The new CSP facilities on the mountain side of the highway and separation from the roadway are expected to transform the location from an unimproved pullout with limited parking capacity to a scenic destination for CSP visitors. The proposed new parking areas, interpretive panels, spotting scopes, viewing platforms, pathways, and benches will provide a focal area for visitors to experience the unique and exceptional scenic values of CSP and Turnagain Arm, reducing visitor impacts—such as soil compaction and litter—on undeveloped natural areas. The project will enhance CSP visitor appreciation of the scenic views of CSP in the Windy Corner area by providing a safe and relaxing place for motorists to observe the scenic views (landscape, bore tide, Dall sheep and other wildlife).
- The proposed material location at MP 109, will be designed to include a vegetated topographic screen, consisting of a buffer of intact earth between the proposed material extraction and much of the adjacent highway. This screen would be approximately 100 feet wide, and would limit visual impacts for northbound traffic except at the access point for the material location. It would also minimize the visual impacts for southbound traffic except for approximately 0.5 miles (approximately 30 seconds) prior to the material location. The proposed material location at MP 104 would only be utilized if material located at MP 109 did not provide sufficient quality and quantity for material for this project.

4. Provide areas for the public display of local wildlife.

- The proposed park facilities will enhance the visitor viewing experience of local wildlife, specifically Dall sheep, by providing convenient vantage points with spotting scopes, viewing platforms, and interpretive panels. The proposed project provides a larger viewing area that is separated from traffic and designed to discourage users from crossing the highway and railroad tracks in search of better viewing points of Turnagain Arm. A dedicated southbound turn lane will provide access to the new mountain side park facilities reducing the likelihood of visitors stopping on the existing southbound highway shoulder to view wildlife. However, the proposed project will change the vantage point from which the public can view beluga whales at Windy Corner. There are other nearby highway pull-offs such as Beluga Point—located at milepost 110.5 of the Seward Highway—and other nearby southbound-side pullouts that provide developed facilities on the ocean side of the highway for viewing belugas.
- The project will provide a high quality and safe public wildlife viewing experience in a unique location that consistently attracts Dall sheep. This rugged area is suitable to raising and sheltering lambs from predators and provides a high value mineral lick. According to the CSPMP, Windy Corner provides one of the best Dall sheep viewing opportunities in Alaska. In addition, the ADF&G claims this “is the only place in the world where Dall sheep can be seen at sea level from a nearby road.”²

5. Protect the existing wilderness characteristics of the easterly interior area.

- The easterly interior area of CSP will not be impacted by this project and shall continue to be operated as a wilderness area and the central area continue to be operated as a scenic area.

6. The eastern area of the CSP shall be operated as a wilderness area, the central area as a scenic area, and the periphery areas as recreational areas.

- The eastern area of the CSP shall continue to be operated as a wilderness area as this project will not impact the eastern area of the CSP.
- The central area of the CSP shall continue as a scenic area as the project will not impact the central area of the CSP.
- The proposed project will protect and enhance the recreational purpose of the CSP periphery by protecting and creating recreation facilities and providing for increased

² <https://www.adfg.alaska.gov/index.cfm?adfg=viewinglocations.windycorner>

and safer access as described above. The proposed new CSP facilities are anticipated to improve recreational opportunities and protect CSP values by transforming the location from an unimproved pullout with limited parking capacity to a scenic destination for CSP users.

Based on the analysis above, DNR finds that the proposed project will not significantly adversely affect the purposes for which CSP was created. While the proposed project would eliminate three low-value climbing routes and change beluga-watching locations along the two-mile project corridor, other measures would substantially enhance the CSP visitor experience, improve safety, and concentrate visitor impacts within a developed facility, resulting in an overall net benefit to the purposes of the CSP.

Chugach State Park Management Plan

The CSPMP management objectives for the Windy Corner Sheep Viewing Area, are to “[u]pgrade existing pullout to create a safe sheep viewing area. Expand parking to a large lot with a buffer between the highway and the parking area. Include interpretive displays and spotting scopes. Coordinate development with highway upgrades. Consult with ADF&G and the Board of Game to establish management practices that may lead to enhanced wildlife viewing.” The stated justification is “[t]his area of the highway poses safety concerns as visitors try to view the sheep that congregate in the area. Parking is limited and there is significant traffic congestion when animals are present” (CSMP p. 116).

Use of Material

The CSPMP recognizes the use of material within the park for highway construction, repair, and maintenance: “as safety upgrades are made to the Seward Highway material is needed and usually found locally by creating a quarry using park resources” (page 115). The CSPMP outlines several sites that may be suitable as a material location for highway safety-related upgrades and makes recommendations for new facilities and facility upgrades that are consistent with this project, including the site selected by DOT&PF for this project:

- MP 109 - Rainbow Point Group Recreation Site: Create a group use site in the quarry area that is established for highway upgrades. Include latrines, pavilions, and parking. As safety upgrades are made to the Seward Highway material is needed and usually found locally by creating a quarry using park resources. A group use site can be sited in this quarry site. The size and shape of this site would be dependent on the reclamation area (page 115).

The plan recognizes that the extraction and use of gravel, rock, sand, and minerals from within the park is a compatible use within the Recreation Development zone, if the material is used within CSP for projects that benefit park purposes and enhance public safety. Construction of a group use site is not within the scope of this project, due to funding limitations and the absence of nearby support facilities (i.e., parking, toilets, water), therefore the proposed site will be closed in a manner that protects public safety and deters unauthorized access.

If there is not enough material in the MP 109 location, DNR may also authorize the use of material from a temporary material location (only to provide materials for this specific project) near MP 104. Use of the MP 109 and the MP 104 (if needed) locations would be subject to the following conditions:

- DOT&PF will sign a material use agreement that incorporates the following conditions and reclamation plans, which require approval from DNR, prior to material extraction:
 - All material removed from a temporary material source must remain in state ownership.
 - All material removed from the MP 109 (and MP 104, if applicable) source must be used solely for this project at Windy Corner.
 - DOT&PF will require any DOT&PF contractors to post performance bonds for construction of a state highway project, and those performance bonds shall include reclamation conditions that will require prior approval from DNR.
 - Material may not be extracted from outside the boundaries of the locations approved by DNR.
 - Any temporary material location(s) must be reclaimed upon completion of this project, consistent with AS 27.19 and reclamation plans which must be approved by DNR. Any modification of the reclamation plan(s) requires the written approval of DNR.
 - Reclamation plans would include measures to deter public access to the material location(s).
 - DOT&PF will require any contractors or subcontractors extracting the material to agree to these conditions.

Access to Navigable Water: Alaska Constitution Article VIII, section 14, and AS 38.05.127

Article VIII, section 14 of the Alaska Constitution authorizes the legislature to regulate and limit access to the navigable or public waters of the state for other beneficial uses or public purposes. Alaska Statute 38.05.127(a)(2) authorizes DNR to restrict free access to navigable or public water when the commissioner finds that limiting access is necessary for other beneficial uses or public purposes. Turnagain Arm is a navigable water body, and access to it already is limited within the project area by the highway and railroad corridors. The railroad and the high volume of traffic on the existing highway alignment limit the opportunities for pedestrians to safely access the tidelands or engage in watersports. As recognized in section 5 of the session law, the highway is the sole highway link between the Kenai Peninsula and the rest of the state and an interstate highway on the national highway system. Similarly, the Alaska Railroad corridor in the project area provides a vital transportation, tourist, and commercial freight link between Anchorage and the communities and ports on the Kenai Peninsula. The highway rights-of-way and the railroad rights-of-way corridors constitute a beneficial use of the tidelands and waters of Turnagain Arm and serve a vital public purpose. DNR finds that continued access limitations are necessary in this area to ensure the safe operation of the Seward Highway and the railroad.

Section Line Easement:

DNR finds that an indefinite closure of the SLE that runs across the project area, more specifically described as Sections 2 and 3 of Township 10 North, Range 2 West, Seward Meridian, is in the State's best interest because closure is necessary to protect public safety while also protecting railroad property. As described above, the Alaska Railroad corridor along Turnagain Arm provides essential transportation and freight services between Anchorage and ports on the Kenai Peninsula. Closure of the SLE will protect ARRC's property and operational interests in the rail corridor through the project area. Additionally, the SLE closure is entirely within CSP, which has been set aside for public enjoyment of its natural resources and recreation opportunities. Public access is generally unrestricted on lands surrounding the project area. Therefore, the underlying land ownership, land management policies, current use patterns, and practicality of use all indicate that closure of the SLE is appropriate. Therefore, the SLE will be closed for an indefinite period of time concurrent with the use of the property for the operation of the railroad.

Survey

A DNR-approved pre-construction survey and an as-built surveys are required to establish the final location and acreage of installed improvements and the associated easements or rights-of-way for this project. Pre-construction mean high water details must be included in the surveys. Easements or rights-of-way will not be issued until the survey has been approved by DNR.

8. Related Actions

Land and Water Conservation Fund (LWCF) Act, Section 6(f)

Section 6(f) refers to a section in the 1965 LWCF Act, codified as Public Law 88-578, 78 Stat. 897.³ The state portion of the LWCF program provides matching grants to states and local governments for the acquisition and development of public outdoor recreation areas and facilities. The conversion of outdoor public recreation areas to a non-recreation use triggers a requirement to replace the converted land with land of equal or greater value. The goals of this program include creating and maintaining high quality recreation areas and facilities with the hope of stimulating non-federal investment in recreation sites across the country.

Section 6(f)(3) of the LWCF Act prohibits the conversion of property acquired or developed with grants from this fund to a non-recreational purpose without the approval of the National Park Service (NPS). Importantly, Section 6(f) applies to all transportation projects that involve possible recreation site conversions (including protected parks, such as CSP), regardless of whether federal funding is being utilized for the project. Because this project will convert existing encumbered recreational land to a non-recreational use, replacement land of equal or greater value has been identified for acquisition. The Environmental Assessment and the Finding of No Significant Impact indicating this Section 6(f) requirement has been met and was approved by the NPS on May 30, 2019 for the partial conversion of CSP, protected under the LWCF. (Attachment B)

³ 54 U.S.C.A. § 100101 note.

National Historic Preservation Act (NHPA), Section 106

Section 106 of the NHPA⁴ requires the project lead federal agency to consider the effects of their undertakings on historic properties. At the time of consultation for the Seward Highway MP 105-107, Windy Corner Safety Improvements Project, No. NH-0A3-1(34)/56631, DOT&PF had assumed certain NEPA responsibilities of the FHWA under 23 U.S.C. § 326 and consulted the Alaska State Historic Preservation Office (SHPO) pursuant to Section 106 of the NHPA, 36 CFR 800, and the 2014 Programmatic Agreement for the Federal-Aid Highway Program in Alaska.

In 2013 the DOT&PF, in consultation with the SHPO, deemed Reger's 2001 survey⁵ sufficient for identification of historic properties for the proposed area of potential effects (APE). Further identification of historic properties was carried out in 2015 for the Turnagain Arm District of the Alaska Railroad (ANC-04057) by Cultural Resource Consultants⁶. The DOT&PF found ANC-04057 eligible for the National Register of Historic Places (letter to SHPO dated January 15, 2015) along with a finding of no historic properties adversely affected for the project. The APE attached to DOT&PF's letter included the highway, ARRC tracks, and cut and fill limits (pullout and parking area at Gorilla Rock) from approximately MP 105-107 as well as material site 1 (at MP 109). The SHPO concurred (letter to DOT&PF dated February 6, 2015) that ANC-04057 is eligible and with DOT&PF's finding of no historic properties adversely affected. In December of 2015, the APE for the project was expanded to include material site 6 (near MP 104) and a supplemental survey was completed by DOWL⁷ for the expansion. DOT&PF further identified the Historic Camp (SEW-1579) site and found it not eligible for the National Register with a finding of no historic properties adversely affected for the project (letter to SHPO dated December 16, 2015). The SHPO concurred that SEW-1579 is not eligible and with DOT&PF's finding of no historic properties adversely affected for the project (letter to DOT&PF dated January 4, 2016). At this time, DNR understands that DOT&PF has fulfilled their obligations under the implementing regulations of Section 106 of the NHPA and provided documentation in support of their findings to the SHPO, as required at 36 CFR 800.11(e).

⁴ 54 U.S.C.A. § 306108.

⁵ Reger, Douglas R. 2001 Archaeological and History Site Survey Along the Seward Highway, Mile 105 to Mile 115, for the Alaska Department of Transportation and Public Facilities, Seward Highway Bird Point to Potter Marsh Passing Lanes and Pathway Project (FHWA No. NH-0A3-1(25). Cultural Resource Consultants, LLC and URS. Reger Archaeological Consulting, Anchorage, AK.

⁶ Yarborough, Michael R., Aubrey L. Morrison, Catherine L. Pendleton, and Lawrence J. Mishkar 2014 Determination of Eligibility for the Turnagain Arm District of the Alaska Railroad (ANC-04057). DOWL HKM and the Alaska Department of Transportation and Public Facilities. Cultural Resource Consultants LLC, Anchorage, AK.

⁷ Zuccotti, Lucy F., and Caitlin L. Kennedy 2015 Cultural Resources Investigation for the Seward Highway MP 105-107, Windy Corner Safety Improvements, Material Site 6 (DOT&PF Project No. 56631). State of Alaska Department of Transportation and Public Facilities. DOWL, Anchorage, AK.

9. Authorizations & Acceptances

DOT&PF Easement

DNR will grant a highway easement to DOT&PF consistent with the Session Law and DOT&PF's certification requirements to FHWA. The location of this easement will be within Sections 2 and 3 of Township 10 North, Range 2 West, Seward Meridian. The highway easement will be 150 feet on each side of the centerline of the relocated highway.

ARRC Right-of-Way

For the new railroad alignment, DNR will convey to ARRC an equivalent property interest to what ARRC received for the existing railroad corridor from the United States under the Alaska Railroad Transfer Act (ARTA), 45 U.S.C. §§ 1201 et seq. The location of this property interest will be within Sections 2 and 3 of Township 10 North, Range 2 West, Seward Meridian. This corridor will be 150 feet on each side of the centerline of the relocated railroad. In exchange, ARRC will convey an equivalent property interest to DNR for the original corridor, which will become part of CSP.

Utility Easement(s)

For utilities that need to be relocated or installed and cannot be collocated within the DOT&PF and ARRC rights-of-way, DNR may grant utility easements necessary to complete this project because they will not adversely affect the purpose for which CSP was created.

Relinquished Rights-of-Way

DNR will accept relinquished rights-of-way and property interests in land from DOT&PF, ARRC, and utilities. Prior to final acceptance of the relinquishments, DNR will require that the relinquished rights-of-way be in or returned to a condition that facilitates DPOR management consistent with the statutory purposes of the park and the CSPMP.

Use of Material

DNR will authorize DOT&PF's use of state-owned materials from a temporary, project-specific material location near Seward Highway MP 109. If needed, DNR also may authorize the use of material from a temporary, project-specific material location near MP 104 subject to the conditions outlined above.

10. Public Notice, Comments, and Process

The public is invited to review and comment on this Finding, which will be advertised for a **30-day** public comment period. Notice will be posted on the Alaska Online Public Notice System at <http://aws.state.ak.us/OnlinePublicNotices/Default.aspx> and at the post offices located in Girdwood, Hope, Anchorage (Huffman), and Whittier. Courtesy notices will also be mailed or emailed to the Municipality of Anchorage, neighboring property owners, third parties, and other interested parties on February 26, 2020 for a **60-day** public comment period.

Public Notice of this Proposed Finding and the public comment period began on February 26, 2020. **Public comments will be accepted through 4:00 PM on April 27, 2020.** Public comments must be in writing and may be submitted to:

Chugach State Park
Superintendent Kurt Hensel
18620 Seward Highway
Anchorage, AK 99516
DNR.Windycorner@alaska.gov

The State of Alaska, Department of Natural Resources, complies with Title II of the American with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services and/or special modifications to comment may call Relay Alaska at 711 or 1-800-770-8973 for assistance at no cost.

The public comment period has been extended for an additional 30 days. Comments will be accepted through April 27, 2020.

At the conclusion of the public comment period, DNR will review all comments received and determine how best to proceed. If DNR chooses to proceed with the Finding, with or without modifications, a copy of the Final Finding will be provided to all commenters. Upon issuance of the Final Finding, anyone who submits a public comment on this Finding may request reconsideration.

Approval

In consideration of the authorities and criteria listed above, I hereby determine that the authorizations to be granted by this decision are consistent with DNR's mission, that this project is consistent with legislative direction and administrative management intent for this land and that issuance of the authorizations described above is in the interest of the State of Alaska. The Department assumes no responsibility for maintenance or liability for injury or damages attributable to this authorization.

As Commissioner of DNR, I find that there is no significant adverse effect of this project to Chugach State Park and therefore, I approve this Finding.

Corri A. Feige, Commissioner
Alaska Department of Natural Resources

Date

A person affected by this decision may request reconsideration, in accordance with 11 AAC 02. Any reconsideration request 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 the 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.

Under 11 AAC 02.030, requests for reconsideration filed under 11 AAC 02 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) and (b).

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on their own motion, this decision goes into effect as a final order and decision on the 31st calendar day after the date of issuance. Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of 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.

Attachments

- Attachment A: The Session Law (Chapter 116, Session Laws of Alaska 2000)
- Attachment B: Land and Water Conservation Fund Finding of No Significant Impact

Art Davidson

2200 Seward Highway Anchorage 99503

Artd@gci.net 907-952-3355

April 25, 2020

Chugach State Park
Re: Windy Corner Comments
18620 Seward Highway
Anchorage, Alaska 99516

Office of the Commissioner
Alaska Department of Natural Resources
Suite 1400, 550 W 7th Avenue
Anchorage, Alaska 99501-3561

Email: DNR.windycorner@alaska.gov

Re: Comments on Proposed Commissioners Finding on Windy Corner Highway Improvements.

Dear Commissioner Feige:

Fifty years ago, I met with then Director of the Division of Lands Joe Keenan and asked him to cancel a clear-cut timber sale that would have left Indian Valley a valley of stumps for his lifetime and mine. I told him that if there was ever a state park behind Anchorage, this valley would be a beautiful part of it and a way for people to go into the backcountry. There was no state park system at the time. But he listened.

It was not easy for Director Keenan to cancel the timber sale. It had already been advertised. It would bring money to the state. But he listened. He canceled the sale because he appreciated that some things are more valuable than money – and that Turnagain Arm and the Chugach Range are not only very beautiful, but mean a lot to Alaskans.

The next day, I bought the USGS maps that cover state lands in the Chugach Mountains behind Anchorage. I taped them together and asked a few friends to meet me at the office of Warren Matthews, who later became a State Supreme Court Justice. Together, we kneeled on the floor and with a felt-tipped pen we outlined what would become the boundaries of Chugach State Park.

This is when something magical happened. When I took plans for Alaska's first state park to Lowell Thomas Jr., who was in the state senate, and others spoke to their friends in the legislature – everyone wanted to do it. Everyone, Republican and Democrat, outdoors people and sit-at-home people, those who lived along the rail-belt, or in Southeast, or up north, or right in Anchorage – they all wanted to create this state park. The common vision, spirit, and purpose was to protect the wildlife and this incredible landscape for generations to come – for all time.

For fifty years, Alaskans and visitors alike have enjoyed and treasured this park. Now come some engineers and planners who propose carving rock quarries from the cliffs of Turnagain Arm. These are not crass people, who stay awake at night thinking of ways to exploit a park. I count some of

them as friends. Perhaps you do as well. The problem is that their plans, designed for efficiency and expediency, collide with a larger and much more important public interest.

Creating rock quarries at mile 104 and 109 would be absolutely incompatible with the values, vision, and purpose of Chugach State Park. This would strike at the very purpose the park was created.

If Director Keenan had allowed that timber sale to go through, the spruce and hemlock trees of Indian Valley would have probably grown back in 70 or 80 years. If you allow these rock quarries to be cut into the cliffs of Turnagain Arm, these scars on the landscape will be there forever. Forever.

Some say the heart of Chugach State Park is in the back country, up on the glaciers and mountain ridges. I've been on many of those glaciers and mountains. They are exquisite. But, except for a handful of peaks facing Anchorage, Chugach Park is pretty well hidden back there. Except for one place. Except for the drive along Turnagain Arm, one of the most beautiful drives in the world. In fact, it is a designated National Scenic Byway.

For me, the heart of Chugach State Park is the drive along Turnagain Arm. This is where I drive home to the little community of Rainbow Valley that my wife and I started in 1972. This is the drive Alaskans take to go skiing at Alyeska, or boating out of Whittier, or heading out to enjoy the Kenai with their family and friends. Thousands of Alaskans drive along Turnagain Arm every day.

For many people who have saved for a once-in-a-lifetime trip to Alaska, their first glimpse of Alaska is Turnagain Arm. These people bring a lot of money into Alaska. You have probably seen them in their rental cars or RVs looking up at the cliffs at sheep, or watching the tide roll in and out. Does anyone think they came to see rock quarries in the midst of all this beauty?

Commissioner, you may feel it is difficult for you to deny these quarries, as it was for Director Keenan to stop that timber sale. The state needed money back then, as it does now. Taking rock from the cliffs would be cheaper than other options. Yes, the price of oil is low. The state budget is tight. I get it. But there are alternatives. And the federal government will cover some 90% of the cost, under the Federal Aid to Highways Act.

I urge you to see the wisdom in making the right decision for the right reasons, as Joe Keenan once did. As all the legislators who voted to create Chugach State Park did. As Governor Miller did when he signed the legislation creating Chugach State Park.

Many years after he was governor, Keith Miller was up at my house in Rainbow. He said, "You know Art, the thing that I am most proud of from my years in public service is my role in creating Chugach State Park. How often do we have a place this beautiful that we can protect for all time?"

You, too, will be able to take great pride in protecting this park, this amazing, one-of-a-kind place that so many people love.

Respectfully yours.

A handwritten signature in blue ink, appearing to read "Art Davidson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Art Davidson

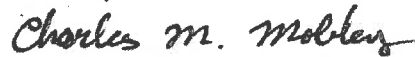
200 W 34th Avenue #534
Anchorage, Alaska 99503
April 27, 2020

Commissioner Corri Feige
Alaska Department of Natural Resources
dnr.windycorner@alaska.gov

Dear Commissioner Feige:

Thank you for your April 7, 2020, acknowledgment of my March 27, 2020, comments regarding the Windy Corner project and the Mile 109 quarry. I am submitting this amendment to those comments to correct the stated distance from the quarry to my home, which erroneously estimated the distance to be 1350' when in fact it is approximately 2350'.

Sincerely,



Charles M. Mobley

Cc: Jeremiah Drage, President, Rainbow Valley Homeowners Association Inc.
Dorothy Childers, Vice-President, Rainbow Valley Homeowners Association Inc.
Senator.Cathy.Giessel@akleg.gov
Representative.Jennifer.Johnston@akleg.gov

200 W 34th Avenue #534
Anchorage, Alaska 99503
March 27, 2020

Commissioner Corri Feige
Alaska Department of Natural Resources
dnr.windycorner@alaska.gov

Dear Commissioner Feige:

I am writing in opposition to use of the Mile 109 locality as a material source for the Windy Corner Project.

I and my family have lived for more than 30 years in Rainbow Valley, in a home that is approximately 1350' from DNR and DOT&PF's proposed Mile 109 material source intended to develop a visitor complex at Windy Corner. We disagree with your proposed Finding to allow use of the Mile 109 site for material extraction.

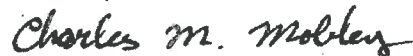
Given Alaska's budgetary restrictions, particularly in light of the recent drop in oil prices but even before that, developing Windy Corner so that tour buses and other visitor traffic can park during the six-eight weeks that Dall sheep families graze nearby (in some years – not all) is a waste of our limited state funds. We support the Seward Highway safety corridor concept, but it appears that DOT&PF without exception justifies all projects in the name of safety, and we believe additional safety can be achieved on the Seward Highway in other ways besides new development. The public has yet to be informed as to the actual cost of this project in total, since secondary costs have not been published. But a set of traffic warning lights or even a seasonal traffic officer at Windy Corner would be cheaper than the tens of millions of dollars of project costs we do know about.

Included in secondary costs should be the additional cost of law enforcement and visitor management incurred by the new development. Our community has experienced an increase in trespass, vandalism, and theft in the last few years while public use of the Turnagain Arm Trail and other Seward Highway use has increased. I'm aware that my community – Rainbow Valley Homeowners Association Inc. – has attempted to obtain briefings from DOT&PF and its contractor regarding the status of the Windy Corner project and has been unsuccessful. The DNR draft Finding similarly fails to address the impacts the Mile 109 quarry may have on our community. What are the consequences of up to two years of blasting on a home – my home -- 1350' away?

Finally, the Mile 109 quarry with its massive rock-drill marks (much larger and taller than the Bird Creek parking lot scar) will disfigure the road corridor in a federally designated Scenic Byway, and is not consistent with the purpose and philosophy of Chugach State Park management.

To conclude, we request that the Mile 109 quarry site not be used to provide material for a Windy Corner visitor facility.

Sincerely,



Charles M. Mobley

Cc: Jeremiah Drage, President, Rainbow Valley Homeowners Association Inc.
Dorothy Childers, Vice-President, Rainbow Valley Homeowners Association Inc.
Senator.Cathy.Giessel@akleg.gov
Representative.Jennifer.Johnston@akleg.gov

Chugach State Park Citizens Advisory Board

March 26, 2020

Brian Elliott, Environmental Manager
DOT&PF Preliminary Design & Environmental
PO Box 196900
Anchorage, AK 99519-6900

Kurt Hensel, Park Superintendent
Chugach State Park
ATTN: Windy Corner Comments
18620 Seward Highway
Anchorage, AK 99516

RE: Seward Highway MP 105-107 EA Comments and Proposed Commissioner's Finding Comments

Mr. Elliot and Mr. Hensel:

The Chugach State Park Citizens Advisory Board has reviewed the Seward Highway MP 105-107 Windy Corner Environmental Assessment, and the associated Proposed Commissioner's Finding.

As stated in our May 2019, we continue to support the project to improve public safety along the highway corridor. We do not support the use of the Chugach State Park at MP 109 for a materials site. We again encourage DOT&PF to use another materials site which does not significantly alter the visual landscape of the CSP. In the Finding, we were disturbed to note the lack of appropriate reclamation information for the materials site.

We also again recommend the inclusion of a multiuse trail as part of the proposed project, as supported by the Chugach State Park Management Plan.

We have included our detailed comments for you below.

If you have any questions or comments, please contact me via email at ryan.yelle05@gmail.com.

Sincerely,



Ryan Yelle, Chair
Chugach State Park Citizens Advisory Board

Public Safety Regarding Pedestrians and Cyclists

As described in AS 41.21.121 and noted in the Proposed Commissioner's Finding on the Windy Corner Highway project, the Chugach State Park's primary purpose is to provide recreational opportunities for people by providing areas for specified uses and constructing necessary facilities in those areas. The Finding specifically notes use for cyclists as an objective of the CSP.

On March 15, 2019, this Board recommended that the Commissioner require an adjacent paved multiuse trail to accommodate the increasing bike traffic as part of the conditional approval of this project. The Board finds a lack of pragmatism in relinquishing the opportunity to construct a multiuse trail when the primary objective of this proposed project is to increase safety and public use within the proposed corridor.

It is specifically noted in the CSPMP, on page 111 under the Special Management Considerations section, subsection "Seward Highway Reconstruction & Scenic Corridor Enhancements" that "...the corridor should be accessible and safely useable by bicyclists and pedestrians". This section is completely ignored by the Finding, despite the explicit direction of the CSPMP that projects of this type must ensure that any reconstruction and enhancement projects (both of which this project is) must ensure the safety and usability of the highway corridor by bicyclists.

Materials Use and Site

The use of the MP 109 materials site is not consistent with State Law, the CSPMP, nor the purposes of the CSP. The Finding misconstrues the wording of the CSPMP to meet DOT&PF's intended use of material from within CSP.

The Commissioner's finding states "Section 6(b) of the Ch. 116 SLA 2000 also supports the use of material for this project, sourced from within the CSP to construct this relocation and widening of the highway".

Below is the cited law:

6(b) A grant or conveyance made under (a) of this section may not exceed the interest needed to relocate or widen the Seward Highway or relocate railroad facilities within the Chugach State Park and to construct, repair, and maintain the relocated or widened highway and the relocated railroad or utility.

Section 6(b) of the Ch. 116 SLA 2000 makes no mention of materials from CSP being used for construction of the highway. Quarrying rock from a materials site within the park is not necessary to "construct, repair, and maintain the highway". In fact, the law states conveyances may not exceed the interest needed to relocate or widen the Seward Highway. This does not include obtaining construction materials. It seems quarrying materials from the park is in direct violation of sections 5 and 6 of chapter 116, Session Laws of Alaska 2000, which the Finding cites.

The Finding further attempts to justify the use of the proposed materials site by stating:

The CSPMP recognizes the use of material within the park for highway construction, repair, and maintenance: "as safety upgrades are made to the Seward Highway material is needed and usually found locally by creating a quarry using park resources" (page 115). The CSPMP outlines several sites that may be suitable as a material location for highway safety-related upgrades and makes recommendations for new facilities and facility upgrades that are consistent with this project, including the site selected by DOT&PF for this project.

This citation is extremely misleading, as the verbiage here from the CSPMP specifically recommends new recreational facilities within the park, shown below (pg. 115):

Facility Recommendations

Below you will find a listing of the new facilities or new upgrades to existing facilities.

<i>Proposal</i>	<i>Scope/Management Objective</i>	<i>Justification</i>
<i>Rainbow Point Group Recreation Site</i>	<i>Create a group use site in the quarry area that is established for highway upgrades. Include latrines, pavilions and parking.</i>	<i>As safety upgrades are made to the Seward Highway material is needed and usually found locally by creating a quarry using park resources. A group use site can be sited in this quarry site. The size and shape of this site would be dependent on the reclamation area.</i>

The Board finds that creating a picnic area in an old quarry is vastly different than extending the old quarry for the proposed materials site, not constructing any recreational facilities at the site, and closing the site to public access after reclamation, which is what the project proposal currently entails.

To ensure that our comments are clear, the Board recognizes that creating a recreational facility at Windy Corner is a separate issue from obtaining materials from Rainbow Point. The CSPMP directly addresses Seward Highway improvements under the subsection, "Seward Highway Reconstruction & Scenic Corridor Enhancements".

The Board finds the EA to be illogical and untrue regarding the sub-alternatives of Alternative 2. If 2B is consistent with the CSPMP, then all of the sub-alternatives of Alternative 2 are consistent with CSPMP and must be examined as such.

The use of materials from MP 109 will not "complement and enhance visual experiences along this route", as stated in the FONSI and EA as both documents which disclose the environmental impacts to the public and the decision-maker, note that the proposed project will have negative visual impacts to the CSP. Therefore, Finding is not consistent with the CSPMP.

The proposed MP 109 material site is located within the CSP Recreation Zone. The CSPMP directly states the uses of the Zone are "... developed parking facilities and trailheads, vehicle and tent camping, developed picnic and group areas, toilet facilities, visitor and interpretive centers, high-standard trails for all ages and abilities, and park management facilities." None of this wording includes using the Recreational Zone for a materials site.

The plan does mention material removal on page 56 under the subsection, "Commercial Use/Other Activity compatible in the Recreational Zone", saying it includes "Resource Extraction for State Parks. Removal of timber, gravel, rock, sand, plants, or other park resources for use by State Parks in the park." Furthermore, under Resource Extraction it says, "Incompatible but may be authorized under 11 AAC 18.010 for public projects that benefit the park, enhance public safety and are in keeping with park purposes. Every effort should be made to ensure that materials removed from the park are used for projects within the park." This quite obviously means, materials from the park should be used for construction or improvement of park facilities or trails, not highway improvement projects.

Diving further into the documentation for this project, the Section 6 (f)(3) requirement of the LWCF should not have been passed by the NPS. To make an adequate FONSI, the determination should include an assessment of the Alternatives within the EA, which it does not. The Council on Environmental Quality recommends that all reasonable alternatives be considered, even if some of them could be outside the capability of the applicant or the jurisdiction of the agency preparing analysis. The only Alternatives considered by NPS were whether to accept the land transfer, ignoring the fact that other areas under NPS control could be appropriate materials sites that are not in direct public view, or already allocated for use as materials sites and the unequal amount of acreage transferred. The Board finds the statement "the effects on the human environment are known, and there were no controversial

impacts or aspects of the proposed project that surfaced during the environmental analysis process” remarkably untrue as presented in our past letters and public statement.

The Board notes that NPS did not make the FONSI publicly available for 30 days as it should have per CEQ guidance. The FONSI was dated February 2019, but as evidenced, was not released to the public until February 2020 as part of the Finding. The Board exhaustively searched Regulations.gov, the National Park Service using many different search words and a wide date range, but was unable to find any notice or submission to the public. The FONSI in this case should have been made available for public review per 40 CFR 1501.4(e)(2) as the Board would argue that the development of an EIS is rational regarding the legality under State Law, location, and use of the materials site and that the materials site involves a high degree of public controversy. If none of the Agencies have noted yet, the Board finds that the materials site use and subsequent closure without appropriate reclamation will cause a notable amount of public consternation.

As mentioned, the lack of proposed reclamation for the site, as stated in the Finding, “...the proposed site will be closed in a manner that protects public safety and deters unauthorized access” is also unacceptable as the CSP is explicitly for public use and the lack of accessibility for public use further degrades the CSP. The NPS FONSI notes that “for the two years that they are in use, the borrow pits have the potential to negatively impact site aesthetics” but that these impacts are considered “temporary” even though it exceeds NSP’s own impact criteria of 180 days by 1.5 years, and “minor” since the impacts would only be to recreational users who see it while hiking, which is the primary user group and activity of the CSP. By the FONSI’s own description, it is incorrect to state that these impacts would be temporary or minor, especially when considering the lack of reasonable reclamation information or planning included in any of the project documents that the Board has been able to review. The Board would argue that these impacts are not temporary, but long-term and moderate, by NPS’s own assessment standards.

We recommend that the Commissioner’s Finding include specific reclamation requirements from the Alaska Department of Environmental Conservation 2012 best management practices for gravel/rock aggregate extraction guidance. We encourage appropriate reclamation measures such as: a grading plan that establishes stable slopes and adequate drainage; self-sustaining vegetative cover; and, monitoring of performance during and after reclamation to ensure objectives are being achieved. Any of the BMPs for site reclamation, including reclamation blasting, slope formation, grading, which allow the area to be reasonably restored over time to useable habitat or pond creation, which allows for new habitat, is preferred by the Board to reclamation to minimal safety standards and disallowing public use of the area.

In conclusion, the proposed project may be constructed, repaired, and maintained without quarrying rock from MP 109. The Finding and the Environmental Assessment, and their supporting documents, illustrate that other options to obtain materials are technically feasible. We continue to recommend another site be used for the materials site as described in our comments. At minimum, we recommend a detailed and thorough reclamation plan that includes remediating the site back to a similar character of the surrounding landscape and including a multiuse path within the project corridor be included in the Finding as mitigation measures.

From: [Evans, David G](#)
To: [DNR.Windycorner \(DNR sponsored\)](#)
Subject: Seward Highway MP 105-107 EA Comment
Date: Friday, March 27, 2020 2:04:34 PM

To whom it may concern

I am writing to you regarding the Windy Corner Project at mile-post 105-107 and the associated Environmental Assessment. I would like to express my **strong opposition** to the use of materials from Chugach State Park (CSP) in the project.

Our state parks are not meant to be used as quarries for road fixes. The project managers need to find another way of making it work. CSP belongs to the people, and I'm rather angry that the project managers and engineers ever considered using our park for their purposes.

Thanks for your time.

David G. Evans

907 538 7037

15140 Mesa Pl
Anchorage, AK 99516
April 21, '20

Kurt Hensel, Superintendent
Chugach State Park
ATTN: Windy Corner Comments
18620 Seward Highway
Anchorage, AK 99516

RE: Comments on DOT's Windy Corner Project (MP 105-107) & Commissioner's Findings

Please consider these comments for the Windy Corner project and the DNR Commissioner's Findings:

1. The proposed project action (MP 105-107) is to improve traffic and implement safety upgrades. Acknowledge that when safety-corridor measures were implemented, the statistics for severe crashes at this location, went down, dramatically.
2. Alternatives to designing within the current ROW, or nearly so, should be given more consideration.
3. While safety on the Seward Hwy needs to be improved, this project includes a component for viewing Dall sheep that is out of character with the season they are viewable and actually could drive the sheep away, perhaps permanently, during the blasting and removal of a huge amount of rock at MP 109.
4. The use of rock from within Chugach State Park (CSP) is not legal by state Statute. The 2000 legislation discusses highway and rail re-alignment, but does not grant taking of CSP resources.
5. Granite's memo (2017) on the cost estimate for material and transportation considers 'either/or' for rock sources, rather than a more logical combination of sources, such as barging for the foundation portion of the project, with other sources supplying the rest of the rock.
6. Granite's memo indicates the cost of supplying rock by barge or rail would require a great deal of infrastructure. No estimates were given for using multiple rock sources, nor how infrastructure costs might be less with multiple sources.
7. The cost of using CSP rock from MP 109 was considered to be free and only the surface land was evaluated (19 acres for \$53,000). The actual rock was not valued; cost estimates should be revised.
8. The wildlife viewing portion of the project indicates a parking site for tour buses, dozens of cars, and over a dozen RVs. This is an excessively large area that would go under-used outside the short sheep-viewing season. There are other viewing areas along the highway that draw our attention for longer periods.
9. The inclusion of restrooms at the wildlife viewing site also seems unnecessary given that restrooms are available a few miles in each direction. Maintenance costs and vandalism issues should be considered before building any viewing site, with or without restrooms.
10. If MP 109 rock is used for all of the proposed project, it would denude a huge area with cliffs from 100 to 240 ft high. Aside from potential harm to the sheep habitat, the results would leave an unacceptable scar that is not in character with CSP—even with the attempt to hide the blast area with highway screening. It would also invite unacceptable behavior and trash because vehicles could not easily be seen

from the road.

11. The quality of rock from MP 104 does not appear to have been determined. It is a gross oversight to select a potential rock source without first doing analysis. Also, this locale is immediately adjacent to a business; Indian Road residents are only a few hundred feet beyond. It is not appropriate to consider this for a rock source.
12. Impacts of this project to the residents of Rainbow Valley have not been considered. Some residences are from 500 to 2000 ft from the MP 109 gravel site. Their utilities are on-site septic and wells. Blasting can easily disrupt both.
13. A private boat launch for the Anchorage Fire Department's (AFD) use in water rescues and training is estimated to be \$500,000. Given that the AFD's statistics reflect one incident in the past four years in Turnagain Arm that required a call-out for a kitesurfer in trouble, the cost seems excessive. Reduce the size of the project or delete it.
14. The project design does not appear to include a bike path along the highway. If highway safety is a key factor in this project, then a path must be constructed. I believe when federal funds are involved, a path must be included.
15. It does not appear that the wildlife viewing area includes a way to connect to the Turnagain Trail that passes above the parking area. The parking area will actually become a trail head, so a good connection to the Turnagain Trail is needed to guide hikers to the trail and avoid having them wander into adjacent sheep habitat.

Dianne Holmes

cc: Corri Feige, AK DNR
Jennifer Johnston,
Cathy Giessel
John Weddleton,
Suzanne LaFrance
Mayor Ethan Berkowitz
John MacKinnon, AK DOT

From: [Donna Jefferson](#)
To: [DNR.Windycorner \(DNR sponsored\)](#)
Subject: Comment to Commissioners Proposed Findings/Windy Corner Mi 105-107 Project EA
Date: Monday, April 27, 2020 11:35:17 AM

Re: Proposed Commissioner's Findings/Windy Corner 105-107 Project EA

Dear Commissioner Fiege,

I am a resident of Turnagain Arm communities since 1990, and drive the Seward Highway, one of America's best National Scenic Byways, everyday, in every season. I enjoy driving immensely, and appreciate well thought out highway improvements that increase efficiency and safety, while intruding the least into the natural intrinsic features that we celebrate and utilize along these highways. The current ADOT Windy Corner EA document and process is/has been confusing and often misleading. I have some serious concerns about potential impacts on Chugach State Park (CSP) resources and values, the surrounding communities, and the actual public process in shaping large, expensive highway projects.

The following are my concerns with the Commissioner's findings:

1. The size and scale of the proposed material site 1, at mi 109 (Rainbow) is prohibitively large (3X the size of the Bird Creek quarry), with a 230' back wall, situated along one of the most popular trails in the Chugach State Park and the Anchorage bowl. Other material source options for this mega project seemed to be a "non option" from the beginning, due to costs. There is yet to be proposed, a SENSIBLE use of the remnants of mining this selected area in Chugach State Park. Clearly, utilizing such Park land goes against the purpose of Chugach State Park lands and would make a mockery of this highway's designation as an American Scenic Byway.
2. Material site 6 at mi 104.5 (Indian), a designated "backup site" was not addressed properly in the development process or in the EA. Unclear in all earlier discussions, being called an 18.4 acre backup quarry site which "probably wouldn't be needed", was still put in the EA document. There was never clarity on how the site would be developed, how it might appear along the highway, and how it would interface with Chugach State Park's, southern end of the Turnagain Arm Trail, and with its long existing, small parking pullout at mi 104.5. The current EA simply stated it as a low use trail. Another MINOR effected piece of parkland? This end of the Turnagain Arm trail is a well trodden path to Falls Creek, and also intersects with a well know social trail that ascends up to Indian House Mountain trail, a trail rivaling Bird Ridge trail for its scenery, wildflowers, and sheep viewing. When the current EA appeared in January 2017, BOTH material sites were surprisingly lumped together to be converted to the ADOT, site 6 quietly going into the conversion. This appears illegal to me, particularly given the EAs inadequate address of material site 6 (Indian quarry). I believe material site 6 at Indian should also be excluded in the Windy Corner project for these reasons.
3. Cost comparisons for material sources in this EA were vague and confusing to many, during this entire process. From the beginning, the nearby material sites were the clear, low cost winner, with no royalty rights and also no sensible plan to remediate or maintain the pit in the park land. Sourcing alternative rock looks to be arranged to exclude best practices and competition.
4. The proposed large quarries along this corridor will negatively effect the dynamic view shed of this Scenic Byway, Chugach State Park, and the surrounding communities in Turnagain Arm; Rainbow, Indian, Hope, Anchorage, and Girdwood. The view sheds from Hope town center, Hope's Porcupine campground, Gull Rock and Point Hope trails, the numerous scenic pullouts of the Hope highway and the air traffic will all have a reminder of a poorly done road project for perpetuity. Most importantly, the Park users and visitors, will have this legacy as they hike the trails and ridges of our park along Turnagain fiord. Imagine the views from the many prominent overlooks, along the Turnagain Arm trail near Rainbow, that will look straight down onto the proposed mi 109 Rainbow quarry, or the Indian quarry. Just a "MINOR "effect? I am certain that there will (SHOULD) be lawsuits against taking free parkland materials for a highway project that could wait for a better financial times in order to obtain

quarry materials from outside the park.

5. ADOT Seward Highway Safety Corridor Accident data, which in part, was justification for the Windy Corner project, was also confusing to many. Statistics included MVA as far back as 1977, which skewed interpreting more recent data and the effects of the MANY safety improvements over the past 40 years. Looking at this long span of data AFTER adjusting to the many improvements on this Safety Corridor, one might conclude that Windy Corner is far from the most dangerous section of this corridor. Other sections, especially where speed limits are higher, have seen far more fatal crashes in the past decade, et.

6. Everyone should be concerned in our current times, about spending; BOTH STATE and FEDERAL funds. At this stage of the Windy Corner process I believe a time deferred shelving of this project is necessary until state and national finances are healthy again. A full analysis of the Partial Conversion alternative, including updated material sources with emphasis on utilizing mixed sources and/or more equitable exchange for any material site within the Chugach State Park. The EA should also reexamine the effects of this project on the parks value and resources, the surrounding communities, ie Rainbow, and show detailed provisions to insure existing recreational trails access and safety around the AKDOT proposed parkland material sites. It is better to wait and build a respectable and excellent highway improvement project than to regret what we have done.

I appreciate this opportunity to be a part of the process and thank you for your consideration, and this most necessary extension of the comment period.

Sincerely,

Donna Jefferson
Indian, Alaska



December, 10, 2019

Recommendations for general construction activities associated with, or near, a public water system source

The following recommendations are intended to address potential impacts of projects, to be permitted or otherwise, in which planned activities are associated with, or near, a public water system (PWS) source. The key aspects of these recommendations are to identify nearby PWS sources, establish appropriate points of contact for the applicant and PWS, and implement best management practices.

Authority:

18 AAC 80.015. Well protection, source water protection, and well decommissioning.

- a) A person may not
 - (1) cause pollution or contamination to enter a public water system; or
 - (2) create or maintain a condition that has a significant potential to cause or allow the pollution or contamination of a public water system.

Recommendations:

- 1) Identify on a legible map the location of existing public water system (PWS) drinking water protection areas (DWPA) for PWS sources (e.g. springs, wells, and/or surface water intakes) that intersect the boundary of the proposed project/permit area. The DWPAs can be found using the interactive web map application, "Alaska DEC Drinking Water Protection Areas", located at <http://dec.alaska.gov/das/GIS/apps.htm>. Basic instructions for using this web map can be found at <http://dec.alaska.gov/media/14954/dwp-dec-dw-public-web-map-instructions.pdf>.
- 2) Where the project/permit intersects a PWS DWPA, notify the associated PWS contact and provide the following. PWS contact information can be obtained using the online application, Drinking Water Watch, <http://dec.alaska.gov/DWW/>.
 - a) A brief description of the project location and associated activities; and
 - b) Project contact information.
- 3) Within the identified DWPA, control stormwater and wastewater discharge such that it is directed away from the PWS.
- 4) Within the identified DWPA, restrict project/permit activities that could significantly and/or permanently change the natural surface water or groundwater levels.

Recommendations for general construction activities associated with, or near, a public water system source (continued)

- 5) Within the identified DWPA, implement best management practices where equipment storage, maintenance and operation, or other potential sources of contamination are located to minimize the potential for PWS source contamination.
- 6) Restrict or limit equipment storage, maintenance and operation, and other potential sources of contamination, within the following high-priority DWPA Zones:
 - a) Zone A DWPA (several-months-time-of-travel for contributing groundwater, or 1,000-foot buffer of the contributing surface water body and its immediate tributaries);
 - b) Zone E DWPA (1,000-foot buffer of the contributing surface water body and its immediate tributaries for a source using groundwater under the direct influence of surface water (GWUDISW)); or
 - c) Provisional DWPA (1,000-foot radius around a PWS source).
- 7) All data related to the project/permit, including but not limited to, water quality results (field and lab), survey data, water levels, subsurface lithologic descriptions and depth, and groundwater flow direction and gradient information, should be made available to the permitting agency upon request.
 - a) When associated with the development, construction, modification, or operation of a PWS, follow the requirements in DEC Drinking Water regulations 18 AAC 80, <http://dec.alaska.gov/eh/dw/regulations>.
- 8) Keep a list of PWS contacts and spill reporting contacts readily available.
 - a) Immediately notify contacts of any potential contamination event, such as spills or excess erosion.

Sincerely,

Charley Palmer, *Hydrologist III*

E: charley.palmer@alaska.gov

Alternate contacts:

Chris Miller, Environmental Program Specialist IV, chris.miller@alaska.gov

Kalah Statz, Environmental Program Specialist II, kalah.statz@alaska.gov

Details Add Edit Basemap Analysis Save Share Print Directions Measure Bookmarks

S010N002W

About Content Legend

Legend

DEC SDWIS Facilities (Secure)

- Community Water System
- NonTransient/NonCommunity Water System
- NonCommunity Water System
- NonPublic Water System

Alaska DEC Drinking Water Protection Areas

Zone A (GW-Several Months Time of Travel or SW 1000 ft buffer)



Zone B (GW-2 Yr Time of Travel or SW-1 mile buffer)



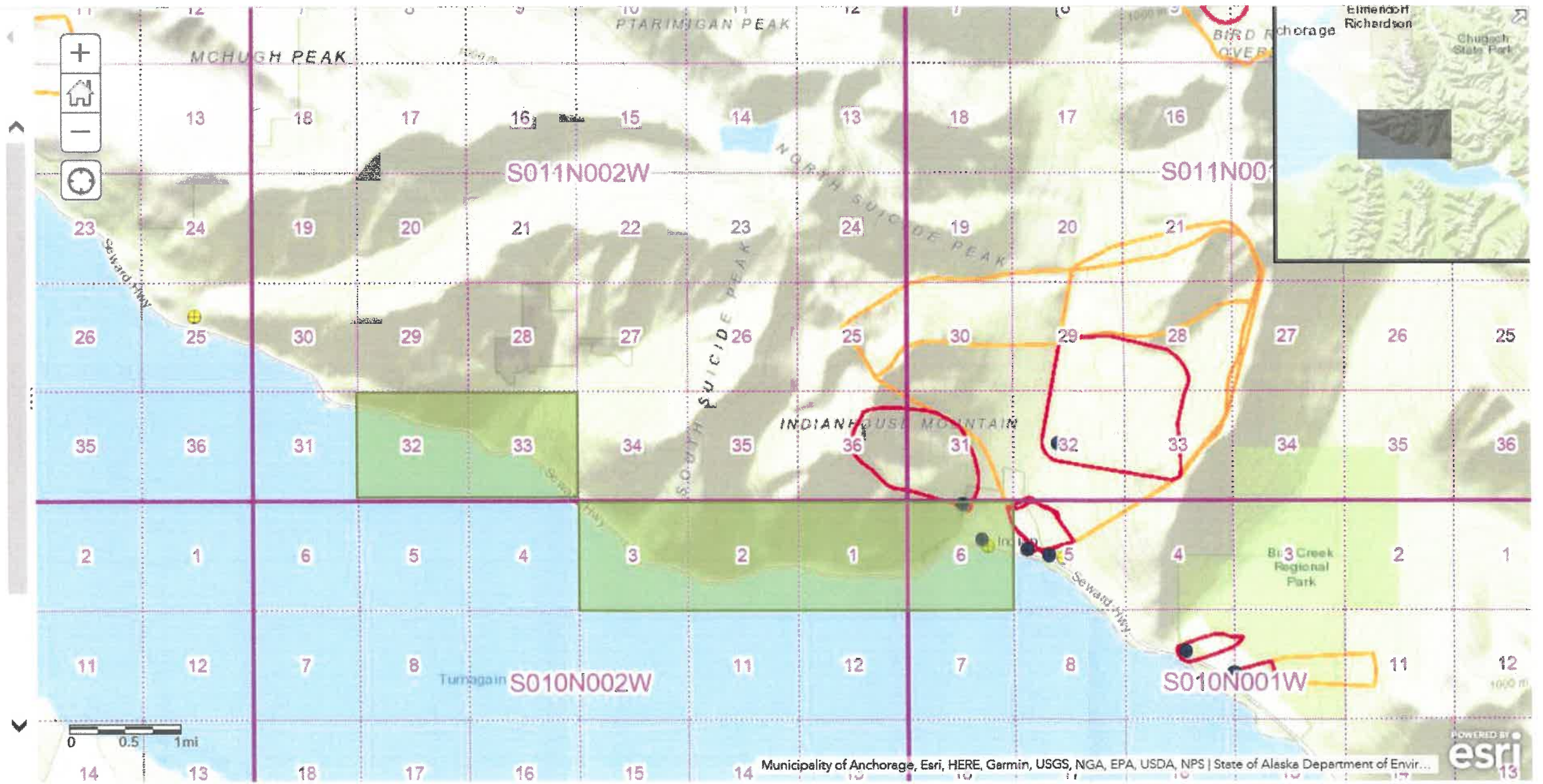
Zone C Surface Water (Watershed Boundary)



Zone E Ground Water Surface Water Influence (1000 ft buffer)



Zone F Ground Water Surface Water Influence (1 mile buffer)



To: 4/12/2020
Alaska Department of Natural Resources
Via email: DNR.Windycorner@alaska.gov

From:
Friends of Chugach State Park
1322 Nst
Anchorage AK 99501

re: Comments on Windy Corner Project, Commissioner's Proposed Finding

To Whom It May Concern:

Friends of Chugach State Park (FCSP) is a grassroots organization representing recreational users of the park whose interests are low-impact and non-motorized. We are volunteers dedicated to the park's natural and wilderness qualities since the 1980's.

We do not support the Commissioner's proposed finding approving the project , and we specifically do not support the planned rock quarries within Chugach State Park.

We believe the project, specifically the proposed rock quarries, will have a significant adverse impact on current recreational opportunities, diminish wildlife viewing opportunities through destruction of habitat, and diminish the scenic qualities of the Park. The quarries will most likely be visible from the Turnagain Arm Trail, Rainbow Peak trail, and the mountains surrounding the Rainbow, Falls Creek, and McHugh Creek drainages. They will also likely be attractive nuisances as currently planned (hidden from the highway). The likelihood of illegal activities such as trash dumping, firearms discharge, and fires will be high.

We also believe that removing approximately 19 acres of habitat and 2.5 million tons of rock is a HUGE taking from Chugach State Park, regardless of the National Park Service's findings. Among the many unresolved issues, the analyses completed to date have way undervalued the material and park land being taken. We also believe that there is no legal authority under Chapter 116, Temp. and Special Acts 2000, to involve any CSP land outside the described railroad and CSP lands to be exchanged for the highway relocation.

We have serious concerns that over time the Seward Highway corridor, a designated National Scenic Byway, will become one rock quarry after another. If the project is not financially feasible with fill from established material sources outside of the Park, then it should be modified to be so.

Chugach State Park was NOT created to become a rock quarry.

Sincerely,



Paul Twardock
Friends of Chugach State Park
paultapu@gci.net

From: [Graham Macdonald](#)
To: [DNR.Windycorner \(DNR sponsored\)](#)
Subject: McHugh Creek blind corner issue
Date: Friday, March 27, 2020 3:12:05 PM

To whom it may concern,

As a regular driver along this road may I suggest we put a more clear indication warning any traffic heading towards Girdwood that the McHugh Creek turnoff is just around the corner. The skid marks testify to increasing troubles on this blind corner (which leads towards Windy Creek).

Best,

Graham Macdonald C.P.G.
907 230 8450

From: [Gary](#)
To: [DNR.Windycorner \(DNR sponsored\)](#); [Anne Brooks](#)
Subject: Windy Corner (Commissioner's finding and EA) comments
Date: Monday, March 23, 2020 4:34:35 PM

Seward Highway MP 105-107 Windy Corner

The DNR Commissioner's findings on the Windy Corner Highway project assesses 6 proposals from DOT. These findings are mostly valid except for the authorization(s) for use of material and ignoring bike accessibility improvements mentioned in the Chugach State Park Master Plan (CSPMP). The material site for the MP 105-107 project should not be located in the park at MP 109. The use of the MP 109 materials site is not consistent with State Law, the CSPMP, nor the purposes of the park. The Commissioner's findings misconstrue the wording of the CSPMP to meet DOT's intended use of material from within Chugach State Park. Lastly, the NPS should not have approved the Section 6 (f)(3) requirement of the LWCF.

I question the legality of using materials from CSP. The Commissioner's finding states "Section 6(b) of the Ch. 116 SLA 2000 also supports the use of material for this project, sourced from within the CSP to construct this relocation and widening of the highway".

Section 6(b) of the Ch. 116 SLA 2000 actually makes no mention of materials from Chugach State Park being used for construction of the highway. Quarrying rock from a materials site within the park, (material which is available elsewhere), is not necessary to "construct, repair, and maintain the highway". In fact, the law states conveyances may not exceed the interest needed to relocate or widen the Seward Highway. This does not include obtaining construction materials. It seems quarrying materials from the park is in direct violation of sections 5 and 6 of chapter 116, Session Laws of Alaska 2000, which the finding cites.

Below is the cited law:

6(b) A grant or conveyance made under (a) of this section may not exceed the interest needed to relocate or widen the Seward Highway or relocate railroad facilities within the Chugach State Park and to construct, repair, and maintain the relocated or widened highway and the relocated railroad or utility.

The Seward Highway may be constructed, repaired, and maintained without quarrying rock from MP 109. This law does not justify the materials site, in fact it does the opposite.

The Commissioner's finding also justifies the use of material by stating:

The CSPMP recognizes the use of material within the park for highway construction, repair, and maintenance: "as safety upgrades are made to the Seward Highway material is needed and usually found locally by creating a quarry using park resources" (page 115). The CSPMP outlines several sites that may be suitable as a material location for highway safety-related upgrades and makes recommendations for new facilities and facility upgrades that are consistent with this project, including the site selected by DOT&PF for this project:

But this citation is from a sub-section of the CSPMP recommending new recreational facilities within the park. Creating a picnic area in an old quarry is vastly different from taking rock from an entirely new hillside, not building any recreational facilities at the site, and closing the site to public access after reclamation, all of which DOT is proposing. Below is what CSPMP actually says on p115:

Facility Recommendations

Below you will find a listing of the new facilities or new upgrades to existing facilities.

Proposal	Scope/Management Objective	Justification
Rainbow Point Group Recreation Site	Create a group use site in the quarry area that is established for highway upgrades. Include latrines, pavilions and parking.	As safety upgrades are made to the Seward Highway material is needed and usually found locally by creating a quarry using park resources. A group use site can be sited in this quarry site. The size and shape of this site would be dependent on the reclamation area.

The material site would not be a new recreation facility, nor an upgrade to an existing facility,

which is specifically what this section of the CSPMP addresses. Creating a recreational facility at Windy Corner is a separate issue from obtaining materials from Rainbow Point. More importantly, the CSPMP actually does address Seward Highway improvements directly on p111. Seward Highway Reconstruction & Scenic Corridor Enhancements

Due to the existence of a major road and rail transportation corridor through this unit, many experience the park only visually. Recognizing the scenic, natural, historical, and recreational values of the corridor, the Seward Highway has been designated a State Scenic Highway, a National Scenic Byway, and All-American Road. Any upgrades or alterations within this transportation corridor shall complement and enhance visual experiences along this route. The corridor should be accessible and safely useable by bicyclists and pedestrians. Bicycle use along the corridor is increasing. This is due to the increased interest in bicycling in general, the bike trail construction programs of the State Department of Transportation and the Municipality of Anchorage, and the scenic attractions along Turnagain Arm. The use of materials from MP 109 will not “complement and enhance visual experiences along this route.” so the Commissioner’s finding does not fit the CSPMP. On another note, the DOT plan ignores improved bike accessibility, which the CSPMP infers should be part of any highway improvement, and has been done on past Seward Highway improvements. So the Commissioner’s finding misuses a statement about facility upgrades to justify getting materials, while ignoring what the plan specifically says about the Seward Highway upgrades. The Finding doesn’t even mention bicycles once. I find it hard to believe that DOT planners working with the CSPMP failed to notice the section of the plan directly dealing with their project. Why was the wording on p111 ignored, while the wording from p115 emphasized in the Commissioner’s finding?

Furthermore, the CSPMP addresses uses compatible within the Recreational Zone, which includes the proposed MP109 material site. On p37 it says, “The most intensive activities and developments are meant to occur in these zones, including, developed parking facilities and trailheads, vehicle and tent camping, developed picnic and group areas, toilet facilities, visitor and interpretive centers, high-standard trails for all ages and abilities, and park management facilities.”

None of this wording includes using the Recreational Zone for a materials site. The plan does mention material removal on p56 under Commercial Use/Other Activity compatible in the Recreational Zone, saying it includes “Resource Extraction for State Parks. Removal of timber, gravel, rock, sand, plants, or other park resources for use by State Parks in the park.” Furthermore, under Resource Extraction it says, “Incompatible but may be authorized under 11 AAC 18.010 for public projects that benefit the park, enhance public safety and are in keeping with park purposes. Every effort should be made to ensure that materials removed from the park are used for projects within the park.”

However, using a quarry to remove rock for a DOT Highway and railroad project 2-3 miles away is not for use “by State Parks in the Park”. A small enhancement in one section of the Park does not mean it is acceptable to damage a different section of the park. Windy Corner will be a DOT Highway and a DOT Project, not a State Park Highway, built for the Park, by the Park. The third purpose of the Park is to “Protect areas of unique and exceptional scenic value”. Putting a quarry at MP 109 will not complement and enhance visual experiences along this route. Using a scenic hillside for a materials site contradicts much of the CSPMP.

Finally, the Section 6 (f)(3) requirement of the LWCF should not have been passed by the NPS. First of all, DOT only gave the NPS two possibilities: accept the project or not, so the NPS could not evaluate alternatives. Given that alternative materials sites do exist (and DOT considered them), this was not acceptable. Also, the approval letter from NPS states that, “the EA was prepared by the Alaska Department of Transportation (ADOT) on behalf of the Federal Highway Administration (FHWA) and in cooperation with the Alaska Department of Natural Resources (AKDNR) and NPS.” I am not permitting expert, but this sounds to me like the State DOT prepared the EA for the land conversion for the Federal NPS, so the NPS could approve what the State DOT wants to do. This seems like asking yourself for permission for something you want. Trading 39.56 acres for 14.7 acres should involve more scrutiny. In fact the approval from NPS includes a statement that “However, ADOT also considered a smaller conversion footprint alternative that would have required them to locate

the materials borrowsites outside the park. Had NPS been forwarded the [Smaller) Conversion Alternative as the selected option instead, it could also have been approved.”So the NPS acknowledged that DOT didn’t really provide all the alternatives it had, so NPS couldn’t evaluate them. This seems like a large omission. Finally, the NPS approval states, “The effects on the human environment are known, and there were no controversial impacts or aspects of the proposed project that surfaced during the environmental analysis process.” I feel strongly that this indicates a lack of thoroughness on the NPS approval. Residents have been upset for years about the nearby material site at Bird Ridge, and plenty of residents will be upset about this material site. Also, the NPS approval was dated February 2019, but as far as I know was not released to the public until late February 2020. Groups like the Chugach State Park Citizen’s Advisory Board had been asking for project updates, or a meeting with DOT personal during 2019, but requests were ignored. If NPS they didn’t uncover any controversy it is because DOT didn’t want NPS to find any, not because they don’t exist. To summarize, the Commissioner’s findings on the Seward Highway MP 105-107 Windy Corner proposals should not include the MP 109 material site. It is not justified by the State law the finding cites, it is not justified by the CSPMP the finding cites, it does not fit the purposes of the Park, and it involves an a swap for Park land approved by the NPS that was not well vetted. Please do not use Chugach State Park as a source for construction material.

Sincerely, Gary Snyder
2421 Maple Ave
Anchorage, AK 99508
alaskagary@hotmail.com

Chugach State Park

Superintendent Kurt Hensel

18620 Seward Highway

Anchorage, AK 99516

March 25, 2020

Re: Comments on the DNR Commissioner's Findings on the Proposed Windy Corner Development and Related Project

I respectfully submit the following comments on the DNR Commissioner's Finding regarding the proposed site development at MP 105-107, Seward Highway, and related project at MP 109 and 104, Seward Highway. Although I'm in general agreement that a solution to documented public safety and highway safety problems along the Seward Highway, MP 105-107, should be solved, certain issues should be included within the amended DNR Commissioner's Finding. This consideration must occur before approval to proceed is authorized. This project should not be authorized without the following issues receiving consideration and inclusion into the amended Finding.

1. If a state park land conveyance is necessary, DNR should request an AG legal review and deliver an opinion that clarifies that a conveyance of Alaska State Park land, established by the legislature, can be conveyed to another commercial enterprise, by a DNR Commissioner, without action by the Alaska State Legislature.
2. Secure a review and comment from USFWS regarding possible eagle nesting sites within the scope of the project area and all associated areas that may be effected.
3. The development of a new public state park facility will create future increased operational demand for maintenance and repair. Two proposed latrines and expanded site construction may create a new tour bus Industry attraction. DOTPF should commit to developing tour bus parking sites and future daily operational maintenance and repair to all infrastructure. This is consistent with AS 41.21.122, (pg. 2 of Finding).
4. Secure a review and comment from APD Traffic Division, who currently patrol this Highway, on the project and related safety issues.
5. Define what, if any, property interest Chugach State Park would receive in exchange for property conveyed, if any, within the scope of this project? This should be public information and be made available before any project authorization.
6. The "proposed connection to existing Turnagain Arm Trail, as displayed on the site plan should become part of this site development and be included in the negotiated conditions of DNR approval.
7. Page 7, of Finding describes ADF&G comment regarding impacts to Dall Sheep. Disturbances during lambing and rutting should not occur.

8. Pg. 9, refers to constructing necessary facilities. This project is proposed within a designated National Scenic Byway and will receive federal funding and national recognition. The passive interpretive displays proposed are inadequate. An artistic bronze statute should be included during site construction to memorialize "Old One Eye", a majestic dall sheep ram and other rams that were illegally taken from this area. Historical references can be researched in the Anchorage Daily News archives. A similar statue exists in Estes Park, Co, to memorialize elk, for comparison.
9. Additionally, this project is on a popular cycling route and should provide secure bicycle locking and maintenance station for cyclist passing through.
10. Pg. 1, refers to the MP 109, material extraction site. Although necessary for project completion the resulting earth scare will be noticeable and a distraction along the National Scenic Byway and State Park. The proposed "Group Use Site" presents a gated facility likely to be closed most of the time or open for permitted use, including rock collection. Consideration should be given to mitigating construction disturbance by creating a "Bike Park" using earth berm contours. Numerous local and state parks nation-wide are offering this type of facility to meet the increasing trends in mountain biking.
11. The Alaska Railroad should remove the public safety hazard, a concrete bunker, at MP 112, just north of McHugh Creek park entrance. This is located on the ocean side of the railroad. It is a visual eye sore and often spray painted by vandals.

Please confirm receipt of my comments. I look forward to receiving the DNR Commissioner's Final Finding as it becomes available. Thank you.

Mike Goodwin
14500 Fernhill Circle
Anchorage, AK 99516
Rezgood@gci.net
907 242-7585

From: [Mark Johnson](#)
To: [DNR.Windycorner \(DNR sponsored\)](#)
Subject: Windy Corner Seward Highway Realignment
Date: Saturday, March 28, 2020 4:51:24 PM

It is my belief that the Windy Corner Seward Highway Realignment is one of the most important Alaska DOT projects in a long time and I support the project wholeheartedly.

Windy Corner has been a hazard because people slow down and will even stop in the roadway to view wildlife. The realignment of the roadway for the construction of a park with ample parking, trails and viewing stands is a wonderful idea. This will not only enhance the enjoyment of both Alaskan citizens and visitors it will make that section of the highway much safer.

Mark Johnson
10300 Prince William Circle
Anchorage AK 99515
rigneyhill@rigneyhill.com
(907) 229-4959

From: [M. Miner](#)
To: [DNR.Windycorner \(DNR sponsored\)](#)
Subject: windy corner road realignment
Date: Sunday, April 26, 2020 4:09:31 PM

Dear Commissioner Feige,

I'm commenting on the proposed rock quarries with Chugach State Park (CSP) at MP 104 and 109 to create rock/fill material for the proposed Seward Highway realignment at and near Windy Corner.

The Alaska Department of Natural Resources has no legal right to use CSP as a rock quarry source to aid in the construction of the proposed highway construction project. The law establishing CSP does NOT include material (i.e. rock extraction) as one of it's purposes.

However, more important to me and many of my friends and colleagues is the matter that DNR and AKDOTPF would even consider using a public state park as a rock quarry location especially given the enormous size of the proposed quarry and its long lasting impacts. Though I don't have any hard data in front of me I'm under the impression that the proposed quarry site would be significantly larger/taller than the huge excavation that exists at the Bird Creek parking lot. Based on this alone it is an abomination that these two agencies even consider CSP as quarry site.

Finally, I would like to see this quarry proposal given more public exposure with facts, figures, drawings and renditions made readily available. The public outreach on this proposal should extend beyond the norm due to the long term significant harm done to a public park.

Thank you for reading and considering our concerns,

Mark and Mary Miner,
Anchorage, AK

From: [Rick Dennis](#)
To: [DNR.Windycorner \(DNR sponsored\)](#)
Cc: [Piper Machamer \(piper.machamer@outlook.com\)](#)
Subject: MP 105-107 Windy Corner Project
Date: Saturday, February 29, 2020 12:37:29 PM

Dear Project Manager:

I am a Bird Creek resident, and I travel the Seward Highway between Bird and Anchorage on a regular basis.

I am concerned about a couple of issues with the proposed MP 105-107 Windy Corner Project:

#1 - Safety

One of the stated purposes of the project is "to address traffic safety concerns on the Seward Highway"

With that stated purpose, it is inconceivable to me that a project of this magnitude will end up with southbound traffic having to cross in front of oncoming (northbound) traffic for entering, AND exiting the Recreation/Parking area.

That DOES NOT improve safety at all, it actually makes that location more dangerous than it is now. Right now, there is no cross traffic in that area.

For a project of this scope, and cost, it should include an UNDERPASS for southbound traffic entering and exiting the parking area.

I understand that an underpass is expensive, but this whole project is expensive AND it is meant to last for many years; WHY NOT DO IT RIGHT the first time?

Turning into oncoming traffic should NOT be a part of this project and I oppose the project if it will allow/require turning into oncoming traffic.

#2 – Fill Material

The project will require countless tons of fill material which will be extracted from nearby locations. Why not take this opportunity to remove material from the cliffs along the highway that are responsible for rock and ice falls? There are several locations where the cliffs are much too close to the highway and are a hazard to travel due to the rock and ice fall that lands on the roadway. These cliffs need to be cut back, similar to the stretch between Bird Point and Girdwood. Cutting back the cliffs and using that material for fill would solve the fill problem while making the Seward Highway safer.

I do not think the project, as proposed, will improve overall safety.

Thank you for your consideration.

Respectfully,

Richard Dennis
166 Bushnell Road
Bird Creek, AK

19300 Villages Scenic Parkway
Anchorage Alaska 99516

April 27, 2020

Kurt Hensel, Superintendent
Chugach State Park
ATTN: Windy Corner Comments
18620 Seward Highway
Anchorage, AK 99516
E-mail: DNR.Windycorner@alaska.gov

RE: Commissioner's finding on Windy Corner

Dear Superintendent Hensel:

Thank you for the opportunity to comment on the Windy Corner highway construction project. I am hopeful that State Parks staff will support substantive revisions to the draft Commissioner's Findings.

The draft Commissioner's Finding proposes to give away Chugach State Park material resources without legal authority and with no compensation. The construction aftermath will leave CSP with a string of quarries and parking lots that diminish the aesthetic value of the park and will siphon off critically-low park maintenance funds. The traffic safety improvements appear to be offset by new hazards at Windy Corner; and traffic hazards at several other recreation turnouts within the project area are being ignored. Finally, the Windy Corner project misses so many recreation opportunities and needs: coastal viewpoints, safety at existing park turnouts, and a multi-use non-motorized pathway along Turnagain Arm.

1. No legal basis nor compensation for rock quarries from within Chugach State Park

The DNR Commissioner should find that there is no statutory authority to authorize quarrying of rock from within Chugach State Park; and therefore, DOT should seek alternative materials sources. None of the authorities enacted in Ch. 116 grant the Commissioner of DNR the authority to dispose of CSP lands or resources that lie outside the specific land and right-of-way areas and acreages authorized by Sec. 116 to be exchanged between DNR and ARRC. The proposed rock quarry/material sites at MP 104 and MP 109 are both located outside the land exchange area and within the boundary of Chugach State Park.

The Commissioner's Finding *erroneously* cites the CSP Master Plan (pages 115 and 116) as a rationale for allowing quarrying of rock within the Park. The Park Master Plan cannot designate quarry sites from within the park for projects located outside the park

because quarrying is not a use recognized in the legislated purpose of the park (Title) nor the Session Laws of 2000 that enabled land exchanges for Seward Highway and Alaska Railroad realignments.

2. Lack of budget analysis and fiscal responsibility

The Commissioner's Findings fail to analyze the budget impacts to Chugach State Park. Fiscal analysis of management and maintenance costs is necessary to ensure that this project will not weaken other recreation services and resource protection by siphoning funds into management of the abandoned quarries as well as the toilets, trash, illegal camping and nuisance behavior at this new magnet site for motorists. The Windy Corner site will be, to an revealed degree, a highway pit-stop, and that is not the purpose of Chugach State Park. In many states, highway services borne by the transportation department rather than the parks department.

One clear unfunded expense will result from this project: greatly increased use of the south end of the Turnagain Arm Trail. This section of trail is minimally improved and will be subject to accelerated erosion. The Commissioner is obliged to protect the resources of the park: but where will trail upgrade funding come from?

One solution is to charge market rate for any materials quarried from within the Park. DNR does not "owe" DOTPF free materials. A giveaway of rock, plus the permanent scarring and loss of parkland value, plus the maintenance costs amounts to fiscal irresponsibility: and the Commissioner should recoup as much value and funding for the park as possible.

3. Uncertainty about maximizing highway safety

The Commissioner should resolve several safety questions arising from this design.

DOTPF has used traffic and accident statistics to justify this project as the highest safety priority along Turnagain Arm. However, since the designation of the Seward Highway Safety Corridor in 2006, new hazards and traffic behavior problems have arisen. The higher speeds on many upgraded stretches of road create new traffic hazards, particularly where there are turning movements.

This proposed design requires motorists to turn across two lanes of traffic moving at 65 mph and higher (since two lanes allow for passing). There does not appear to be a way motorists to turn south from the Windy Corner site unless all four lanes of traffic are free. In addition, there will be vehicles turning in and out at the quarry sites, even if they have gated driveways.

Further, this path fails to include safe multi-use path for cyclists.

Finally, the Commissioner should raise concerns about other, equally dangerous pull-outs used by recreationists: Falls Creek and Indianhouse Mountain in particular, but

also Rainbow parking lot, all between MP 104 and 109, and therefore within the construction zone.. For a project with this massive cost and disruption, why is the Commissioner not advocating for a comprehensive plan to recreation turnouts along this stretch of the Seward Highway?

4. Lack of protection for park's scenic values

The quarries are an egregious scenic blight. The proposed Windy Corner parking lot, over ¼ mile long with 50 percent "overflow" parking, is also a visual degradation.

The Chugach State Park Management Plan, Chapter 6, page 111, note

Recognizing the scenic, natural, historical, and recreational values of the corridor, the Seward Highway has been designated a State Scenic Highway, a National Scenic Byway, and All-American Road. Any upgrades or alterations within this transportation corridor shall complement and enhance visual experiences along this route.

There is no straight-faced rationale that the quarries will enhance the visual experience of Chugach State Park. Alternative rock sites exist, several of which are along the rail corridor, allowing transport of rock by train. The Commissioner should deny use of rock from within Chugach State Park. No quarrying should take place at any site without a revegetation plan. The Commissioner should also require revegetation and restoration of half of the Windy Corner site. Overflow parking, with no apparent need for it, is a gross misuse of parkland and a scenic blight.

5. Need to improve connection to Turnagain Arm Trail

The Commissioner should insist upon funding to improve the trail connection to the Turnagain Arm Trail at Windy Corner, not just within the parking lot, but for one-half mile north. DOTPF wants to inflict permanent scarring at the quarry sites within the park: therefore, DNR should extract some compensatory value within the park. If materials are quarried from the park, DNR should charge market value and use the funds on upgrading and future maintenance of the adjoining trails.

6. Need to construct multi-use non-motorized trail along Seward Highway

The Commissioner should stand firmly in support of a multi-use trail within the highway corridor along Turnagain Arm. Numerous state and local planning documents have envisioned a separated path extending from Potter to Girdwood. Segments already exist: and every new highway construction project should include this essential safety feature.

The Chugach State Park Management Plan, Chapter 6, page 111, notes:

Recognizing the scenic, natural, historical, and recreational values of the corridor, the Seward Highway has been designated a State Scenic Highway, a National Scenic Byway, and All-American Road. Any upgrades or alterations within this transportation corridor shall complement and enhance visual experiences along this route. The corridor should be accessible and safely useable by bicyclists and pedestrians. Bicycle use along the corridor is increasing. This is due to the increased interest in bicycling in general, the bike trail construction programs of the State Department of Transportation and the Municipality of Anchorage, and the scenic attractions along Turnagain Arm.

I ask the State Park staff and the DNR Commissioner to uphold their professional responsibilities, and to work resolutely and constructively with DOTPF to ensure that a project of this magnitude and cost contributes to the safety, scenic enjoyment, and recreation value of Chugach State Park.

Thank you,
Nancy Pease

Correspondence



RABBIT CREEK COMMUNITY COUNCIL (RCCC)

A Forum for Respectful Communication & Community Relations



1057 West Fireweed Lane, Suite 100 / Anchorage, AK 99503

Kurt Hensel, Superintendent
Chugach State Park
ATTN: Windy Corner Comments
18620 Seward Highway
Anchorage, AK 99516
E-mail: DNR.Windycorner@alaska.gov

April 22, 2020

Dear Superintendent Hensel –

The Land Use & Transportation Committee of the Rabbit Creek Community Council (RCCC) has reviewed the proposed Commissioner's Finding and other information for the Windy Corner MP 105-107 Seward Highway Realignment. Recommendations from that review were presented and discussed at the April 9th meeting of the RCCC. The summary included below and details in the Attachment were unanimously approved at that April 9th meeting with 16 yeas, zero nays, and zero abstentions.

The RCCC area borders the Seward Highway as well as Chugach State Park with the project area regularly traversed by our community members. Our Council supports the project purpose to provide safety improvements to the Seward Highway Corridor. We also support the intention to provide well-designed access to Chugach State Park that minimizes nuisance behavior and maintenance costs, while improving Park visitor opportunities and experiences consistent with the Chugach State Park Management Plan.

At the same time, we are painfully aware of the limited budgets for both transportation improvements and Chugach State Park access. Our local projects to improve arterial and collector road safety and park access have long been stymied by lack of funding. In sum, RCCC is concerned that the proposed Windy project: (1) represents a piecemeal response to safety and access, that is not cost-effective and may not be a priority compared to other needs along the Seward Highway corridor; (2) involves rock quarries that are not allowed under Chugach State Park authorizing statutes and that have greater adverse impacts than alternative designs; (3) lacks both a multi-use separated pathway and a connection to the existing, adjacent Turnagain Arm Trail; (4) does not include safe turning lanes; (5) does not fully account for impacts to wildlife, specifically, Dall sheep and a current consultation for beluga whales; and (6) creates oversized and unfunded management costs for Chugach State Park that should be reconsidered.

¹ Please note, in response to the current COVID-19 emergency orders, the RCCC monthly meeting was held via video- and tele- conference. RCCC bylaws do not address voting in such circumstances, so our vote is provisional. Our bylaws allow for further consideration of action taken between general meetings, if members so desire, at the next regular meeting. Given the deadline for comments in conjunction with the physical distancing orders, we expect the Alaska Department of Natural Resources (DNR) to give these comments full consideration.

These questions and concerns are expanded in the Attachment. We expect to provide similar comments during the associated public review for the Municipality of Anchorage's Conditional Use Permit if DNR moves forward to allow quarry sites. Please do not hesitate to contact us if you have any questions about our comments.

Sincerely,



Ky Holland, Co-chair
Rabbit Creek Community Council
rabbithcreekcc@gmail.com



Ann Rappoport, Co-Chair
Rabbit Creek Community Council
rabbithcreekcc@gmail.com

Attachment

cc: Corrie Feige, Commissioner, AK Department of Natural Resources
Jennifer Johnston, State Representative, Alaska
Cathy Giessel, State Senator, Alaska
John Weddleton, Anchorage Assembly
Suzanne LaFrance, Anchorage Assembly
Mayor Ethan Berkowitz
John MacKinnon, Commissioner, AK Department of Transportation and Public Facilities

ATTACHMENT: Rabbit Creek Community Council – Comments on Proposed Windy Corner MP
105-107 Highway Realignment

Following are specific concerns and recommendations approved by the Rabbit Creek Community council (RCCC) on April 9th, 2020, by a vote of 16 yeas, zero nays, and zero abstentions. The vote was registered provisionally via video- and tele-conference meeting and the issues may be re-opened once RCCC can again convene in person.

These recommendations were developed by RCCC's Land Use and Transportation Committee (LUTC) based on review of the Alaska Department of Natural Resources' Commissioner's Finding on the proposed Windy MP 105-107 Seward Highway Realignment. In sum, RCCC is concerned that the proposed Windy project: (1) represents a piecemeal response to safety and access, that is not cost-effective and may not be a priority compared to other needs along the Seward Highway corridor; (2) involves rock quarries that are not allowed under Chugach State Park authorizing statutes and that have greater adverse impacts than alternative designs; (3) lacks both a multi-use separated pathway and a connection to the existing, adjacent Turnagain Arm Trail; (4) does not include safe turning lanes; (5) does not fully account for impacts to wildlife, specifically, Dall sheep and a current consultation for beluga whales; and (6) creates oversized and unfunded management costs for Chugach State Park that should be reconsidered.

- (1) Review the Windy Corner project in the context of the entire Seward Highway Corridor along Turnagain Arm to better address safety and access concerns, cost-effectiveness, and adverse impacts.

The safety evaluation area for the Windy project should be extended to include safe park access at McHugh Creek and Rainbow. Alaska Department of Natural Resources should take a pro-active role with the Alaska Department of Transportation and Public Facilities (ADOT) to design safe, high-value, affordable access to Chugach State Park. ADOT should produce a conceptual plan for overall Seward Highway improvements that prioritizes maximum safety and minimizes environmental impact. The selected plan is based on a design criteria of 65 mph in a highway safety corridor, immediately adjacent to two areas of public high use in Chugach State Park. Higher vehicle speeds will **increase hazards** associated with slowing, stopping, and turning at these locations. The 65 mph criteria are not appropriate without due consideration of these impacts. Reconsider the project alternatives that improve safety but have smaller footprints and lower costs as presented in the January 2011 URS Value Engineering Study Report.

The Seward Highway Corridor plan should include paved-trail connectivity between Anchorage and Girdwood. Specifically, **the DNR Commissioner's Finding, in accordance with the Chugach State Park Management Plan, should require ADOT to incorporate a separated paved, multi-use pathway into all segments of the highway affected by the Windy Corner project.**¹

¹ The Chugach State Park Management Plan states: A coastal trail that runs along the coastline of Knik and Turnagain arms has long been recommended for development. The Seward Highway and the Indian to Girdwood Pathway have become important bike routes for tourists and residents linking the Turnagain Arm communities. Once the remainder of the continuous, separated, paved pathway is completed between Potter Marsh and Indian, a number of access points and amenities will be needed along the scenic corridor for improved visitor enjoyment (page 114).

(2) Select a legal alternative for the rock quarries, and reduce impacts to parkland.

Under the authority establishing Chugach State Park, rock quarries are not a legally allowed use (Alaska Statute 41). Other rock sources would reduce permanent impacts and costs to the park, avoid impacts to the neighborhood, and reduce highway disruption.

a. Alaska Statute 41, which established Chugach State Park, does not allow materials to be given for charitable or public use purposes. Additionally, legislation from 2000 that allows right-of-way adjustments for the highway and railroad does not apply to quarrying within the boundary of the Park. Therefore, the Commissioner's findings regarding the rock quarry would be inaccurate. Quarrying could set a dangerous precedent for future materials extraction, which is contrary to the statutory purposes of the park.

b. ADOT has inappropriately ruled out alternative materials sources outside the park, with transport possible by rail and or barge. These sources were under-rated partly because ADOT assumed that rock from the park is "free," contrary to existing legislation as noted above.² The cost of materials is only one of many factors regarding the project and should not necessarily be the deciding factor. We believe the negative impacts to the neighborhood, the park, and traffic disruption have been undervalued in the current analysis.

The alternative of using several rock sources to reduce the amount needed from a possible quarry at MP 109 should be considered. ADOT did not present alternative rock quarries in its submittal for a Significant Impact review by the National Park Service, Section 4(f) which prevented their consideration of a full range of alternatives under the 4(f) process, as documented by the National Park Service (4(f) finding of February 2019, approved May 30, 2019).

c. During construction, the proposed rock quarries will pose unacceptable impacts to the neighborhood and highway where daily traffic volumes exceed 22,000 vehicles during peak summer weekends. Construction-related road closures would be greatly reduced if other rock sources or combination of sources could be used.

d. The rock quarries will create a permanent nuisance and management expense to Alaska State Troopers and Alaska State Parks, both of whom have severely-constrained budgets. The quarry at MP 109 will be a sunless, view-less hole, with walls 100 to 240 feet high, with no recreational or habitat value. There is no design provided for the possible quarry at MP 104; rather, it will result in the potential for a 0.9-mile long scar.

² Based on the enabling legislation for Chugach State Park, the DNR Commissioner's Finding should have found that there is no authority to authorize quarrying of rock from within Chugach State Park; and therefore, ADOT should seek alternative materials sources. None of the authorities enacted in Ch. 116 of Session Laws of Alaska in 2000 grant the Commissioner of DNR the authority to dispose of Chugach State Park lands or resources that lie outside the specific land and right-of-way areas and acreages authorized by other legislation allowing lands to be exchanged between DNR and the Alaska Railroad Corporation. The proposed rock quarry/material sites at MP 104 and MP 109 are both located within the exterior boundary of Chugach State Park, yet are entirely outside the land areas designated for exchange. The Commissioner's Finding cites the Chugach State Park Management Plan (page 115) where it indicates, "As safety upgrades are made to the Seward Highway material is needed and usually found locally by creating a quarry using park resources." While this suggests that areas of the park could be quarried for rock, the Management Plan cannot change the statutory protection of the park.

e. We are concerned that the Commissioner's Finding fails to protect the public value of Chugach State Park. As proposed, there will be a net loss of 20 acres of land from the park without adequate compensation. ADOT has grossly-undervalued the **surface** lands (at \$53,000 for 19 acres). ADOT and DNR have accounted for no value for the rock that would be quarried, assuming without rationale that it will be "free". Quarrying of rock is not allowed under either the statutes that created the park or the 2000 legislation that allows highway and railroad re-alignment. If quarrying is found by court to be legally allowed, DNR should protect the public interest by receiving fair market value for the extracted rock, fair land exchange, and restoration to some level of habitat and recreation value.

f. The quality and quantity of the rock from the proposed quarries has not been proven. There is no design for the Milepost 104 backup extraction. It would be irresponsible for DNR to authorize quarries without known rock quantities and qualities, and a restoration plan.

(3) Require a multi-use separated pathway at all locations of highway construction activity, and construct a connection to the existing, adjacent Turnagain Arm Trail.

The partly-established Anchorage to Girdwood multi-use pathway is a popular recreational trail used by thousands of Alaskans and visitors each year. It should be extended by segments with each construction project, including this one. The ADOT Long-Range Transportation Plan sets goals for improving all modes of transportation. The Federal Highway Administration MAP-21 regulations support the funding of recreation trails as part of the national transportation infrastructure.

The Windy Corner project should include a sustainable trail connection to the Turnagain Arm Trail which passes within a couple hundred feet of the project. The new parking facility will invite more hiking along the use of this section of the popular Turnagain Arm Trail. Failure to build a trail link will allow erosion and other damage to the resources of Chugach State Park, including possible disturbance to sheep and thus to the wildlife viewing experience, as people would make or follow a variety of 'social' trails. A designated trail connection should be built to minimize erosion potential and could be considered partial compensation for other project impacts to Chugach State Park.

(4) Verify how the design will create safe turning patterns.

Additional evidence for safe turning should be provided. The turn pocket for south bound vehicles into the Windy Point parking lot does not appear to accommodate safe turning for those same vehicles as they turn left out of the parking lot to resume their southbound travel. Travel speeds will be substantially higher, and there will be double lanes. Additionally, alternative designs should be evaluated for how they could affect driving behavior, and ultimately, safety.

Current, detailed Seward Highway traffic accident and driving behavior data should be included in project documents, along with an evaluation of whether this design at Windy Corner meets ADOT goals to, "prioritize funding based on their impact on transportation system performance goals and cost effectiveness" (Goal 2, Alaska State Wide Transportation Plan, 2016).

ADOT relied on accident data from prior to 2006 to initiate this project. Since 2006, the Windy Corner segment is no longer the highest accident segment of the Seward Highway between Potter Marsh and Girdwood. While there were 24 major injury crashes and 8 fatal crashes in

MP 105-107 from 1977-2007, there have been three major injury crashes and no fatal injury crashes from 2006-2016. Since the Seward Highway MP 87-117 was designated a Traffic Safety Corridor in May 2006, measures such as decreases in speed limits, pullouts, and increased signage have led to a 36% decrease in fatalities and major injury crashes.

Project documents should include detailed traffic accident data it has collected since designating the Seward Highway a Traffic Safety Corridor in 2006, including: causes and numbers of accidents; changes in driving behavior from straighter roads and higher speed; benefits of turning lanes; benefits of safer pull-outs; and the correlation between law enforcement and accidents.

(5) Expand on information about potential impacts to Dall sheep and update the beluga whale consultation.

Alaska Department of Fish and Game biologists report that there could be impacts to both. Construction of a large tourist facility at Windy Corner could displace Dall sheep. This area is important spring habitat for Dall sheep as it melts first providing early forage during lambing. It is not clear whether the impacts to Dall sheep from the construction, as well from the future traffic speed, noise, and human activity have been evaluated. Given that a facility for viewing Dall sheep is the intended compensation for the loss of Park acreage in this project, it is essential that Dall sheep not be driven off or depleted by this project.

The informal consultation with the National Marine Fisheries Service for the endangered beluga whale is dated October 28, 2015. Updated documentation is needed from NMFS regarding the current status of the beluga whale and how this project may or may not adversely affect them.

(6) Re-consider the scale of the parking site, cost-benefit of various elements, and the entire project.

The parking site is scaled for four buses, 55 cars, and 13 recreational vehicles, with an equal amount of 'overflow' unpaved parking that will require mowing and invasive species removal. It extends over 1,500 feet as an over ¼ mile long parking lot with no documented need. As proposed, the site fails to maintain the aesthetics or natural character of the park. We recommend that at least some part of the site should be revegetated with native species.

DNR and ADOT should provide a cost-estimate of the patrols and maintenance required for the Windy Point site as well as the quarries (if developed). Budget constraints should be part of the consideration of DNR approval. Who will pay for snowplowing and toilet maintenance, as well as routine patrols and graffiti and trash removal? Budget reductions have caused State Parks to reduce staff and reduce operation of some sites. Can State Parks collect any revenue at a site that is primarily funded with Federal Highway Administration money?

Information is lacking on how the proposed \$500,000 emergency boat launch at Windy is both strategic and cost-efficient, relative to the number of Anchorage Fire Department water rescue team responses in Turnagain Arm over the past 4 years.

To: Alaska Department of Natural Resources
Via email: DNR.Windycorner@alaska.gov
Re: Comments on Windy Corner Project, Commissioner's Proposed Finding
From: Rainbow Valley Homeowners Association
Richard Ibarguan and Jan Flanders
Date: April 22, 2020

Comments on the DNR Commissioner's Proposed Finding for the Windy Corner Project

These comments are submitted on behalf of the 18 members of the Rainbow Valley Homeowners Association (RVHA) and residents of Rainbow Valley at the Seward Highway. We live on in-holdings within the Chugach State Park, at MP 108.5 of the Seward Highway. We care deeply for the park's integrity and consider it a privilege to live here.

Our residents have used the highway for more than 40 years and we value its safety. However we have significant concerns about the Windy Corner project and do not support the Commissioner's Proposed Finding to approve the project, especially the MP 109 material site.

- Blasting an estimated 2.5 million tons of rock from the proposed MP 109 material site runs counter to the Chugach State Park's legislative purposes and the park's management plan.
- The Proposed Finding entirely ignores the effects of community disruption at Rainbow Valley during the project.
- Also un-acknowledged is the very real threat the resulting quarry will hold for public safety after the project is finished. We are the Turnagain Arm residents closest to the MP 109 site and will be affected most directly by development of the quarry and fate of the quarry after the project is completed.
- To make matters worse, the project itself is over-sized and is a burden on our state budget.

We strongly support the Safety Corridor designation made in 2006, and much of DOT's plan to improve safety on the Seward Highway. Scaling back the Windy Corner project need not compromise goals for highway safety. We support a smaller project obviating the need for the large quantity of fill and abandoning the MP 109 material site for rock that is available at existing locations. This approach could save money, avoid damage to park land, and prevent the creation of new opportunity for crime along our section of the highway.

Please see detailed comments below.

1. The MP 109 material site is in the Chugach State Park but is not consistent with the park's purpose or its management plan.

We question the legal basis for relegating the MP 109 site to material extraction. Alaska State law does not include blasting for construction material from Chugach State Park land. Further, the MP 109 site is within the Chugach State Park Recreation Zone along the Seward Highway and the park's management plan does not include rock extraction for highway construction in the zone. Chugach State Park land should not be repurposed as a source of material for highway projects. The Windy Corner project in effect condemns scenic park land and wildlife habitat, converting it to a 19.6-acre hole in the ground with no lasting benefit and no commitment that DOT or DNR would not seek to enlarge it further for use in another future construction project.

2. Disruption to our community will be significant.

According to a Granite memo to DOT, material site blasting and rock transport would extend over two years from April to November each year and involve an estimated 150,000 truckloads of rock and ceaseless traffic delays. Houses at the highway are close enough to be hit with a slingshot from the proposed quarry, and RVHA homes uphill would be directly exposed to the noise of blasting. It would essentially block sales of homes here for two years, which will be a significant hardship for some of our members.

3. The quarry would be a huge opportunity for crime, hidden from view.

The quarry will not become a park asset. The cliff sides will reach 230 feet, 100 feet higher than the towering Bird Creek cut, with a volume equal to about 450 Olympic size swimming pools. DNR acknowledges that the quarry will not be suitable for recreational use in the future. DNR specifies that the reclamation plan will be for the purpose of discouraging access to the quarry while leaving a "vegetated screen" between part of the excavated pit and the highway for visual mitigation. This is hardly in keeping with the purpose of Chugach State Park. DNR further describes the quarry as a "temporary material site." On the contrary it will be anything but temporary but rather permanently degraded land and an unusable liability.

The quarry will become a dangerous, hidden place likely to attract nefarious activity. In recent years the Rainbow Valley highway pull-out and road have seen an increase in crime including the dumping of garbage and filth, needles, empty handbags, stolen US mail, bags of spoiled game meat and dead fish, and illegal fires. Not long ago, over a two-year period, we had eight break-ins and thefts.

No one can police the quarry. The city police will not be able to see in as they drive by. State Parks cannot afford to clean up the garbage, and DOT won't. It's just an invitation for trouble, and it doesn't need to be in our, or anyone's, back yard.

4. Windy Corner is over-sized.

Windy Corner was conceived in an era of high oil prices, and is far more elaborate than is needed, and more expensive than we can afford. The project's visitor amenities (including parking for 55 cars and 13 RVs; bathrooms; viewing stations) are not practical given cuts in the

state budget overall and State Parks in particular. DNR has already closed facilities at some recreation sites around the state to cut costs, the State's savings accounts are almost gone, and the price of oil is low. Even with the share of federal transportation funds for construction, this is not a time for Alaska to be building new infrastructure that it cannot maintain. Who will clean the bathrooms and pick up the trash?

For now we should focus on a simpler upgrade of the highway in the Windy Corner project area. The demands for material could be radically reduced, and the transport of less material from an existing source more affordable. The millions saved could be applied elsewhere on the highway to improve and maintain safety, such as management of dangerous rock falls and landslides.

We are encouraged that designating the Seward Hwy as a "Traffic Safety Corridor" in 2006 led to a lower number of fatalities and serious accidents in the project area. This is not reflected in the information that DOT currently makes available on the project website but it can be gleaned from other DOT documents. Any fatal accident is a tragedy and we appreciate the state's interest in making our highways safer. But it is not possible to build a highway that guarantees no tragedies and so, in evaluating alternatives, the public should be provided all the information that shows the results of different actions. These would include data on the effects of the 2006 Traffic Safety Corridor designation, what happens to driving behavior when we straighten curves but increase the speed limit, benefits of turning lanes and better pull-outs, and the presence or lack of law enforcement.

Conclusion

As residents of the project area, we feel that DOT and DNR have pushed a vision of the project forward without appropriate consideration of our concerns and those raised by others. We urge the state to reconsider the scale of the project, the necessity of its design features, and its consistency with park values.

THOMAS E. MEACHAM

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April 24, 2020

Chugach State Park
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Anchorage, Alaska 99501-3561

Re: Comments on proposed Commissioner's Finding on
Windy Corner Highway Improvements

Also sent by e-mail: DNR.Windycorner@alaska.gov

Dear Commissioner Feige:

I am submitting these comments on the proposed use of Chugach State Park lands for the Seward Highway Windy Corner relocation and related changes proposed by the Alaska Dept. of Transportation & Public Facilities (ADOTPF).

Your proposed Commissioner's Finding contains a number of subjects related to the ADOTPF highway improvements. My comments are confined to the subject of the two rock quarries (material sites) located within Chugach State Park (CSP) near highway MP 104 and MP 109 that are proposed to be created to supply the shot-rock and other rock materials required for the Windy Corner project.

My basic position on your proposed Commissioner's Finding is this:

The Alaska Dept. of Natural Resources has no constitutional, statutory or regulatory authority to sacrifice any land within Chugach State Park as a material source to provide construction materials to ADOTPF for highway construction.

ADOTPF has provided to the public a proposed plan drawing and excavation profile for the MP 109 rock quarry (also described as the "Rainbow material site") within the exterior boundary of Chugach State Park (CSP).

To date, neither DNR nor ADOTPF has provided the public with any plan drawing or excavation profile of the MP 104 material site. (The only documentation that appears to be available is a generalized map drawn for surface land appraisal purposes). Thus it is

impossible for the public to comment meaningfully on the location, size or relative impacts of the proposed alternative material site at MP 104.

However, the comments contained in this letter regarding the lack of constitutional and legal authority for the Rainbow material site applies equally to the proposed alternative MP 104 material site.

A. The law does not authorize the use of state park land as a material site for highway projects. A general statement of claimed state policy is buried in the Proposed Finding, at p. 12:

As safety upgrades are made to the Seward Highway material is needed and usually found locally by creating a quarry using park resources.

Chugach State Park has no general legal obligation to provide materials for the construction of ADOTPF highway projects, whether within the Park or adjacent to it. This claimed “purpose” for the use of protected CSP land and resources, as an easy source of ADOTPF road-building materials, is entirely absent from the Alaska Constitution and statutes under which CSP was created by the Legislature.

1. The designation of CSP as a “special purpose site” under Article VIII, Section 7 of the Alaska Constitution precludes the sacrifice of CSP land as a material source for highway improvement. CSP was established under the explicit authority of Art. VIII, Sec. 7. *See* Alaska Statutes 41.120.

2. The statutes establishing CSP do not include the extraction of the Park’s natural resources as one of the purposes of CSP. *See* AS 41.21.120-.125.

3. The CSP regulations at 11 AAC 20.010-.060 do not contain provisions permitting any entity, including another state agency, to requisition natural materials from CSP in order to complete projects under the responsibility of that agency.

B. Chapter 116, Temporary and Special Acts 2000, does not authorize the establishment of material sites (rock quarries) within Chugach State Park.

1. Chapter 116 is often cited, including in the proposed Commissioner’s Finding, the source of legislative authorization for the trading of Alaska Railroad Corporation right-of-way land with CSP, in order to move the Railroad further out into the Arm, and to place the relocated Seward Highway on the land vacated by the Railroad. This is the correct interpretation of this act of the Legislature in 2000.

This relocation will entail the exchange of land title documents between ARRC and DNR, following the “de-designation” of existing CSP land so that ARRC may acquire it, and the conveyance of ARRC’s existing right-of-way to DNR for incorporation into CSP. Accordingly, Ch. 116 made the following finding at Art. 2, Sec. 5(b):

It is the policy of the state that relocation or widening of the Seward Highway or relocation of railroad facilities within the Chugach State Park is appropriate and may be accomplished without significantly adversely affecting the purposes for which Chugach State Park was established.

Section 116 at Art. 2, Sec. 6 states,

CHUGACH STATE PARK LAND TRANSFERS AND CONVEYANCES. (a) Notwithstanding AS 41.21.120-.125, the commissioner of natural resources may, for the purpose of relocation or widening of all or portions of the Seward Highway or relocation of railroad facilities within the Chugach State park, and upon a finding by the commissioner that any grant or conveyance for the purpose would not significantly adversely affect the purposes for which the Chugach State park was established,

- (1) grant a highway easement to the Department of Transportation and Public Facilities;
- (2) convey a property interest in land to the Alaska Railroad Corporation to allow relocation of the Alaska Railroad;
- (3) grant utility easements; and
- (4) receive land or interests in land in exchange for land or interests in land granted or conveyed under (1), (2), or (3) of this subsection.

(b) A grant or conveyance made under (a) of this section may not exceed the interest needed to relocate or widen the Seward Highway or relocate railroad facilities within the Chugach State Park or to construct, repair and maintain the relocated or widened highway and the relocated railroad or utility.

None of the authorities enacted in Ch. 116 grant the Commissioner of DNR the authority to dispose of CSP lands or resources that lie outside the specific land and right-of-way areas and acreages authorized by Sec. 116 to be exchanged between DNR and ARRC.

The proposed rock quarry/material sites at MP 104 and MP 109 are both located within the exterior boundary of Chugach State Park, yet are entirely outside the land areas designated for exchange under authority of Ch. 116. Further, they lie outside any land area that is required to be excavated or disturbed to accomplish the highway/railroad relocation – in other words, they are not within the authorized path of relocation.

C. The 2015 Chugach State Park Master Plan does not contain independent legal authority for the use of CSP resources for highway construction. The proposed Finding at page 12 contains the following statements:

The CSPMP recognizes the use of material within the park for highway construction, repair, and maintenance: “as safety upgrades are made to the Seward Highway material is needed and usually found by creating a quarry using park resources” (p. 115).

The [CSP] plan recognizes that the extraction and use of gravel, rock, sand, and minerals from within the park is a compatible use within the Recreation

Development zone, if the material is used within CSP for projects that benefit park purposes and enhance public safety.

These statements are erroneous, for several reasons. First, the CSP master plan cannot legally create new park “purposes” that were not already contained in Art. VIII, Section 7 of the Alaska Constitution, and stated in the statutes in Title 41 that established the Park. “Highway construction materials” is not one of the stated purposes or uses of designated and dedicated CSP lands.

Second, these statements ignore the beneficial attributes flowing from the designation of the Seward Highway as a National Scenic Byway. If the upland margins of the Highway are to be peppered with rock quarries at frequent intervals (many of which will be sited within the Park under the authority claimed in the propose Finding), much of the scenic value of the Scenic Highway Corridor will be lost.

Finally, if the CSP Master Plan otherwise had authority to authorized the use of Park resources for ADOTPF highway projects, the stated proviso that the resources blasted from Park lands had to be used “within CSP” is not met. One of the purposes of the Windy Corner “land exchange” is to swap CSP land with ADOTPF highway right-of-way, so as to remove the highway from inside the Park boundary.

D. The proposed Commissioner’s Finding would give away CSP assets at a fraction of their market value, with virtually no compensation coming to the Park for the removal of its natural resources. The proposed Finding fails to discuss the economic value of the shot-rock proposed to be quarried for ADOTPF from the MP 109 site. (Even fewer details are available about the back-up MP 104 site). The proposed Finding reveals no volumes of materials authorized to be removed. This lack of public information should be fatal to these rock-quarry proposals.

The appraisal submitted by ADOTPF to the federal Land & Water Conservation Fund, as part of the Fund’s required Environmental Assessment, calculated the *surface area* of the MP 109 quarry at \$53,000.00 for 19.6 acres of “undeveloped upland.” Yet what ADOTPF is intent on acquiring is not the surface area, but the *volume* of material contained within the surveyed boundary of this 19.6-acre site. Yet the proposed Finding reveals nothing about the *volume*, the true value of the MP 109 site to ADOTPF.

ADOTPF in past communications has stated that it intends to remove 2,500,000 tons of material from the MP 109 quarry site. (The volume involved here has been difficult to pin down, because ADOTPF sometimes states it in cubic yards, sometimes in cubic meters, and sometimes in tons). The writer has obtained information on shot-rock volumes and values from a person involved in the road-building materials industry.

I have been informed that the usual royalty on 2.5 million tons of shot rock is from \$1.50 to \$2.00 per ton, or around \$3.00 per cubic yard. Based on these market-rate figures, the shot-rock to be obtained – *essentially for free* – from the MP 109 quarry would be in the neighborhood of \$4,500,000. This is why ADOTPF’s cost comparisons examining the MP 109 site are so favorable. Measuring royalty-free rock from Windy Corner against alternative sources that must absorb royalty fees, either directly or

indirectly, through the original capital costs paid for another source of quarry rock, will always favor “free” rock taken from within CSP.

Disregarding the illegality of the CSP quarries for the moment, the proposed Commissioner’s Finding makes a very serious error, and will act directly contrary to the public interest, if it authorizes the blasting and removal of a valuable subsurface resource from within the Park for a very small fraction of its market value as road-building material.

E. The authorities cited for possible recovery of some minimal resource value from rock quarries by CSP are inapplicable to Park land. By a letter dated August 9, 2019, from Division of Parks Director Ricky Gease, I have been informed that,

At this point in time, final determinations of quantity and monetary values would be worked out via the engineering and design process. Any proposed material sale portion of the project will be handled by the Division of Mining, Land & Water (DMLW) as they are the experts on the subject within DNR. An estimate on revenue will not be known until after the public process is concluded and the design is completed.

In the same letter, Director Gease also wrote,

DOT would pay DNR for any material removed from the proposed MP 109 and MP 104 quarries in accordance with the public and charitable use authorities in AS 38.05.810(a), AS 38.05.550(d)(3), and AS 38.05.565. Pursuant to these authorities, DNR charges other state agencies an administrative base rate for materials used in constructing or maintaining a public project, which partially covers the costs to DNR of administering the use agreement with DOT. This fee is identified in 11 AAC 05.130(e).

The fundamental legal problem with all of these citations to authority in the Alaska Statutes is that they all pertain *only* to state land governed by Title 38 of the statutes, *i. e.*, the Alaska Land Act. The lands managed under Title 38 are the State’s *public domain* lands. The jurisdiction and authority of Title 38 and its regulations extend only to the State’s general *public domain* lands.

By contrast, CSP is a “*special purpose site*” established under authority of Article VIII, Section 7 of the Alaska Constitution. *See* AS 41.21.130. Once withdrawn from the State’s general public domain by an act of the Legislature and designated as a constitutional special purpose site, the land in CSP is no longer subject to *any* resource disposal authority, procedures, or requirements of Title 38 that apply to general public domain land (*see* AS 41.21.121-.130). The land and water described as CSP were reserved from all uses incompatible with its primary function as state park...” AS 41.21.121. This includes withdrawal of CSP land from material disposals, even for “public and charitable uses,” under AS 38.05.565.

The clear legal distinction between constitutional “special purpose sites” designated by the legislature, and lands managed as state public domain lands under Title

38, has been reviewed and confirmed numerous times. See Opinion of the Alaska Attorney General, Feb. 9, 1981 (1981 WL 38551); Opinion of the Alaska Attorney General, Feb. 5, 1981 (1981 WL 38547); Opinion of the Alaska Attorney General, April 27, 2015 (2015 WL 4186149); Opinion of the Alaska Attorney General, Feb. 21, 1985 (1985 WL 70073); Opinion of the Alaska Attorney General, Nov. 1, 1997 (1977 WL 21983); Opinion of the Alaska Attorney General, Nov. 29, 1994 (1994 WL 796609).

F. The notions that ADOTPF's rock extraction at MP 104 and/or MP 109 would only be "temporary," and that these sites could late fulfill useful park purposes, are a convenient sham. The proposed Commissioner's Finding takes considerable pains to emphasize that ADOTPF's use of the MP 104 and/or MP 109 rock quarry sites would only be "temporary," and that after ADOTPF is finished with them, they will revert to CSP management. The important question is this: What useful and realistic purposes that might fulfill the Park's statutory mission could possibly be derived from these "bomb crater" sites?

The proposed Decision speculates that after ADOTPF has blasted and removed the desired quantity of rock from the MP 109 site rock-quarry site, the giant hole remaining in the mountain could become the "Rainbow Point Group Recreation Site" (Proposed Finding, p. 12). The Finding speculates that this site might have such upgrades as "latrines, pavilions, and parking" to enhance the "group site."

The speculation that the quarry pit at MP 109 might eventually provide an attractive "group recreation site" is simply laughable. What recreation or picnic group would enjoy holding their event at the bottom of what will essentially be a 230-foot deep dry well? The gross unattractiveness of such site is evident from ADOTPF's MP 109 quarry site drawing and profile.

No mention is made, in conjunction with the proposed site use as a "Group Recreation Site," that there will remain, probably in perpetuity, the extreme threat to life and limb from loose rock falling hundreds of feet from the blasted and excavated margins of the quarry. In proposing this "group recreation site," there is no recognition of this significant danger, let alone any proposed mitigation measures that could be taken.

The Proposed Finding candidly admits that,

Construction of a group use site is not within the scope of this project, due to funding limitations and the absence of nearby support facilities (i.e., parking, toilets, water), therefore the proposed site will be closed in a manner that protects public safety and deters unauthorized access.

If there was really any *bona fide* intent to develop a blasted and abandoned Rainbow Quarry site into any sort of useful Park amenity, surely the necessary funds could be found to do so -- particularly since ADOTPF will be saving millions of dollars by using of this essentially "no cost" rock for its Windy Corner highway project.

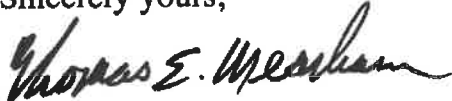
In the last analysis, it seems apparent that the proposed "Rainbow Point Group Recreation Site" is simply grasping at straws -- a transparent attempt to claim that something -- *anything* -- useful to Chugach State Park might possibly be left after the

Park's rock has been extracted -- essentially for free -- and ADOTPF leaves its massive, abandoned quarry site at MP 109. What is infinitely more likely is that this gigantic hole in the ground will become the site of unlawful trash dumping, illegal firearms discharge, and drunken pallet-burning parties. None of these activities -- while both attracted to and suitable for a site comprising a gigantic man-made hole in the ground -- are authorized purpose or activities for Chugach State Park.

G. Conclusion. For all of the reasons stated in this letter, I urge that the Commissioner of ADNR **not** approve of the Proposed Finding; that ADOTPF be directed to **not** use any rock resources to be removed from within CSP at either MP 104 or MP 109; and that the highway agency be encouraged to obtain the necessary construction materials from sites outside the boundary of Chugach State Park.

I request that this letter be included in the public comments regarding the Proposed Finding on the Windy Corner Project. Thank you.

Sincerely yours,

A handwritten signature in black ink that reads "Thomas E. Meacham". The signature is written in a cursive style with a prominent initial "T".

Thomas E. Meacham