

Following are responses to the public comments that were submitted in email to the Department of Natural Resources' (DNR's) Division of Mining, Land and Water<sup>1</sup> concerning the submission of Application for Permits to Mine in Alaska ("APMA") # J20245690 (hereinafter the "application", "plan of operation" and, where relevant the "permit") requesting authorization to conduct geotechnical drilling, mineral exploration, trenching, hydrogeological monitoring, seismic refraction surveys, and associated access construction on state mining claims held by Constantine Mining, LLC<sup>2</sup> via the project operator Constantine North, Inc.

### **Comment Overview**

In rendering a decision on this application, the Department considered comments submitted during the comment period which ran from April 10<sup>th</sup>, 2024 to April 24<sup>th</sup>, 2024<sup>3</sup>. DNR received 158 individual public comment letters, consisting of over 2,100 pages. Comments within the scope of the application review were considered, as well as relevant, competent, and scientifically sound information that the commenter cited in support of their comments.



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<sup>1</sup> "DNR" "ADNR", the "Department", the "Division", "DMLW" and "Mining Section," are used to indicate the Alaska Department of Natural Resources, Division of Mining, Land & Water.

<sup>2</sup> "Constantine" throughout this document is used to indicate both applicants, Constantine Mining and Constantine North unless collectively. Any references to the corporate entities separately by the Division will use their unique name.

<sup>3</sup> A comment response document is not required by statute or regulation but provides a useful summary of the relevant comments on the application that were submitted to DNR during the comment period and the Department's responses.

## Contents

ISSUE TOPIC: OPINION COMMENTS AGAINST THE ISSUANCE OF THE PERMIT.....	4
ISSUE TOPIC: OPINION COMMENTS IN FAVOR OF ISSUANCE OF THE PERMIT.....	5
ISSUE TOPIC: APPLICANT’S COMPLIANCE HISTORY .....	6
ISSUE TOPIC: PLAN OF OPERATIONS “POO” DOES NOT COMPLY WITH 11 AAC 86.800 ~ INADEQUATE PROJECT DESCRIPTION .....	8
ISSUE TOPIC: THOROUGHNESS AND READABILITY .....	10
ISSUE TOPIC: DRILLING PLAN VAGUE AND INADEQUATELY SUPPORTED BY APPLICATION.	10
ISSUE TOPIC: BASELINE DATA .....	11
ISSUE TOPIC: FUEL USE, TRANSPORT, AND STORAGE .....	11
ISSUE TOPIC: SEARCHABLE ELECTRONIC DOCUMENT FOR REVIEW .....	12
ISSUE TOPIC: SMARTCOMMENT .....	13
ISSUE TOPIC: PUBLIC NOTICE AND COMMENT PERIOD .....	14
ISSUE TOPIC: PUBLIC HEARING.....	15
ISSUE TOPIC: CHILKAT BALD EAGLE PRESERVE ADVISORY COUNCIL.....	15
ISSUE TOPIC: HAINES BOROUGH ASSEMBLY MEETING SCHEDULE.....	16
ISSUE TOPIC: DUTY IMPOSED ON DNR BY 11 AAC 96 REGULATIONS.....	18
ISSUE TOPIC: TRIBAL (GOVERNMENT TO GOVERNMENT) CONSULTATION.....	19
ISSUE TOPIC: CULTURAL RESOURCES .....	20
ISSUE TOPIC: PLATEAU AND KLEHINI SITES, FUTURE MINE TAILINGS FACILITIES AND A COMMENTER PROVIDED AMENDED NI 42-101 TECHNICAL REPORT FOR THE PALMER PROJECT. ....	22
ISSUE TOPIC: WASTE MANAGEMENT PERMIT UNDER REMAND.....	24
ISSUE TOPIC: ECONOMICS OF MINING THE PALMER AND OTHER DEPOSITS IN THE UPPER GLACIER CREEK DRAINAGE .....	24
ISSUE TOPIC: REQUIREMENT OF AN ENVIRONMENTAL IMPACT STATEMENT (EIS).....	25
ISSUE TOPIC: LONG-TERM DAMAGE AND COSTS.....	26
ISSUE TOPIC: RISKS TO AIR QUALITY, FUGITIVE DUST FROM MINE OPERATIONS AND TRUCK TRANSPORT/SHIPPING. ....	26
ISSUE TOPIC: SOCIAL AND ECONOMIC IMPACTS OF MINING ON RURAL COMMUNITIES .....	28

ISSUE TOPIC: “PROJECT NOT IN THE BEST INTEREST OF THE STATE AND INCLUDES SITE SPECIFIC RISKS AND HAZARDS CONTRIBUTING TO UNCERTAINTY.”	29
ISSUE TOPIC: DISPOSAL OF A STATE INTEREST	30
ISSUE TOPIC: “HARD LOOK” REVIEW	40
ISSUE TOPIC: CUMULATIVE IMPACT ASSESSMENT	39
ISSUE TOPIC: RESTRICTION OF PUBLIC ACCESS	41
ISSUE TOPIC: ACCESS ROAD CONSTRUCTION	43
ISSUE TOPIC: RECLAMATION PLAN	44
ISSUE TOPIC: RECLAMATION BONDING	45
ISSUE TOPIC: STATUS OF RECLAMATION AT DRILL SITES	46
ISSUE TOPIC: WETLANDS PERMITTING	46
ISSUE TOPIC: FOREST RESOURCES	48
ISSUE TOPIC: STREAM CROSSING/ FORDING	48
ISSUE TOPIC: EXPLOSIVES USE	49
ISSUE TOPIC: BALD EAGLES	50
ISSUE TOPIC: SUBSISTENCE AND SPORT HUNTING	52
ISSUE TOPIC: SUBSISTENCE PLANT HARVESTING	52
ISSUE TOPIC: HAINES HIGHWAY VIEWSHED	52
ISSUE TOPIC: WATER USE	<b>Error! Bookmark not defined.</b>
ISSUE TOPIC: WATER WITHDRAWAL PUMP INTAKES/ LOCATIONS	<b>Error! Bookmark not defined.</b>
ISSUE TOPIC: “SARAH CREEK” RESERVATION OF WATER APPLICATION AND SUPPLEMENT	53
ISSUE TOPIC: DATA COLLECTED	53
ISSUE TOPIC: COMPLIANCE SCHEDULE	54
ISSUE TOPIC: MATERIAL SITES	55

## **ISSUE TOPIC: OPINION COMMENTS AGAINST THE ISSUANCE OF THE PERMIT.**

**Comment Summary:** Commenters voiced their opposition to the activities proposed in the amendment submittal. The commenters stressed the importance of salmon in the Klehini and Chilkat Rivers. One commenter described these rivers, (also referred to as the Jilkáat Aani K̄a Héeni) “ranked as one of the highest-value watersheds for salmon and other fish habitat in Southeast Alaska”.

**DMLW Response:** General support/opposition comments were noted. The Division agrees with the need to adequately manage fishery resources, and in administering this permit, DMLW will continue to work closely with the Alaska Department of Fish and Game, which has regulatory expertise considering the management and protection of fish, wildlife, and habitat resources. The activities proposed in the application are discrete and are of limited duration, with a de minimis likelihood of adverse environmental impact.

The Division's review of this application was conducted by a team of subject matter experts with extensive experience in mining, environmental science, and natural resource management. Our analysis is based on objective criteria, established scientific principles, and relevant regulations. We approach each application with impartiality, focusing solely on the facts presented and the applicable legal and regulatory framework.

Our team's diverse expertise allows for a comprehensive evaluation of all aspects of the proposed activities, including potential environmental impacts, technical feasibility, and regulatory compliance. We strive to maintain the highest standards of professional integrity in our assessments, ensuring that our decisions are based on sound science and law, rather than personal or political considerations. The Division is committed to transparency in our decision-making process, which is evident in this response to comment document.

After working extensively with Division staff to obtain pre-application technical assistance; Constantine has submitted a comprehensive and meticulously prepared application that demonstrates a thorough understanding of the regulatory requirements and the complexities of the proposed activities. The application includes detailed plans, extensive data, and a clear outline of operational procedures, reflecting a commitment to responsible resource management

The Division has completed a “hard look” and has issued a reasoned decision considering the material facts and issues presented. The provisions implemented in the terms of the approval protect the public interest, including ensuring the health and robust fisheries in the watershed. As noted in the Reclamation Bonding comment response below, Constantine is participating in the Statewide Reclamation Bonding Pool under AS 27.19.040(b) Additionally, as a stipulation of the Plan of Operations Approval, the Division has required that the permittee will provide a performance guaranty<sup>4</sup> conditioned upon compliance with all terms of the approval. The reclamation bond pool and additional performance guaranty are put in place to protect the state and public lands if the permittee is unable or unwilling to meet permit obligations and complete the required reclamation.

## **ISSUE TOPIC: OPINION COMMENTS IN FAVOR OF ISSUANCE OF THE PERMIT.**

**Comment Summary:** Commenters expressed support for the activities proposed and that the project provides economic benefits to the Haines area and the overall state.

**DMLW Response:** Comments Noted. The Division has decided to issue a Plan of Operations Approval with reasonable and appropriate stipulations to protect the state’s interest. Issuance of this decision is consistent with the provisions of the Alaska Constitution, Article VII, the Alaska Lands Act (AS 38.05), the Haines State Forest Resource Management Area statutes (AS 41.15) and Subsurface Resources and Materials Goals of the Haines State Forest Management Plan<sup>5</sup>. Specifically, those goals are as follows:

**Goals 1.** Develop mineral and material resources to contribute to the mineral and material supplies of the community, region, state and nation. **2.** Contribute to the local, regional and state economy by developing mineral resources and materials which will provide stable job opportunities and stimulate growth of secondary and other primary industries. **3.** Aid in the development of infrastructure where feasible and continue to provide geologic mapping and technical support to the mining industry. **4.** Protect the integrity of the environment and affected cultures to the extent feasible when developing mineral and material resources.

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<sup>4</sup> Performance guaranties are typically provided by a personal or corporate surety bonds.

<sup>5</sup> Haines State Forest Management Plan, Chapter 2 Subsurface Minerals and Materials (pg. 2.29)

The Division values public input and remains committed to ongoing dialogue with all stakeholders throughout the permitting process and beyond.

## **ISSUE TOPIC: APPLICANT'S COMPLIANCE HISTORY**

**Comment Summary:** Several commenters indicated that Constantine's (both Constantine Mining & Constantine North's) compliance history warranted additional skepticism of the reliability of the data and information provided.

**DMLW Response:** Comment Noted. The Division does not find this line of reasoning persuasive and regardless the point is moot. The Division always looks at all data and information included in application with a rigorous and thorough eye. DMLW also considers the applicants to be in good standing and a prior compliance issue has been resolved to the Division's satisfaction.

**The only history of non-compliance known to the Division involved Constantine's contractor brushing of seismic survey lines to a width that exceeded the permissible amount prior to obtaining a permit. For additional context, here is what was discussed about the matter in the Division's response to comments for a prior permitting action in 2023 under casefile APMA J20195690 Amendment #1.**

(Continued on page 6.)

*During the comment period, the Division was advised by several commenters that clearing work for seismic lines was initiated at the Klehini Site prior to the issuance of a permit, with some portions of the lines in excess of 5' in width. Constantine provided a preliminary verbal notification shortly after that their contractor had deviated from Generally Allowed Uses and had cleared in excess of 5'. Constantine indicated that they would be providing a follow-up verbal and written report regarding their findings from field teams walking the cleared lines. On June 18th, Constantine provided DNR the results of a full ground survey of the cleared lines, indicating that approximately a half mile of lines at the Klehini Site were cleared in a width more than 5', but that no areas in excess of 15' were noted. Areas cleared that were wider than 5' of width were in areas of dense devils' club or alder and were cleared to address potential poking, tripping, or travel hazards to the clearing crew. In the report, it was discussed that the contractor understood it to be permissible to clear wider for those above-listed reasons. Constantine also noted that the few standing trees cut were already dead or infested. The Division conducted a follow-up site to the Klehini site on August 2nd and noted that the forest undergrowth, grasses, ferns, and forbs that have grown over the summer have made it difficult in places to determine that the line clearing has occurred.*

*The Division has determined that commenters are correct in that clearing in a width more than 5' prior to receiving a permit or other written authorization is a violation of **11 AAC 96.010 ("Uses requiring a permit")**. Pursuant to **11 AAC 96.145(a)**, "A person who violates this chapter or a provision of a permit issued under this chapter is subject to any action available to the department for enforcement and remedies, including revocation of the permit, civil action for forcible entry and detainer, ejection, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. The department may seek damages available under a civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or 09.45.735 for violations involving injuring or removing trees or shrubs, gathering geotechnical data, or taking mineral resources." Upon review of the totality of the circumstances (and that the Division has determined that it is appropriate to issue the requested permit authorizing clearing up to 15' in width for seismic studies); **no remedy is required beyond the requirement for the posting of a performance guaranty<sup>20</sup> to ensure compliance with the terms of the issued permit**. The required performance guaranty is \$5,000 USD. The pursuit of damages ("punitive or compensatory damages") for the clearing activity is unwarranted. Those cleared areas are now part of a permitted and authorized surface use and civil action would be subject to the principle of **de minimis non curat lex**. Commercially valuable timber cleared (if any) prior to the issuance of the permit is now required to be salvaged according to the terms of the permit.*

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## **ISSUE TOPIC: APPLICANT PARENT ENTITIES**

**Comment Summary:** Several commenters remarked on denying the permit due to the foreign parent corporation ownership of Constantine Mining, Constantine North and the Palmer Project.

**DMLW Response:** Comments Noted. Constantine Mining, LLC (organized in the State of Delaware) is qualified to do business in Alaska<sup>6</sup> and thus qualified to acquire and hold State Mining Claims under AS 38.05.190(a)(5). Operator Constantine North, Inc<sup>7</sup>. is an Alaska domestic business corporation. Foreign ownership isn't a concern for the Division in this permitting process for several reasons:

**Legal standing-** Both Constantine Mining, LLC and Constantine North, Inc. are qualified to do business in Alaska and hold state mining claims.

**Equal treatment-** Treating applicants differently based on shareholder nationality could raise constitutional due process concerns.

**Regulatory compliance-** The focus is on the applicant's ability to meet regulatory requirements, not on ownership structure.

**State interests-** The permit review process prioritizes environmental protection, regulatory compliance, and economic benefits to Alaska, regardless of ownership.

**Lack of legal basis-** There's no legally defensible cause for denying the requested Plan of Operations Approvals based solely on the nationality of a corporation's shareholders.

## **ISSUE TOPIC: PLAN OF OPERATIONS “POO” DOES NOT COMPLY WITH 11 AAC 86.800 ~ INADEQUATE PROJECT DESCRIPTION**

**Comment Summary:** One commenter provided a lengthy discussion on why they don't believe that Constantine's APMA/Plan of Operations submission meets the requirements for applying for a

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<sup>6</sup> Alaska Department of Commerce, Community and Economic Development Entity # 10063019. Constantine Mining, LLC is managed by Constantine North, Inc, which is the operator of the project.

<sup>7</sup> Alaska Department of Commerce, Community and Economic Development Entity # 63048D



Plan of Operations Approval under 11 AAC 86.800, including discussions of the size and appropriateness of provided maps and diagrams.

**DMLW Response:** Comment Discussion Noted. The commenter has provided a piecemeal accounting of alleged “requirements” for a complete plan of operations submission. The Division notes that some of the references appear to be to regulations associated with an application for a Land Use Permit (11 AAC 96.030) such as *“A land use permit application ( or POO) for activities on public lands managed by DNR “must contain the following information in sufficient detail to allow for the department's evaluation of the planned activities' effect on the land: ... a map at a sufficient scale and detail to depict the location of all activities and routes of travel of all equipment or motorized vehicles for which a permit is required; a description of the proposed activity, any associated structures, temporary improvements, and the type of equipment or motorized vehicles that will be used; and any additional information or document that the department requires.”* Additionally, the commenter appears to copy/paste language from the Plan of Operations regulation 11 AAC 86.800(b) without any clear accounting of what supposedly required information from that list is not present. The commenter also discusses additional alleged requirements that all maps provided must be 8 ½” by 11” and that maps provided by Constantine are “smaller than the required size, blurry, illegible, and do not contain the required information.

As a preliminary matter, the Division reminds that the applicant (Constantine), as not applied for a Land Use Permit and thus the language from the 11 AAC 96.030 “Application” which is applicable only to Land Use Permit requests is not pertinent to this decision to issue a Plan of Operations Approval.

The Division has reviewed the entirety of the APMA application, including the embedded Plan of Operations document/narrative for completeness under the pertinent regulation 11 AAC 86.800(b) and has determined that it is complete. It is important to note that 11 AAC 86.800(b) states that the submitted plan “must include statements and maps and drawings setting out the following, as applicable” before going into further detail in a list of potentially applicable information. The Division retains discretion to determine what is applicable based on a wide variety of activities that may be approved under that plan of operations regulation, ranging from mineral exploration/investigative work to full scale production mining.

The Division would also note that references to Constantine’s provided maps being too small to meet the alleged size requirements are incorrect. The Division provides guidance that maps cannot exceed 8 ½” by 11” in the APMA application guidance and instructions, but only states that if

larger maps than that are provided an equivalent copy no larger than 8 1/2” by 11” must be provided. The Division also finds that assertions that the provided maps are not clear and lack the applicable information as unpersuasive.

## **ISSUE TOPIC: THOROUGHNESS AND READABILITY**

**Comment:** I appreciate the thoroughness and readability of this permit application. It would also be helpful to see some drone view to get a better understanding of this operation as it grows in the advanced stage.

**DMLW Response:** Comment Noted. The Division has determined that the application is complete and has all applicable information in which to make a decision to issue the Plan of Operations Approval. The Division will advise Constantine on your suggestion to include drone imagery with any subsequent submissions to the Division.

## **ISSUE TOPIC: DRILLING PLAN VAGUE AND INADEQUATELY SUPPORTED BY APPLICATION.**

**Comment:** The description of geotechnical drilling in the permitting materials is inadequate. The maps (pages 14 & 15 POO) show only the general locations of the proposed drill pads. The maps are only 3 ½ by 5 ½ inches, rather than the 8 ½ by 11 required by the regulations. The maps are not USGS maps but blurry overhead photographs, perhaps satellite images, but in any case, they are not useful for identifying the locations of the proposed drill pads and the other resources those drill pads will impact.

**DMLW Response:** Comment Noted. The applicant has provided sufficient maps and information to determine the locations of the geotechnical drill sites located within the state mining claims and authorized by this Plan of Operations Approval issuance decision. The Division has determined that the APMA/Plan of Operations submission is complete under 11 AAC 86.800(b). The drilling activities under this Plan of Operations are limited to two core areas of operations (Plateau, which is west of Glacier Creek and also a site to the East of Glacier Creek along the Porcupine Road) that are easily identified. Additionally, the commenter's reference to a required 8 ½ by 11 sized map by regulation is incorrect, and the APMA application instructions simply advise the size of the paper to not exceed 8 ½” by 11”.

## **ISSUE TOPIC: BASELINE DATA**

**Comment Summary:** Several commenters mentioned a perceived lack of baseline data provided with the submitted application.

**DMLW Response:** Comments noted. The baseline data needs for these ongoing geotechnical and exploratory activities are minimal, as the proposed activities are for a discrete and limited duration with a limited, temporary impact on the land and surface disturbances are carefully planned to be consolidated with the concurrent timber harvesting operations. The Division has reviewed the extensive application materials and proposed activities, as well as consulted with agency partners with the Alaska Departments of Fish and Game and Environmental Conservation. No additional baseline data needs were identified by the State of Alaska or by the federal agencies that were provided notice or participated in the agency review process. Imposing additional burdens on the applicant for comprehensive baseline studies would be unwarranted and disproportionate to the scale and potential effects of the ongoing geotechnical and exploratory activities. The APMA application framework and permit adjudication process recognize the exploratory phase's inherent low-impacts characteristics while maintaining appropriate environmental safeguards. Additionally, the Division implements an adaptive natural resource management strategy, retains the ability to stop work, modify provisions and/or revoke the Plan of Operations Approval, and can require additional data, monitoring, reclamation, mitigation, or changes in activities if warranted new by new information.

## **ISSUE TOPIC: FUEL USE, TRANSPORT, AND STORAGE**

**Comment:** Constantine has failed to provide sufficient information regarding its proposed usage, transportation, and storage of fuel. To begin with, the permit application requires the applicant to disclose the "types and volumes of fuel" that will be used, but Constantine fails to provide a complete listing of this basic information. Instead, they just indicate the types of fuel and the number and capacity of some of the storage containers. Critically, Constantine fails to give any indication of how many times the fuel storage tanks on-site will be resupplied.

To understand the total quantity of fuel being used during the course of the project and the concomitant fuel spill-related risks, DNR and the public must be provided with an estimate of the project's daily, weekly, seasonal, and/or annual usage, deliveries, or throughput for each type of fuel, as well as the distance from water bodies where all fueling operations would occur.

DNR's permitting regulations and application forms require detailed diagrams with locations, dimensions, and descriptions of all facilities, including fuel use and storage at both remote camps and work sites, as well as fuel transport routes. Without this information, DNR and the public cannot determine what threats Constantine's proposed activities may pose to rivers, wetlands, fish, habitat, downstream communities, subsistence, cultural resources, and other receptors. The lack of such information also inhibits the development of mitigation measures, such as relocation of fuel transfer and storage facilities farther away from water or onto more stable substrate. Constantine fails to provide maps and diagrams showing the locations of fueling stations and storage facilities.

**DMLW Response:** Comment Noted. There is no missing required information regarding fuel storage in APMA J20245690 application. As noted in Constantine's submitted Plan of Operations *Section 3.7 Fuel Management*, the primary fuel storage facility for the overall project is the existing site located on BLM managed lands at mile 2.4 of the Glacier Creek Road. That site is not **managed by the Division** and **is not in the area authorized** by this Plan of Operations Approval issuance.

Constantine has made quite clear in Section 3.7 that the only fuel storage on the state mining claims subject to this decision is a 500-gallon diesel fuel tank at the one-acre laydown location at the Plateau Area to the west of Glacier Creek. The laydown yard storage tank is more than 100' from flowing waters as required by the Division. This 500-gallon tank is similar in size to those used for residential heating fuel in the Haines area, will be placed in a secondary containment duck pond liner and will also have associated earthen berms as an additional protection. The project has a Spill Prevention Control and Countermeasures Plan (SPCC), spill kits onsite, training for project personnel in spill prevention and response procedures, and inspection procedures. Due to all of this, further consideration of the frequency of storage tank or equipment refueling is unnecessary and it is clear that fuel spills are of a minimal risk.

## **ISSUE TOPIC: SEARCHABLE ELECTRONIC DOCUMENT FOR REVIEW**

**Comment:** Several commenters noted that the .pdf document (scan) of the application package was not searchable and that it increased the time needed for review.

**DMLW Response:** Comment Noted. The Division recognizes that the application document provided as an attachment to the Online Public Notice Site posting is an Imaged-Based PDF, meaning that the pages are simply a picture (scan) of the original. This scan accurately represented the original document.

As noted in the public notice posting, the Division complies with Title II of the Americans with Disabilities Act of 1990<sup>8</sup>. Accordingly, Division staff received and fulfilled one request for accommodation for a version of the file compatible with a computer screen reading program. After running the Image Based PDF file through an Optical Character Recognition (OCR) program, the file was provided via the State of Alaska's File Sharing Service (Alaska ZendTo). OCR programs insert a text component behind the image of the text and substantially increase the file size of the .pdf making it too large to be emailed via the state system or attached to the Online Public Notice System. The fulfilled accommodation was acknowledged by the requestor, who indicated that the screen reader program was successful in utilizing the file.

## **ISSUE TOPIC: SMARTCOMMENT**

**Comment:** Several commenters remarked about submitted digital written comments via the SmartComment portal for APMA J20245690, rather than having an email address available to directly submit comments during the public comment period.

**DMLW Response:** Comment Noted. SmartComment is a web-based platform with functionality comparable to browser and app based email solutions. Submission of a comment via the SmartComment platform does not require the creation a commenter account and comments are entered via a simple interface that obtains commenter personal and contact information, as well as the comment body and attachments as needed. This system is similar to the portal utilized by the Federal Government via regulations.gov and other online federal platforms. Many commenters successfully and timely submitted during the open comment period. The SmartComment platform is not burdensome, nor does it represent a barrier to commenters due to the similarity in function to modern email systems. SmartComment provided a suite of tools and comment management options for the Division which allows for our staff to effectively address a large volume of submitted comments and documents.

It is of note that there is no legal or procedural requirement to accept APMA public comment submissions via an email address, and the Division also accepts mailed comments.

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<sup>8</sup> The Division also notes in the posting that individuals who may need auxiliary aids, services, or special modifications to comment should contact Alaska Relay at 711 or 800-770-8973.

## **ISSUE TOPIC: PUBLIC NOTICE AND COMMENT PERIOD**

**Comment Summary:** A substantial number of comments received by the Division remarked on the adequacy and constitutionality of the initial 14-day comment period. Many commenters indicated that a 30-day or a 90-day comment period was required.

**DMLW Response:** Comment Noted. Many Commenters are mixing up federal agency NEPA/EIS<sup>9</sup> comment periods that typically range from 45-90 days (depending on the scope of the project) with the public notice requirements for Plan of Operations Approvals. Revocable permits and authorizations such as the issued Plan of Operations are not a disposal of a state interest and are exempt from formal public notice requirements by AS 38.05.945(e). Pursuant to Alaska Constitution Article VIII, Section 10, the Alaska Legislature enacted AS 38.05, including the provisions of AS 38.05.945.

However, the department does retain the discretion to issue an online notice posting and solicit comments. The Division determined that it was appropriate to post our standard exploration permit/plan of operations approval 14-day posting, which is used for comparable exploration projects elsewhere on state lands. This is the typical timeframe that land use authorizations such as Plan of Operations Approvals and Land Use Permits are noticed by the Mining Section and that the Division's Regional Land Offices notice for non-mining related land use permits. The public notice had a clear description of the proposed action and pertinent facts, information and links to submit comments, and the application before the agency for review and consideration.

While not required, the notice provided by the Division was constitutionally adequate<sup>10</sup> ; as it was a reasonable and substantial opportunity for the public to participate in the adjudicatory process governing the issuance of the Plan of Operations Approval, receive numerous detailed substantive comments, and provide a response to comments document addressing public interests and concerns.

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<sup>9</sup> National Environmental Policy Act (NEPA) / Environmental Impact Statement (EIS)

<sup>10</sup> Because Alaska Const. Article VII § 10 "Public Notice" does not specify the requirements and there are no specific requirements for revocable Plan of Operations Approvals, what constitutes constitutionally adequate centers on due process. In the due process context, notice has been found adequate when the party has had actual notice and the opportunity to present its arguments to DNR.

## **ISSUE TOPIC: PUBLIC HEARING**

**Comment Summary:** A common remark in comments and correspondence received by DMLW during the public comment period was that a “public meeting”, “public hearing” and “open house” is required or requested for DMLW to make a permitting decision.

**DMLW Response:** Comments Noted. There is no legal requirement for public meetings or hearings in the adjudication of 11 AAC 86 Plan of Operations Approvals. Permits and other authorizations (such as Plan of Operations Approvals) that are revocable are also exempt from AS 38.05.945 public notice requirements and thus, are exempt from AS 38.05.946 public hearings<sup>11</sup>. DMLW has provided a detailed response to comments document to address concerns and questions raised during the 14-day public notice period.

## **ISSUE TOPIC: CHILKAT BALD EAGLE PRESERVE ADVISORY COUNCIL**

**Comment:** The Alaska Chilkat Bald Eagle Advisory Council (CBEP) which has authority to review all actions proposed within the boundaries of the Chilkat Bald Eagle Preserve, was not officially notified on a formal agenda for a meeting on this proposed plan of operations, even though this was the one notification step taken by AKDNR in 2023 for a very similar action, when APMA J20195690 was a permit amendment for one year. Now, the permit applicant is proposing a five-year plan of operations and no comment period has been given for the Alaska Chilkat Bald Eagle Advisory Council (CBEP).

**DMLW Response:** Comment Noted. The Chilkat Bald Eagle Preserve is a unit of the Alaska State Parks System managed by the Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation (DPOR). The activities proposed in the APMA J20245690 Plan of Operations, as well as those from last years APMA amendment of J20195690 are not located within or adjacent to the Chilkat Bald Eagle Preserve. Of note, the closest lands designated by the Alaska Legislature as a part of the preserve are approximately 5.75 miles east of the state mining claims listed in APMA J20245690. There is no legal or procedural requirement that the CBEP is provided

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<sup>11</sup> Under AS 38.05.946



notification, meet or hold hearings regarding an application for a APMA/Plan of Operations Approval within the Haines State Forest.

## **ISSUE TOPIC: HAINES BOROUGH ASSEMBLY MEETING SCHEDULE**

**Comment:** We, the below signed Haines Borough residents, are writing to express our concerns regarding the APMA J20245690- A Hard Rock Exploration Application Within the Juneau Mining District- Glacier Creek and the lack of time provided to evaluate the application and its implications for our community. The two-week comment period, set to expire on April 24 at 5 p.m., must be extended by 30 days for the public and our elected leaders to review the over 200-page permit application and the Plan of Operations.

Notably, the public notice for this permit and the five-year Plan of Operations were submitted on April 10, 2024, the day after the most recent Haines Assembly meeting. The public comment period for this permit is set to expire on April 24, 2024, the day after the next Haines Assembly meeting. Thus, our local elected government needs more time to address the proposed permit and plan.

**DMLW Response:** Comment Noted. The Division has addressed the public notice period timeframe in the our response to the issue topic Public Notice and Comment Period earlier in this document. Any further consideration of the proceedings and actions of the Haines Borough Assembly is outside the scope of the Plan of Operations Approval issuance decision.

## **ISSUE TOPIC: AGENCY NOTICE**

**Comment Summary:** Several commenters made allegations of a flawed interagency notice and communications process, as if the Division had withheld the APMA application from pertinent agencies. For example, the Chilkat Indian Village (CIV) provided this specific comment-

“The permit applicant also stated that “all” affected agencies have been notified by AKDNR about the proposed Plan of Operations. As of April 23<sup>rd</sup>, to our knowledge, none of the additional federal and state agencies with management authority and permitting responsibilities associated with this proposed plan of operations have been notified. This includes Alaska Department of Fish and Game (Fish Habitat Permit), US Fish and Wildlife Service (Bald Eagle impacts including habitat modification and impacts to migratory birds), National Oceanic and Atmospheric Administration



(NOAA) (impacts to Essential Fish Habitat and impacts to important habitat for salmonids), and US Army Corps of Engineers (wetlands impacts, including extents larger than 0.1 acre).”

**DMLW Response:** Comments noted. Allegations that the above listed agencies were not provided notice of the application and opportunity to provide agency comments to the Division are incorrect and may be partly based on lack of understanding of the Application for Permits to Mine in Alaska (“APMA”) program. The Division, as the lead state agency acts as the administrator and coordinator of the APMA program.

The APMA is a multi-agency application packet that serves as the forms to obtain permits and authorizations from the Department of Natural Resources, but also numerous other state and federal agencies. For example, the Alaska Department of Fish and Game not only is provided an opportunity to provide comment to the Division on the APMA/ Plan of Operations, the APMA serves as their application for issuance of a Fish Habitat Permit. Likewise, the US Army Corps of Engineers utilizes the APMA application packet as a pre-construction notice for a number of nationwide and regional general permits under Section 404 of the Clean Water Act.

The distribution of the APMA application and the start of the agency notice and comment period occurred on April 10<sup>th</sup>, 2024<sup>12</sup> and ran concurrently with the public notice and comment period. The Division received comprehensive and detailed comments from the Alaska Department of Fish and Game and the applicant was also issued the relevant Fish Habitat Permits to support the activities proposed in the Plan of Operations. The Division also received agency comment from NOAA, that a formal Essential Fish Habitat assessment will not be done for the activities proposed in the Plan of Operations as there is no federal permitting action requiring such. The US Fish and Wildlife Service was also notified of the APMA and while they had not provided specific comment on J20245690, they have conducted a detailed review of essentially the same proposed activities in 2023 when they provided extensive comments to the Division.

The US Army Corps of Engineers has communicated no comments or objections to the proposed activities and works closely with the Division as an interagency partner in the APMA program and to identify concerns, information gaps, incomplete applications, and to address issues of non-compliance in the situations where both agencies share concurrent jurisdiction over exploration and mining activities.

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<sup>12</sup> The agency notice distribution and posting to the APMA Interagency Discovery Portal is included in the administrative record of APMA J20245690.

## **ISSUE TOPIC: DUTY IMPOSED ON DNR BY 11 AAC 96 REGULATIONS.**

**Comment:** Surface uses of public lands managed by AKDNR are generally governed by 11 AAC 96. Under this chapter, AKDNR has a duty to “manage uses and activities” on public lands in a manner that will “minimize adverse effects on the land and its resources.” AKDNR is also expected to include terms and conditions that will “minimize conflicts with other uses,” “minimize environmental impacts,” and otherwise protect the “interests of the state.”

**DMLW Response:** Comment Noted. The Division recognizes that that the Alaska Constitution, Article VIII- Natural Resources, the Alaska Lands Act (AS 38.05) and the Haines State Forest Resource Management Area statutes (AS 41.15.300 through AS 41.15.330); as well as the provisions of the Haines State Forest Management Plan provide the foundation and requirements for making a decision regarding issuance of a Plan of Operations Approval under APMA J20245690. However, the Division notes that the above-referenced regulatory chapter (11 AAC 96) does not impose any specific duty on the Division regarding this decision.

For example, 11 AAC 96.005 "Purpose" outlines the intent behind the chapter but does not impose specific duties or requirements on the Division. This regulation states that the purpose of the chapter is "to manage uses and activities on state public domain land, including shoreland, tideland, and submerged land, in order to minimize adverse effects on the land and its resources". While this provides a general framework for the chapter's objectives, it does not prescribe concrete actions or obligations for the agency to follow.

Furthermore, the commenter's statement that AKDNR is also expected to include terms and conditions that will “minimize conflicts with other uses,” “minimize environmental impacts,” and otherwise protect the “interests of the state.” is predicated on the express language of 11 AAC 96.040(b) which is a provides discretionary authority to the Division to include terms in conditions when issuing a Land Use Permit. As it is discretionary in nature, that language does not impose any specific duties or requirements on the Division. It should also be noted that 11 AAC 96.040 does not apply to the issuance of a Plan of Operations Approval under the mining regulations, as it is specific to terms and conditions for an issued Land Use Permit.

Regardless, the Division has thoroughly reviewed and analyzed the proposed plan of operations and has issued it pursuant to 11 AAC 86.150 and 11 AAC 86.800 with the reasonable and appropriate stipulations to meet the requirements and intent of the Constitution, the Alaska Lands Act, the Haines State Forest statutes, and the Haines State Forest Management Plan.

## **ISSUE TOPIC: TRIBAL (GOVERNMENT TO GOVERNMENT) CONSULTATION**

**Comment Summary:** Several commenters, including the Chilkat Indian Village (CIV) indicated that a formal tribal consultation must occur for the Division to decide on APMA J20245690.

From CIV's Comments submission- "Before approving any aspect of the proposed activities, AKDNR should remedy these failures by scheduling at least one Tribal consultation on a Government-to-Government basis that is respectful of the Tribe's sovereignty and expertise. AKDNR should also schedule at least one public meeting or workshop, with options for both in-person and online participation, presentation of substantive information in a concise and readily understandable manner, and ample opportunity for public input and dialogue with the project proponent and agency decision-makers. These workshops should not be held by for-profit corporations who are applying for permits and writing the proposed plans of operation."

**DMLW Response:** Comment Noted. The Division appreciates the detailed comments submitted by the CIV regarding the Plan of Operations application. CIV input is valuable and has been carefully considered in our review process. The Division want to assure CIV and other commenters that the tribe has received the same opportunity to participate in the adjudicatory process as all other stakeholders. The Division is committed to fair and equitable treatment of all parties involved in this process. We have thoroughly reviewed and considered all comments received, including those from the tribe, in making our decision. While we recognize the unique status of tribal governments, the regulatory framework for this specific permitting process does not provide for a separate government-to-government consultation beyond the public comment period. We encourage continued engagement and dialogue as we move forward with this and future projects that may affect tribal interests.

To discuss the topic in more detail; The Division provided public notice of the APMA/ Plan of Operations on April 10<sup>th</sup>, 2024. No existing legal obligation warrants government-to-government consultation for the issued authorization. A 2017 Alaska Attorney General Opinion discussed the status of federally recognized tribes in Alaska and the authority of a sovereign government over its citizens, its land, and people who enter<sup>13</sup> its land. The opinion recognizes that sovereignty includes the power of native tribes to form a government and laws, determine tribal citizenship, assert sovereign immunity, and enter certain agreements with the federal government. This advisory

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<sup>13</sup> All activities proposed in APMA J20245690 are located on state lands, within the Haines State Forest.

opinion does not indicate that the State has a legal obligation to provide a sovereign tribal government with additional or greater rights or consultation opportunities than the rest of the public, or, for example, a municipality.

In contrast with advisory opinions, the notice requirement for revocable permits and authorizations is governed by statute and regulation. Upon receipt and review of an application, law<sup>14</sup> provides the Division with discretionary authority to determine whether notice is performed. As beforementioned, the Division provided notice and a 14-day comment period. CIV participated in this public notice process by submitting comments during that time and the Division has responded with a comment response document.

In summary, although the Division did not engage in any specific government-to-government consultation as none is legally required, DMLW provided CIV a substantial opportunity to participate in the adjudicatory process governing the issuance of the permit and CIV substantially participated. The Division received, reviewed, and responded to CIV's (and other) comments as appropriate. The administrative record supports this finding, and no other law currently mandates DMLW to conduct government-to-government consultation.

## **ISSUE TOPIC: CULTURAL RESOURCES**

**Comment Summary:** Several commenters, including the Chilkat Indian Village (CIV) remarked on the concerns regarding the potential for heritage resources within the Klehini and Plateau Sites. Additionally, some references were included that the “State of Alaska has a legal responsibility under Section 106 of the National Historic Preservation Act” regarding the proposed activities.

**DMLW Response:** Comments Noted. The Division acknowledges and respects the deep cultural and heritage concerns raised by the Chilkat Indian Village (CIV) regarding the proposed activities within their traditional territory. We recognize the importance of the Jilkáat Aani K̄a Héeni (Chilkat River Watershed) to the Tribe's cultural practices, subsistence activities, and spiritual well-being.

The Division consulted with the Department of Natural Resources, Office of History and Archeology, Review and Compliance Unit (OHA)<sup>15</sup> who reviewed the proposed activities, the

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<sup>14</sup> AS 38.05.945(e) provides that notice is not required under this section for a permit or other authorization revocable by the commissioner.

<sup>15</sup> The Office of History and Archaeology (OHA) is Alaska's primary office with knowledge and expertise in historic preservation dedicated to preserving and interpreting Alaska's past, and serves as Alaska's State Historic Preservation

Alaska Heritage Resource Survey (AHRIS) data repository, as well as CIV's comment letter. OHA indicated that cultural resources survey work is always encouraged. The Office, however, expressed no concerns precluding the proposed work to commence and advised that the standard inadvertent discovery language within DNR permits to be suitable.

The Division notes the following: The proposed activities are primarily concentrated in areas already impacted by the ongoing Baby Brown Timber Sale, most of the planned work will utilize existing approved access routes and approved disturbance areas, the seismic activities are just brushing out vegetation for pedestrian access and will have limited ground vegetation and earthwork impacts, nothing in the administrative record provides sufficient evidence to warrant requiring an archaeological survey prior to Constantine's resumption of project activities in 2025.

However, the Division remains committed to protecting cultural resources. As a protective measure, the permit has been stipulated with specific requirements, including a stop work order if cultural or paleontological resources are inadvertently discovered as a result of or during activities authorized by this permit. **All of Constantine's activities under the permit must be in full compliance with the Alaska Historic Preservation Act (AS 41.35).** The permittee must promptly notify the Division and OHA of any discoveries and work may not resume at the site without written permission from the Division/OHA.

Constantine has also noted that they will "engage a qualified archeology contractor to perform pedestrian cultural resource clearance surveys of areas that Constantine intends to disturb, prior to that disturbance. Constantine understands that those surveys will be coordinated by the contractor with the Alaska Office of History and Archeology."<sup>16</sup>

The Division also notes that Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires **federal agencies**<sup>17</sup> to consider the effects on historic properties of projects they carry out, assist, fund, permit, license, or approve throughout the country. However, the review, adjudication, and issuance of a Plan of Operations Approval<sup>18</sup> by the Division is purely a state

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Office (SHPO) pursuant to the National Historic Preservation Act of 1966. OHA administers programs authorized by both the National Historic Preservation Act of 1966 and the Alaska Historic Preservation Act of 1971.

<sup>16</sup> Plan of Operations Section 2.2.5 (pg. 10).

<sup>17</sup> If a federal or federally-assisted project has the potential to affect historic properties, a Section 106 review will take place and is administered by the appropriate federal officials in cooperation with the State Historic Preservation Officer.

<sup>18</sup> 11 AAC 86.150 and 11 AAC 86.800

action, with no federal nexus. Thus, Section 106 does not apply to this decision and does not warrant consideration by the Division.

**ISSUE TOPIC: PLATEAU AND KLEHINI SITES, FUTURE MINE TAILINGS FACILITIES AND A COMMENTER PROVIDED AMENDED NI 42-101 TECHNICAL REPORT FOR THE PALMER PROJECT.**

**Comment:** The applicant proposes new geotechnical work and infrastructure north and south of the confluence of Glacier Creek and the Klehini River, including up to 5.5 miles of seismic surveys, and installation of 20 new monitoring wells, 40 new test pits, and 33 new drill pads. In addition to the direct, induced, and cumulative impacts of the activities explicitly described in the application, DNR must consider the long-term impacts of the intended development of the Plateau and Klehini sites. Constantine’s Preliminary Economic Assessment (available at <https://americanpacificmining.com/projects/palmer-vms-project/>) identifies the Klehini Site as its preferred alternative for a tailings storage site.

Liz Cornejo, vice president of DOWA Alaska, the majority owner of the Palmer Project joint venture, confirmed on public record at the May 25, 2023 Haines Borough Assembly meeting that the developments proposed in the application for the Plateau and Klehini sites are intended for tailings storage. American Pacific's senior vice president Peter Mercer further confirmed this in a community meeting at the Aspen Hotel in Haines on April 17, 2024. In considering this permit application, DNR must not limit itself to a reductionist, piecemeal analysis of the proposed activities as described, but instead analyze the potential direct, induced, and cumulative impacts of the intended result: tailings storage at the confluence of the anadromous Glacier Creek and Klehini River. DNR should require full transparency of intended activities in this permit application and analyze potential impacts accordingly.

**DMLW Response:** Comment Noted. The Division has reviewed and considered this comment as well as reviewed the Preliminary Economic Assessment or “PEA” (Amended NI 43-101 Technical Report) reference. Regarding the PEA, the Division does factually recognize that the document has maps, information, and diagrams showing a conceptual non-sulfide tailing management and non-potentially acid generating (NPAG) waste rock facility at the Klehini site. Its important to understand the purpose of the report and the terminology involved for context.

A “preliminary economic assessment (PEA)” is an early-stage study conducted to analyze the potential economic viability of a mining project, typically by evaluating the mineral resources

within a specific deposit or deposits, providing initial insight into whether further development is justified based on potential profitability and associated risks. This often includes snapshots with conceptual high-level mine design and facilities based on what is known at the time about the deposit and site conditions and suitability. To be compliant with investment and securities regulations for publicly traded companies and offerings in Canada, reports such as the PEA must be compliant with Canadian Securities Administrator's NI 43-101 standards of disclosure.

The PEA, while presenting a conceptual mine design and layout to communicate about the project to investors or other interested parties, should not be taken as a formal proposal made specific or an indication that the project proponent has formally decided of suitability of an area for facilities or infrastructure placement.

While a full review and commentary on the PEA from the Division is outside the scope of the decision for the Plan of Operations, the PEA's overall project information, and the conceptual mine designs included support that Constantine is following a reasonable and customary sequence of project activities to get to the point where they are wanting to pursue a geotechnical investigation program at the Klehini and Plateau sites.

The issuance of this Plan of Operations is limited to surface uses associated with geotechnical and hydrogeological investigations of the Klehini and Plateau sites. While Constantine has indicated the Klehini location as a potential site in corporate documents; **no plans have been reduced to a specific proposal, nor are they in front of the Division.** Any discussions of tailings facility proposals are highly speculative at this point and would be subject to a separate future permitting process via the Division's Large Mine Program. In contrast, the work proposed in this APMA is part of an iterative process with the geotechnical and hydrogeological investigations advancing design and feasibility considerations.

Pursuant to AS 38.05.255(a) and 11 AAC 86.145(a), surface use of land or water is limited to those "necessary for the prospecting for, extraction of, or basic processing" of mineral deposits, and is subject to reasonable concurrent use. Constantine's proposed geotechnical drilling, trenching and seismic studies meet these requirements. Geotechnical boreholes expand understanding of the regolith in relation to mine design (primarily the siting of mine facilities).

Advancing the understanding of the unconsolidated material under potential mine facilities is in the interest of the State as it is directly related to the management of risk associated with the potential construction of tailings storage and other mine site facilities. It is not in the state's interest to review or evaluate future mine facility development plans without first requiring the



collection of necessary geotechnical, geologic, and hydrogeologic data. These types of data are characterized through the collection of rock and substrate samples, hydrogeologic monitoring, and resource modeling. Permitting the applicant to conduct such work allows Constantine to design realistic facility proposals and allows the Division to review future permit proposals with legitimate, rigorous scientific data rather than hypothetical ideals.

### **ISSUE TOPIC: WASTE MANAGEMENT PERMIT UNDER REMAND**

**Comment:** The application refers to "construction of a water disposal system which is also authorized by ADEC under a waste management permit." The waste management permit referenced has been under remand by the Alaska Department of Environmental Conservation (ADEC) since 2019. On August 18, 2023, then-ADEC Commissioner Jason Brune reaffirmed the remand, barring discharge from the system while the state evaluates natural baseline conditions.<sup>4</sup> (OAH No. 22-0887-DEC, August 18, 2023). Constantine has a demonstrated history of incomplete permit applications that fail to adequately address natural baseline conditions. DNR should take this history into account in evaluating this permit that follows that pattern.

**DMLW Response:** Comment Noted. The referenced Waste Management Permit application/request and associated proceedings with the Alaska Department of Environmental Conservation are outside of the scope of the decision for this Plan of Operations Approval issuance. Additionally, the area covered under the requested DEC permit application is located up the Glacier Creek drainage and is not located on the state mining claims approved under this Plan of Operations Approval decision. No Waste Management Permit is needed for the proposed activities within the Plan of Operation.

### **ISSUE TOPIC: ECONOMICS OF MINING THE PALMER AND OTHER DEPOSITS IN THE UPPER GLACIER CREEK DRAINAGE**

**Comment Summary:** Several commenters remarked that the Palmer deposit has not been shown to be economic to mine or that insufficient exploration has been conducted to date.



**DMLW Response:** Comments Noted. The Palmer Project is an advanced-exploration-stage, zinc-copper-silver-gold-barite deposit with 15.7 million tons of mineralization defined<sup>19</sup> as of 2020. While a review of the overall project economics is outside the scope of adjudication for this proposed Plan of Operations, the Division has determined that Constantine’s activities proposed at the Plateau and Klehini<sup>20</sup> are following a reasonable and customary mineral exploration, development, mining, and reclamation sequence. The Division conducts technical reviews of all activities proposed on state mining claims to prevent unnecessary impacts from operations that are conducted out of sequence with the reasonable and customary mineral exploration, development, mining, and reclamation cycle. Constantine has proposed using geotechnical and geophysical investigation methods, studies, and equipment that is appropriate to the geological terrain and stage of development.

## **ISSUE TOPIC: REQUIREMENT OF AN ENVIRONMENTAL IMPACT STATEMENT (EIS)**

**Comment Summary:** Several commenters remarked that this application required a new Environmental Impact Statement (EIS).

**DMLW Response:** Comments noted. An Environmental Impact Statement is a report mandated by the National Environmental Policy Act of 1969 (NEPA) to assess the potential impact of actions “significantly affecting the quality of the human environment” for activities that involve a federal nexus. NEPA is a federal law that does not apply to the review, adjudication, and issuance of a state Plan of Operations Approval. Rather, in this case, the Department of Natural Resources was guided by the provisions Article 8 (Natural Resources) of the Alaska Constitution, the Haines State Forest enabling legislation AS 41.15.300 - .330, the Alaska Forest Resources and Practices Act AS 41.17, the Alaska Lands Act AS 38.05, and the provisions of the Haines State Forest RMA Management Plan in determining whether it is appropriate to issue a Plan of Operations Approval.

DMLW’s adjudication of the proposed activities has taken a careful and reasoned review of the potential environmental impacts of the proposed land use activities in accordance with state law, which included agency consultation listed in Section 8 of the memorandum of decision.

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<sup>19</sup> Twelker, Evan, Werdon, M.B., and Athey, J.E., 2022, Alaska's mineral industry 2020: Alaska Division of Geological & Geophysical Surveys Special Report 76, 75 p. <https://doi.org/10.14509/30848>

<sup>20</sup> As well as the overall Palmer Project.

## **ISSUE TOPIC: LONG-TERM DAMAGE AND COSTS.**

**Comment:** With a proposed sulfide mine project, agencies should look to the past to predict the future. Nationwide, mining companies have taken at least \$300 billion in minerals without paying a dime to U.S. taxpayers. The mining industry has littered the landscape with 500,000 abandoned mines and left taxpayers with the cleanup bill. The EPA estimates that 40% of US rivers and 50% of lakes have been contaminated by mining. Mine companies somehow never end up paying for the cleanup costs. Instead, they often "go bankrupt" after mining the wealth from an area, leaving the never-ending, currently \$613 billion cleanup bill to the federal government (and therefore taxpayers). The Government Accounting Office (GAO) has identified this problem, including the underreporting of its scope, and called for system-wide changes.

**DMLW Response:** Comment Noted. As discussed previously in this comment response document, APMA J20245690 does not propose a sulfide mine nor the development of production mining facilities and thus this comment is outside the scope of the plan of operations approval issuance decision. However, the Division does note that mining operations within the State of Alaska are subject to corporate and mining license taxes, required production royalty filings and payments for locatable minerals produced on state lands, mining claim and lease rental payments, and Hardrock mining operations are subject to stringent permitting and environmental requirements including but limited to reclamation plan approvals, reclamation bonding in an amount that provides for the reasonable and probable costs of reclamation, habitat protection and environmental permits regarding water quality and quantity.

## **ISSUE TOPIC: RISKS TO AIR QUALITY, FUGITIVE DUST FROM MINE OPERATIONS AND TRUCK TRANSPORT/SHIPPING.**

**Comment:** The Palmer Project plans to use the Haines Highway to transfer concentrates to the community-owned Lutak Dock. In 2023, the local ad hoc group Safe Haines Highways commissioned Lois Epstein of LPE Engineering and Policy to analyze the impacts of the Haines Highway trucking corridor becoming a haul road for ore concentrates. It found that ore concentrate trucks and mine service vehicles would: increase road and bridge repair frequencies and State of Alaska costs, affect the safety of people near the truck corridor, including children on their way to school (there are approximately ten school bus stops along the Haines Highway), increase ambient noise for up to 16 hours a day, increase animal

collisions and injuries/roadkill, potentially decrease Haines' appeal as a tourist and/or retiree destination and thus result in fewer local jobs and a decrease in local sales tax revenue and property values, and likely result in ore concentrate spills that could adversely impact fisheries and harvesting of subsistence foods.

Additionally, because there is no designated truck corridor, ore concentrate trucks would travel directly through downtown Haines, increasing safety risks, exposing residents to fugitive dust, and decreasing quality of life. Hauling toxic ore concentrates is not a safe endeavor or a minor concern.

Lubetkin et al reviewed state and federal government records for the five major hardrock mining operations in Alaska and determined that, "[b]ased on the records from ADEC (2021), there were 114 collision/allision and rollover/capsize accidents associated with these five mines," but that "[ w ]hile truck accident and pipeline spills are the only spills with quantitative representation in any of the EIS/EAs examined, they are only a small portion of all the transportation-related spills identified in the ADEC database (e.g., unsecured cargo, overfilled tanks, leaks). There were 1,004 total transportation-related spills at all five mines, resulting in aggregate totals of 33,404 gallons and 1,771,077 pounds of hazardous materials spilled. As a result, when all transportation-related spills from the ADEC database were included, there were more than 230 times more actual transportation-related spills of hazardous materials than the model would have predicted for truck accident spills alone." (see Alaska-Mining-Spills-Retrospective-Analysis)

Trucking spills and fugitive dust from mining, trucking, and shipping can leave lasting damage to the natural environment. ADEC "analyzed the air outside the mill at Red Dog mine and found lead concentrations 30% higher than considered safe for human health. The dust emissions along the access road for Red Dog mine have significantly contaminated the environment with toxic metals including lead and cadmium. Even moss 1000 meters to 1200 meters from the roadwas contaminated at levels above those found in many of the most polluted countries in Europe."(see ACAT Mining and Community Health report).

**DMLW Response:** Comment Noted. This speculative comment on ore transportation and trucking is outside the scope of the decision for APMA J20245690 plan of operations approval which is limited to authorizing mineral exploration and geotechnical investigation activities on state mining claims. As noted in the previously in this response to comment document, **there is no proposed production mine before the Division for consideration at this time.**

## **ISSUE TOPIC: SOCIAL AND ECONOMIC IMPACTS OF MINING ON RURAL COMMUNITIES**

**Comment:** Tom Power's report, *The Social Impacts of Contemporary Mineral Extraction*, looks at the dark side of mining's social impacts, including man camps and the increasing transience of mine workers, the impact of transient workers on rural communities, the variety of potential socio-economic impacts associated with mineral extraction, and labor displacing technological change: increased production, decreased jobs, and the long-run social impacts of mining on rural communities. Specifically, Power looks at the socioeconomic impacts of the development of the Palmer Project using research from similar circumstances in other communities..

The social impacts from mining on small towns and rural areas undermines community well-being and quality of life in serious ways. Power found that mining-dependent small communities and rural areas are at risk for the following social problems associated with transient mine employees: "Increased alcohol and substance abuse and the violence, morbidity, and mortality associated with it; Increased violent crime including physical and sexual assault; Increased pressure on law enforcement agencies because of substantial increases in citizens seeking police assistance in dealing with social problems; Increased presence of convicted felons including drug dealers and registered sex offenders; Undermining of Indigenous peoples' and other existing residents' ways of life and traditions; and Increased conflict among residents along income, employment, and racial lines as the community fragments under the pressure of substantial transience among workers and residents."

**DMLW Response:** Comment noted. The Division reviewed this specific comment as well as Mr. Power's report which was included as an attachment to Lynn Canal Conservation's overall submittal. While the Division appreciates the commenter's concerns about the social and economic impacts of mining on nearby communities, we must clarify that these considerations are outside the scope of the current decision-making process for this plan of operations.

The APMA J20245690 Plan of Operations under review is specifically for mineral exploration and geotechnical investigations on the applicant's state mining claims. This plan does not involve any mining extraction activities, the creation of man camps on state lands, or significant changes to project staffing. Additionally, it would be inappropriate and premature for the Division to consider speculative impacts of potential future mining operations when

evaluating an exploratory and geotechnical permit application when no proposals or specific plans have been put before the agency.

**ISSUE TOPIC: “PROJECT NOT IN THE BEST INTEREST OF THE STATE AND INCLUDES SITE SPECIFIC RISKS AND HAZARDS CONTRIBUTING TO UNCERTAINTY.”**

Comment: James R. Kuipers P.E., chief consulting engineer at Kuipers & Associates with over 35 years of experience in the mining industry, conducted the analysis of Constantine's July 2019 Preliminary Economic Assessment (PEA). "Constantine-Palmer is a speculative mining project in northern Southeast Alaska that could\* produce zinc, copper, lead barite, silver and gold." However, the report notes that "\*none of the projected resources are proven reserves." The report continues, "Palmer's Net Present Value (NPV) and Internal Rate of Return (IRR) indicate a high level of inherent project risk," and, "The PEA is based on unproven mineral resources that are "speculative" and "do not have demonstrated economic viability." Constantine's plan to sell barite, a waste product at similar mines, is "highly speculative." Constantine's cost estimates assume no acid mine drainage that would require treatment, but "there is reason to believe this assumption will not be correct." There is "a high likelihood of exceeding the estimated capital and operating costs, potentially by significant amounts (i.e. up to 50%)." "The Palmer Project, due to its high dependency on zinc prices, might prove to be uneconomic." The report identifies numerous site-specific risks, including avalanche, portal construction, AG deposit metallurgy, site surface geotechnical conditions, water management, seismicity, geochemistry, dust management, and post-closure site-specific risks. Each of these risks carries potential associated additional costs. The report also notes the lack of an ore terminal as a project risk.

"Constantine's Preliminary Economic Report does not address a plan for transport facilities for any of its concentrates, which is important as the remote town of Haines does not have a deepwater port with facilities to service Palmer." Given the extensive risks associated with the project and the high level of uncertainty of practical feasibility or economic viability, it is dubious that the project is in the best interest of the State, as required by AS § 38.05.850(a). (see Kuipers 2020).

**DMLW Response:** Comment Noted. This comment is outside the scope of the decision for APMA J20245690 plan of operations approval which is limited to authorizing mineral exploration and geotechnical investigation activities on state mining claims. These proposed ongoing activities (which do not constitute a new phase of the project) advance knowledge of the mineral deposits, geologic site conditions, hydrology, and mine design and engineering factors. Obtaining this

information is crucial in mitigating and understanding risk of a future mine development and/or facilities are proposed. As noted elsewhere in this comment response document, there is **no proposed production mine before the Division for consideration at this time.**

### **ISSUE TOPIC: DISPOSAL OF A STATE INTEREST**

**Comment Summary:** Several commenters remarked on the proposed plan of operations constituting a disposal of an interest in state lands. The Chilkat Indian Village's ("CIV") comments are the most developed and detailed on this topic and are included here. Notably, CIV cites several court cases in footnotes to support their comments including Nunamta Alukestai v. DNR, 351 P.3d 1041, 1057 (Alaska 2015) and Sullivan v. Resisting Env'tl. Destr. Indig. Lands, 311 P.3d 625, 635-37 (Alaska 2013) ["REDOIL"]

From CIV~

*“The proposed project represents a disposal of interests in land requiring a “hard look,” including evaluation of cumulative impacts. The proposed activities in the plan of operations, if permitted by AKDNR, could constitute a disposal of an interest in State Lands because of the functionally irrevocable activities proposed and ongoing by Constantine Mining LLC.*

*The drill holes, trails, stream crossings, excavation and associated activities and structures will involve substantial monetary investments and permanent damage to the land, waters, fish, and other public resources. The extraction and use of construction material (material sites) from the state land also constitutes a disposal of state land. The State of Alaska and Constantine Mining LLC’s investment in the Palmer Project and exploration activities is a clear factor in the State of Alaska’s approval of this significant exploration activity and expanded activity in the proposed plan of operations. The proposed plan of operations demonstrates the functional irrevocability of Constantine Mining LLC’s ongoing and proposed activities, including the following:*

- a. The continued physical presence of boreholes and monitoring wells. At least 300 drill holes are planned based on the Plan of Operations filed with BLM and this proposed Plan of Operations with the State of Alaska. The reclamation of these boreholes and monitoring wells will be “decided by management” upon completion of the project as written in the proposed Plan of Operations, and though many options for reclamation are discussed, the permit applicant states that they “may” decide to take other action, or no action;*
- b. The irrevocable damage to hydrology that includes permanent destruction of wetlands, fish habitat, and small streams that connect to Waters of the U.S. and are anadromous waters in the Alaska Anadromous Waters Catalog;*
- c. The thermal degradation as a result of vegetative clearing for roads and equipment storage;*
- d. Permanent and irrevocable harm to fish and wildlife from water pump intakes and seismic disturbance;*
- e. Use and removal of extracted material for trail, road and pad construction from material sites; and*



*f. The permanent destruction of cultural resources and traditional food and subsistence harvesting sites.”*

**DMLW Response:** Comments Noted. Issuance of this Plan of Operations Approval<sup>21</sup> for the activities described in APMA J20245690 is not a disposal or “alienation” of an interest in state lands. Rather, it is a decision to approve surface operations for a disposal that has already occurred<sup>22</sup>. Locators of state mining claims<sup>23</sup> have exclusive rights to possession and extraction of the locatable minerals lying within the boundaries of the claim. Additionally, under Alaska law<sup>24</sup>, a person who acquires mining rights to located claims also has rights to make use of the corresponding surface estate as “necessary for the prospecting of, extraction of or basic processing of minerals<sup>25</sup>”. As discussed previously in this response document, Constantine’s proposed activities meet that requirement. While a locator may not necessarily be allowed to exercise all of their rights surface rights without obtaining a land use permit, plan of operations approval, or other written authorization; these rights are acquired upon discovery, location and recording. No additional property rights are to be conveyed with this Plan of Operations decision. Additionally, The Plan of Operations Approval itself is facially revocable due to the terms contained within.

Regardless of the discussion above that indicates that this decision does not constitute a disposal of a state interest due to the surface rights associated with a state mining claim, an analysis of CIV’s disposal arguments shows that it is without merit utilizing their own cited framework. CIV’s discussion and conclusions rely on Nunamta Alukestai v. DNR, 351 P.3d 1041, 1057 (Alaska 2015), which is a Alaska Supreme Court opinion on matters revolving around the Division’s issuance of an AS 38.05.850 Miscellaneous Land Use Permit for Hardrock Exploration and Reclamation at the Pebble Project in Southwest Alaska. Note that this current decision does NOT involve an AS 38.05.850 Permit, which is a type of license to use land and is markedly different from a Plan of Operations Approval under the State’s Mining Rights regulations 11 AAC 86.

Utilizing CIV’s own cited framework:

1. CIV indicates that they believe that “substantial monetary investments” by Constantine in the drill holes, trails, stream crossing, excavations, and associated activities and structures

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<sup>21</sup> A Plan of Operations Approval is a regulatory construct of the State of Alaska’s Mining Rights regulations 11 AAC 86, specifically 11 AAC 86.145 Surface use, 11 AAC 86.150 Plan of operations instead of land use permit, and 11 AAC 86.800 Plan of operations.



makes the activities functionally irrevocable, as if this might weigh against the Division revoking the Approval. CIV overplays the scale of the surface improvements authorized by this Plan of Operations Approval, which the costs primarily would be focused on any needed access road construction for a limited distance at the Plateau site. The remainder of the drill pads and drill spur access will require limited expense as the project is designed to minimize cut and fill and material movement expenses. The short spur drill trail routes are pioneer in nature and will require little more than the basic action of removing some surface vegetation; as well as some leveling to allow for equipment passage. The iterative geotechnical investigation work including the drilling and trenching program provides nearly instantaneous samples and data to the operator, and any loss incurred due to revocation associated with previously completed work is limited because the operator has already obtained the relevant samples and pertinent information needed. Mobilization and contractual expenses that are impacted by a revocation may be characterized as a loss, but those expenses are not significant.

2. CIV also indicates that “permanent damages” from drill holes, trails, stream crossings, excavations and associated activities makes the proposed activities functionally irrevocable, as well as the “(t)he continued physical presence of boreholes and monitoring wells”.

This is incorrect, as the Division will explain below.

The mere presence of boreholes does not constitute functional irrevocability. At the termination of the project or the revocation or termination of this Plan of Operations Approval, whichever may come first, the applicant will be required to properly abandon and reclaim drill holes to meet State of Alaska reclamation law and regulation as defined in AS 27.19 and 11 AAC 97 and the terms of the approval.

There are no damages are (permanent or otherwise) to state lands from the sonic geotechnical overburden drillholes. Overburden drill holes are advanced by the sonic drill rig generally utilizing a 4' (102mm) inner diameter core barrel and a 6' (152mm) outer

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<sup>22</sup> All state mining claims listed in this Plan of Operations Approval shown as active in the DNR Land Administration System online casefile abstract.

<sup>23</sup> AS 38.05.195

<sup>24</sup> Alaska Const. art VIII § 11, AS 38.05.255 and 11 AAC 86.145.

<sup>25</sup> *Gold Dust Mines, Inc. v. Little Squaw Gold Min. Co.* 299 P.3d 148, 2012 WL 4465195, Alaska, September 28, 2012 (NO. S-13530, S-13909)

diameter casing. As these holes are unlined they will collapse after the required overburden samples are collected. The top of these abandoned holes will be plugged with bentonite clay or grout to prevent surface water infiltration as the holes are collapse in on themselves from the unconsolidated host sediments and gravels.

Those overburden drillholes identified for environmental monitoring well are drilled through unconsolidated till and fluvial deposit. The wells produce a 5-inch hole, approximately 65 - 265 ft (20- 80 m) deep, and a schedule-80 PVC well is installed. A well consists of a pre-packed well screen (usually 20-slot) and a silica sand filter pack installed within the annulus between the screen and hole wall (Figure 8). A bentonite seal is installed above the filter pack near surface to prevent surface water from entering the well. The well opening is protected by a metal monument. Nested shallow and deep wells may be installed at select sites. Prior to abandonment, the wells will be plugged and capped. These properly closed and abandoned monitoring cannot rationally meet the legal definition of damage to the land. They do not cause physical harm, are not unauthorized alterations, or negatively impact the property's value or use. Instead, they represent a responsible approach to environmental monitoring and protection.

The geotechnical holes drilled using a diamond drill rig would inform structural stability analysis, allow for hydrologic planning, and samples of the core would be subject to geochemical characterization. The total number of holes to be subject to geochemical characterization is anticipated to be 10 - 15. Historical drilling at the Palmer project has required very little use of sumps due to the fractured nature of the rock; however, if sumps are required to support diamond drilling, hand-dug sumps will be constructed to encourage drill solid settling before the overflow is allowed to seep into the ground.

Likewise, when properly reclaimed and abandoned, the geotechnical drill holes authorized by this decision also cannot rationally meet any legal definition of damage to the lands. They do not cause physical harm, are not unauthorized alterations, or negatively impact the property's value or use.

Access improvements dovetail exceptionally with those authorized for timber sale operations and are beneficial in supporting the multiple-use management of the Haines State Forest. For those roads and trails that are reclaimed, no permanent damage to state lands will occur due to the reclamation measures returning the site to a stable condition, preventing waterborne soil erosion and allowing for the re-establishment of renewable resources via vegetation regrowth.

The Division, along with our sister agency staff at the Division of Forestry and Fire Protection have extensive subject matter knowledge regarding mining and forestry road reclamation and have conducted monitoring and documentation of numerous reclaimed routes<sup>26</sup> that utilized the same methodology Constatine proposes. around the state and in particular within the Haines State Forest.

Examples of such road closure are even present within the project mining claims, such as extent of the Porcupine Creek Road past the Glacier Creek bridge which has effectively re-naturalized with extensive early successional timber growth.

If DOF requests any segments of roads<sup>27</sup> to remain for future timber access and other public uses such as recreation, hunting and harvesting; these roads remain for a valid government purpose<sup>28</sup> and also cannot also be rationalized as being “permanent damage”.

With the installation of the Glacier Creek Bridge, in stream crossing of Glacier Creek will not be required under this Plan of Operations Approval. Crossings of the upper extent of Plateau Creek subject to protective stipulations to prevent damage and sedimentation during initial road construction and culverts will be installed. Culvert removal if the routes are decommissioned will not cause damage.

Constantine estimates excavating and rehabilitating approximately 40 test pits to assess ground conditions. Test pits will remain as small as possible and will be preferentially sited in areas disturbed by other activities outlined as part of the Plan (i.e., within road development areas, drill pads, or seismic line locations) . Test pits will generally be 5-15 ft. long and as wide as the natural angle of repose dictates. Test pits would be excavated until refusal (bedrock or maximum excavator reach). During excavation, a record of soil horizons and material competency would be logged and samples would be collected. Material not removed for analysis would be piled next to the excavation until the test pit is completed. After completing the test pit, the excavated material would be replaced into the excavation and any vegetation removed would be placed back on top. These excavations

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<sup>26</sup> All around the state and notably within the Haines State Forest.

<sup>27</sup> These roads were designed with consideration of the environmental values of the Haines State Forest.

<sup>28</sup> Pursuant to the Haines State Forest Management Plan, Chapter 2 (pg. 2-33) Transportation which clearly articulates a goal to “expand the existing road system to provide safe and economical access for timber harvest, as well as mining, public recreation, fire protection and other resource management activities within the State Forest” and “maintain state-owned timber access roads and bridges for public access subject to available funding, safety concerns and environmental conditions.”

are minute will be reclaimed and will not cause any hydrologic or erosional hazards or concerns. With topsoil and vegetation duff returned to cover these sites, the Division anticipates they will revegetate quickly with no lasting or noticeable impacts to the land.

3. CIV continues with “the irrevocable damage to hydrology that includes permanent destruction of wetlands, fish habitat, and small streams that connect to Waters of the U.S. and are anadromous waters in the Alaska Anadromous Waters Catalog;”

CIV provides no evidence to support their claim of “irrevocable damage” to the hydrology of Plateau Creek and thus it can be dismissed without further consideration.

4. CIV further describes that “the thermal degradation as a result of vegetative clearing for roads and equipment storage” is evidence of the irrevocable nature of the activities.

Thermal degradation is associated with the melting of subsurface permafrost soils, which are notably absent from the project area.

5. Permanent and irrevocable harm to fish and wildlife from water pump intakes and seismic disturbance;

The Alaska Department of Fish and Game has conducted a detailed review of the APMA and Plan of Operations and has issued Fish Habitat Permits<sup>29</sup> for water withdrawals in fish bearing waters associated with the proposed activities. They have expressed no concern to the Division for harm to fish and other aquatic life associated with Constantine’s proposed activities. Temporary Water Use Authorizations issued under the Alaska Water Use Act (AS 41.15), which are required for Constantine to appropriate a “significant” quantity of water also consider impacts of pump intakes and include protective requirements<sup>30</sup>: The Plan of

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<sup>29</sup> Fish Habitat Permits have detailed and protective stipulations including but not limited to pump intake screening to prevent fish impingement and harm.

<sup>30</sup> Temporary Water Use Authorization terms and conditions include the following: Adequate flow and water levels, as determined by the Alaska Department of Fish and Game, Habitat Division, must remain to support indigenous aquatic life and provide for the efficient passage and movement of fish if any are present. Except as otherwise specifically noted herein or by attachment hereto, issuance of this authorization does not give the authorization holder the right to block or dam a water course. Any water intake structures in fish bearing waters, including a screened enclosure, well-point, sump, or infiltration gallery, must be designed, operated, and maintained to prevent fish entrapment, entrainment, or injury at the maximum withdrawal rate, unless specifically exempted by the Alaska Department of Fish and Game, Habitat Division. Inspect the intake screen for damage (torn screen, crushed screen, screen separated from intake ends, etc.) after each use and prior to each deployment. Any damage must be repaired prior to use of the

Operations Approval also includes protective stipulations<sup>31</sup> for pump intakes and fish, regardless of the applicability of Fish Habitat Permit and Temporary Water Use Authorizations.

The Division's detailed analysis of the airblast and ground peak particle vibration of the seismic refraction surveys small explosives use details that the activities will not impact fisheries and that the airblast impacts are di minimis from the small shot size.

There is no indication or evidence of significant adverse effects or "permanent and irrevocable harm" as CIV opines.

6. CIV cites the "Use and removal of extracted material for trail, road and pad construction from material sites; and"

The Division has a detailed discussion of this issue later in this document, which looks at the issue of material use and indicates that no disposal or material sale is required. No material site extraction is authorized by this decision.

7. And finally, the "permanent destruction of cultural resources and traditional food and subsistence harvesting sites."

The Division acknowledges and respects the deep cultural and heritage concerns raised by the Chilkat Indian Village (CIV) regarding the proposed activities within their traditional territory. We recognize the importance of the Jil̄káat Aani ̄ka Héeni (Chilkat River Watershed) to the Tribe's cultural practices, subsistence activities, and spiritual well-being.

The Division consulted with the Department of Natural Resources, Office of History and Archeology, Review and Compliance Unit (OHA)<sup>32</sup> who reviewed the proposed

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structure. The structure must always conform to the original design specifications while in use. The suction hose at the water source take point must be clean and free from contamination.

<sup>31</sup> APMA J20245690 Plan of Operations Approval Special Stipulation on Water Use: In any fish-bearing waters, each water intake structure shall be centered and enclosed in a screened box designed to prevent fish entrapment, entrainment or injury. The effective screen opening may not exceed ¼ inch. To reduce fish impingement on screened surfaces, water velocity at the screen/water interface may not exceed 0.5 feet per second when the pump is operating.

<sup>32</sup> The Office of History and Archaeology (OHA) is Alaska's primary office with knowledge and expertise in historic preservation dedicated to preserving and interpreting Alaska's past and serves as Alaska's State Historic Preservation Office (SHPO) pursuant to the National Historic Preservation Act of 1966. OHA administers programs authorized by both the National Historic Preservation Act of 1966 and the Alaska Historic Preservation Act of 1971.

activities<sup>33</sup>, the Alaska Heritage Resource Survey (AHRS) data repository, as well as CIV's comment letter. OHA indicated that cultural resources survey work is always encouraged. The Office, however, expressed no concerns precluding the proposed work to commence and advised that the standard inadvertent discovery language within DNR permits to be suitable. The Division notes the following: The proposed activities are primarily concentrated in areas already impacted by the ongoing Baby Brown Timber Sale, most of the planned work will utilize existing approved access routes and approved disturbance areas, the seismic activities are just brushing out vegetation for pedestrian access and will have limited ground vegetation and earthwork impacts, nothing in the administrative record provides sufficient evidence to warrant requiring an archaeological survey prior to Constantine's resumption of project activities in 2025.

However, the Division remains committed to protecting cultural resources. As a protective measure, the permit has been stipulated with specific requirements, including a stop work order if cultural or paleontological resources are resources are inadvertently discovered as a result of or during activities authorized by this permit. **All of Constantine's activities under the permit must be in full compliance with the Alaska Historic Preservation Act (AS 41.35).** The permittee must promptly notify the Division and OHA of any discoveries and work may not resume at the site without written permission from the Division/OHA.

Constantine has also noted that they will “engage a qualified archeology contractor to perform pedestrian cultural resource clearance surveys of areas that Constantine intends to disturb, prior to that disturbance. Constantine understands that those surveys will be coordinated<sup>34</sup> by the contractor with the Alaska Office of History and Archeology.”<sup>35</sup>

The Division also addresses the topics of the impacts of the proposed activities on sport and subsistence hunting and subsistence harvesting later within this response document, with conclusion that there will be no significant, adverse impacts.

In conclusion, this decision to issue Constantine's Plan of Operations Approval APMA J20245690 is not a disposal of an interest in state lands since it is authorizing surface uses of mining claims

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<sup>33</sup> For compliance with the Alaska Historic Preservation Act of 1971 (AS 41.35)

<sup>34</sup> A State Cultural Resource Investigation Permit (SCRIP) permit issued by the Office of History and Archeology is required of any person or agency proposing to conduct cultural resource monitoring or surveys on state lands,

<sup>35</sup> Plan of Operations Section 2.2.5 (pg. 10).

where the disposal has already taken place and because it is both legally and functionally revocable.

## ISSUE TOPIC: CUMULATIVE IMPACTS

**Comment Summary:** Several commenters cite *Sullivan v. Resisting Env'tl. Destr. Indig. Lands*, 311 P.3d 625, 635-37 (Alaska 2013) [*“REDOIL”*] to support their assertions that a formal cumulative impacts assessment or analysis is required by the Alaska Constitution before issuance of a Plan of Operations Approval for APMA J20245690.

**DMLW Response:** Comment Noted. The *REDOIL* case does not apply to 11 AAC 86 Plan of Operations Approvals. In *REDOIL*, the Alaska Supreme Court analyzed the relationship between AS 38.05.035's best interest finding requirement for oil and gas projects and Article VIII.<sup>36</sup> The Court upheld AS 38.05.035(e)'s provision that best interest findings at each phase of development were not required,<sup>37</sup> but determined that “potential impacts must be considered by DNR in the future, at each subsequent phase, as more information becomes known.”<sup>38</sup> Short of clarifying that cumulative impacts assessments were not a formal NEPA-like analysis, the court left to the legislature to “provide instruction on how the State should analyze cumulative impacts after the lease sale phase.”<sup>39</sup>

Despite the commentator's insistence to the contrary, *REDOIL*'s cumulative impacts requirement does not already apply to mineral exploration. In fact, the related statutory question in *REDOIL* regarding a single best interest finding does not apply to Plan of Operations Approvals<sup>40</sup> or even Land Use Permits<sup>41</sup> for mineral exploration. And *Nunamta* expressly declined to address whether *REDOIL* extended to hardrock exploration and mining and additionally does not support the commenters position.

The Alaska Constitution allows for very little agency discretion in deciding to dispose of locatable mineral rights. The right to minerals and the authorizations necessary to extract them vests by

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<sup>36</sup> 311 P.3d 625 (Alaska 2013).

<sup>37</sup> *Id.* at 631-3

<sup>38</sup> *Id.* at 636.

<sup>39</sup> *Id.* at 637.

<sup>40</sup> AS 38.05.035(e)(6)(A)

<sup>41</sup> AS 38.05.035(e) (6)(A) and .035(e)(6) (H)



operation of law,<sup>42</sup> and includes the right to use of the surface estate, subject to additional authorizations and reasonable concurrent uses.<sup>43</sup> Exploration is an integral part of a claimant's ongoing right to extract minerals and obligation to conduct labor to maintain their claim.<sup>44</sup> DNR can manage the impacts of exploration activity through land use authorizations, but the right to the minerals vests upon discovery, location, and filing.<sup>45</sup>

Even if the constitutional and statutory scheme for the development of locatable minerals and the surface uses of state mining claims is subject to *REDOIL*'s analysis, while it may not be in the form in which the commentor's may expect, the Division decision package for this Plan of Operations Approval issuance shows that the Division identified and took a well-reasoned approach to addressing impacts of authorized activities with a level of analysis and scope that is commensurate with the potential impacts, resources affected and the project scale. As discussed earlier in this response to comment document the activities proposed in the application are discrete and are of limited duration, with a de minimis likelihood of adverse environmental impact.

## ISSUE TOPIC: HARD LOOK

**Comment Summary:** Several commentors remarked, again citing *REDOIL* intertwined with various comments on cumulative impacts analyses that the Division has a constitutional requirement to take specifically a "Hard Look" at impacts from the project.

**DMLW Response:** Comment Noted. For the reasons listed in the DMLW response to the issue topic cumulative impacts above, the Division is not bound by the *REDOIL* case in this decision. Regardless, of the fact that *REDOIL* does not apply this Plan of Operations submission and approval decision, the record reflects that the Division engaged in reasoned decision making, considered all material facts and issues in reaching its decision (many of which are laid out in this response to comment document). That is also reflected in various environmental, operating and reporting requirements the Division imposed on Constantine in this decision. A "hard look" in administrative law generally requires an agency to engage in thorough and comprehensive examination of the relevant issues before making a decision, This Division has done this:

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<sup>42</sup> Alaska Const. art. VIII, sec. 11; AS 38.05.195(a). *See also Beluga Min. Co. v. State Dep't of Natural Res.*, 973 P.2d 570, 574 (Alaska 1999) ("A person obtains the exclusive right to possess and extract minerals on state land open to claim staking by discovery, location, and recording.").

<sup>43</sup> *See Gold Dust Mines, Inc. v. Little Squaw Gold Min. Co.*, 299 P.3d 148, 153 (Alaska 2012) (citations omitted). Authorization is not required for mineral exploration activities that fall within generally allowed uses. 11 AAC 96.020(a)(3)(F).

<sup>44</sup> *See AS 38.05.255; AS 38.05.210; 11 AAC 86.145. See also Gold Dust Mines*, 299 P.3d at 165.

<sup>45</sup> Alaska Const. Art. VIII, sec. 11.



1. Detailed explanation. The Division has provide a comprehensive explanation of its decision making process, including the rationale behind its conclusions.
2. Consideration of all relevant factors. The Division has demonstrated that it has examined all significant aspects of the matter before it.
3. Response to public comments. The Division has addressed and responded to all significant points raised during the public comment period , including all significant counterarguments.
4. Factual Support. The Divisions findings are grounded in the administrative record.
5. Policy choices: To the extent pertinent, the Division has shown that discretionary policy decisions ultimately included in the decision are reasonable and not merely minimally rational or dismissive.
6. Articulation of policies: The Division has not only the laws regarding the decision, the Division has also clearly stated the policies it aims to further through its decision. For example, policies and goals presented in the Haines State Forest Management Plan are legally binding Department policy.

By conducting this thorough analysis, the Division has demonstrated that is has taken a “hard look” at the issues, ensuring that the decision is a product of reasoned decision-making and is not arbitrary or capricious.

## **ISSUE TOPIC: RESTRICTION OF PUBLIC ACCESS**

**Comment Summary:** Several commenters expressed concerns that activities proposed in the amendment submittal would preclude access to both the Klehini and Plateau sites for recreation, subsistence hunting, berry and medicinal plant harvest, sport hunting, and firewood cutting. The gate along the Glacier Creek Road and general allegations of Constantine preventing access in the Glacier Creek area where also discussed in various comments.

**DMLW Response:** Comment Noted. According to 11 AAC 86.145(a)(1), the locator (of a mining claim) does not have exclusive use of the surface of the location... and a locator may not restrict public access or other use of the surface unless approved in writing by the director. The director may allow the locator to restrict access or other surface uses of the location only to protect public safety or prevent unreasonable interference with the rights of the locator.

In the issued Plan of Operations Approval, DMLW has stipulated that the locator may not restrict public access or use, except for limited public safety closures associated with seismic refraction line blasting operations. These closures will only be in effect for the exclusion areas around the

seismic line as described in the Plan of Operations submittal and be limited to only the timeframe reasonably necessary to conduct the setup, blasting, and other safety-related tasks deemed necessary by the permittee, subcontractors, and licensed blaster.

The public should note that any other access restrictions for the general management of the Haines State Forest, authorized timber harvest activities, and other public safety considerations are outside of the scope of this Plan of Operations Approval issuance decision.

While public access restrictions are narrowly tailored in this approval to be limited to the public safety closures associated with seismic line operations, access by third parties (members of the public and other forest users) to the project area must be consistent with 11 AAC 96.020 “Generally Allowed Uses” and 11 AAC 96.025 “Conditions for generally allowed uses”. 11 AAC 96.025(9) requires that “on lands subject to a mineral or land estate property interest, entry by a person other than the holder of the property interest, or the holder’s authorized representative, must be made in a manner that prevents the unnecessary or unreasonable interference with the rights of the holder of that property interest.”

The existing Glacier Creek Road starts at the intersection near where the Porcupine Creek Road crosses Glacier Creek and runs uphill and up drainage adjacent to the Creek on the hillside for a for approximately a mile and a quarter through State Mining Claims before crossing over into federal claims managed by the US Bureau of Land Management. The road beyond the gate is a somewhat steep gradient, narrow, and does not afford any turn any significant or suitable turnaround points until after it crosses over into federal lands. The Division of Forestry and Fire Protection, the primary land manager of the Haines State Forest has indicated to the DMLW the arraignments for the gate to initially be in place to protect the road to let it settle in during a fragile stage near construction included the understanding with Constantine that the gate would be subject to removal from the road at a time of Forestry’s choosing, likely when timber operations in the area commence. This Plan of Operations Approval decision does not upset that understanding.

However, the Division has discussed with and advised Constantine that despite the gate being in place along the Glacier Creek access road, it does not preclude the public from access for land use activities on those state mining claims<sup>46</sup> under Generally Allowed Uses. For example, bird hunting, plant harvesting, recreational hiking, and other activities. Constantine concurs with the Division’s position on the matter and confirms their understanding that the only formal access closures are those associated with the seismic line activities. The Division encourages Constantine

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<sup>46</sup> Note that access to the federal claims and Mental Health Trust lands up the drainage from the Haines State Forest is outside the scope of this decision.

to review any currently posted public advisories and update as appropriate for clarity.

As for commenter remarks that Constantine has specifically refused access requests to the Glacier Creek watershed, those allegations are vague and non-specific, and the Division has no credible information or complaints in our administrative records that indicate that concurrent uses of state lands have been unreasonably interfered with. Members of the public with concerns and questions about access to DNR managed lands are always encouraged to contact a DNR Public Information Center to obtain more information on legal access and permissible uses.

## **ISSUE TOPIC: ACCESS ROAD CONSTRUCTION**

**Comment Summary:** A few commenters remarked on the terminology used in the Plan of Operations submittal (“access trail” vs “access road”), that they view 25’ wide as an excessive access footprint, and concerns about slope gradient.

**DMLW Response:** Comments Noted. The term exploration or access trail is commonly used to describe routes constructed in the mineral exploration industry that have limited fill or elevated driving surfaces. These are pioneer routes. Terminology aside, the Division has determined that access with an overall maximum width of 25’ is acceptable due to several considerations; including building on sidehills, the need for room at turns for equipment and log skidding, any necessary ditching or water control features, and for appropriate line of sight for safety. The 25’ is the max width requested, however, the Division anticipates that not all stretches will require that width, especially the routes that will be utilizing the prior, existing logging roads at the Klehini site<sup>47</sup>.

In the submission, Constantine did reference potential horizontal to vertical incline gradients of up to 30% on the temporary secondary access trails (at the Plateau site). These gradients are the short pitch maximums, which means as a design driver they will not be indicative of a significant portion of secondary access trails. Short sections of 30% are not adverse for skidding salvage timber downhill with a log skidder to the appropriate staging area. Reclamation of these short sections may require the installation of water bars or other water management BMPs either above or within the section to give the trail sufficient time to revegetate. The Division appreciates that Constantine is minimizing the overall access trail

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<sup>47</sup> That require negligible dirt work for use, with some requiring no work other than brushing woody vegetation that has come up since the initial construction and use for timber harvesting operations.

impacts by utilizing prior, existing logging road/skidder trail infrastructure and developing new access that co-insides with the Baby Brown access road.

## ISSUE TOPIC: RECLAMATION PLAN

**Comment Summary:** Commenters remarked and some insinuated that the reclamation plan is inadequate.

**DMLW Response:** Comments Noted. The Division reviewed the proposed reclamation measures included in the APMA and Plan of Operations, including the drill site pad, trenching and access trail closure work. These measures meet or exceed the State of Alaska's Mine Reclamation performance standards under AS 27.19.020 and 11 AAC 97.200 and are authorized under the APMA J20245690 Reclamation Plan Approval, which also includes surface exploratory drilling operations on the adjacent federal and mental health trust lands.

The APMA (which includes both the information for the Plan of Operations as well as the Reclamation Plan) described to the Division how the operation will be conducted in a manner that prevents unnecessary and undue degradation of land and water resources along with reclamation measures that will leave the site in a stable condition<sup>48</sup> as required by law. The Division also finds it pertinent to advise as we did in 2023 for a prior permitting action under APMA J20195690 Amendment # 1 that restoration of the microtopography is not required<sup>49</sup> to meet the stable condition requirement under the performance standards described in 11 AAC 97.200(b) and such a requirement to do so would be arbitrarily prescriptive.

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<sup>48</sup> **11 AAC 97.200(a)(1)** *For the purposes of AS 27.19.100 (6) and this section, a stable condition that "allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes" means a condition that can reasonably be expected to return waterborne soil erosion to pre-mining levels within one year after the reclamation is completed, and that can reasonably be expected to achieve revegetation, where feasible, within five years after the reclamation is completed, without the need for fertilization or reseeding. If rehabilitation of a mined site to this standard is not feasible because the surface materials on the mined site have low natural fertility or the site lacks a natural seed source, the department recommends that the miner fertilize and reseed or replant the site with native vegetation to protect against soil erosion; however, AS 27.19 does not require the miner to do so. Rehabilitation to allow for the reestablishment of renewable resources is not required if that reestablishment would be inconsistent with an alternate post-mining land use approved under AS 27.19.030 (b) on state, federal, or municipal land, or with the post-mining land use intended by the landowner on private land.*

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## ISSUE TOPIC: RECLAMATION BONDING

**Comment Summary:** Several commenters expressed concerns about the size and efficacy of the Statewide Reclamation Bonding Pool. One commenter specifically questioned: “What assurance is provided when a bond "pool" is used that the bond can cover everything it needs to? What if multiple outlays of funding are required in a single year? Does this save money for permittees but leave the public stakeholders unsupported?”

**DMLW Response:** Comments Noted. Constantine is participating in the State of Alaska Mine Reclamation Bond Pool established by the Alaska Legislature in AS 27.19.040(b), which is administered by the Department of Natural Resources, Division of Mining, Land & Water. The bond pool is a program where the overall mining industry’s payments along with compounding interest have been contributing to an increased account corpus since 1992. These funds<sup>50</sup> are available to DMLW after an administrative process should the operator default on their reclamation obligation. Constantine is also liable to the state in a civil action for the full amount of reclamation and administrative cost incurred upon a violation and default.

The Division, including the Authorized Officer who along with other professional technical review staff are subject matter experts in reclamation and closure considered the proposed reclamation plan and overall project activities. Due to the limited scope and surface disturbance acreage, along with the easy access to the project site and minimal excavation dirtwork required for the project, have determined a reclamation cost estimate is not needed. The Division has a rigorous oversight and administrative program to ensure that the Bond Pool is not over leveraged, as required by AS 27.19.040(b), which requires the Division to consider reclamation costs in relation to the size of the bonding pool. In the unlikely event of a default of an operation in the bonding pool which necessitates expenditures that reduce the equity balance, the Division’s adaptive management strategy for the bond pool will include other certain operations are no longer eligible due to their projected reclamation costs<sup>51</sup>.

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<sup>50</sup> As of December 10<sup>th</sup>, 2024 the full equity balance (immediately available to the Department) of the bond pool is \$3,168,988.86. This, and any of the the miner's refundable deposits into the bond pool may be used by the Department to conduct reclamation upon bond forfeiture.

<sup>51</sup> And thus, would be required to provide Individual Financial Assurance, for example in the form of a surety bond or other bonding instrument allowed by law.

## **ISSUE TOPIC: STATUS OF RECLAMATION AT DRILL SITES**

**Comment:** In viewing the photographs for some areas reported to be "reclaimed" still show a substantial amount of bare soil even though vegetation covered the site before clearing took place. One example is A 2023 P1-09. Bare soil should be covered with vegetation, debris, or duff when "reclaimed." Extra effort needs to be made in vegetated tundra areas which recover far more slowly than lowlands. (Also P1-06, P1-05,P1-09, P2-09, P2-06)

Why is A2023 P1-07 not reclaimed? Did forester tell workers not to or say that it was OK not to? Or had it just not been done yet? Will sumps at Rudolph Drill Pad eventually be reclaimed?

**DMLW Response:** Comment Noted. Overburden Sonic Geotechnical Drillhole A 2023 P1-09 is reclaimed, as the photos clearly show organic topsoil and vegetative debris have are present. The Division is confident that this site meets the reclamation standards required and will rapidly revegetate. Likewise, the Division has reviewed the photos for the other drillsites you have listed and those photos show that Constantine has ensured that organic topsoil, vegetative mat and debris have been returned to provide for rapid revegetation.

A 2023 P1-07 is an overburden geotechnical sonic borehole being used as an environmental monitoring well, left open as allowed under APMA J20195690 Amendment # 1 for future monitoring. Plugging of the borehole will occur when data collection needs have been met.

The Rudolph drill pad is a helicopter supported up the Glacier Creek valley on federal mining claims and is not within the lands (state mining claims) subject to this Plan of Operations Approval decision. Pursuant to Constantine's BLM approval, as well as the reclamation plan, the Rudolph pad is required to be reclaimed and closed sometime in the future when drilling operations there cease. As that pad can be used to drill multiple azimuths and inclinations of diamond core boreholes for mineral exploration, the Division cannot speculate when reclamation would occur.

## **ISSUE TOPIC: WETLANDS PERMITTING**

**Comment:** Constantine claims that it is avoiding wetlands. By doing so, Constantine appears to be aiming to avoid federal permitting obligations. However, the heavy equipment crossings at Glacier Creek and Plateau Creek, removal of material within several hundred acres of

wetlands, and roading of these wetland areas, have the potential to trigger such obligations. The U.S. Army Corps' permitting program under Section 404 of the Clean Water Act applies to activities in "waters of the United States," which includes both surface waters and wetlands.

The use of tracked vehicles and other heavy equipment in surface waters and adjacent wetlands can result in "discharges" that trigger permitting obligations through the "redeposit" of displaced soil or sediment. Indeed, certain nationwide permits (NWP) appear designed to govern these types activities.<sup>21</sup> For instance, NWP governs "minor discharges," and there is no minimum quantity threshold for the preconstruction notification requirement where the discharges are made to a "special aquatic site, including wetlands." Similarly, NWP 33 applies to the "temporary structures, work, and discharges ... necessary for construction activities," and this may be applicable to the bridge construction across Glacier Creek.

AKDNR should coordinate with the U.S. Army Corps to ensure that Constantine complies with CWA § 404 obligations in connection with the stream crossings and other aspects of the proposed work, as appropriate. Such compliance generally requires formal Tribal consultation on a government-to government basis regarding cultural resource impacts. The Corps' findings and determinations could help inform AKDNR's evaluation of cultural resource impacts of the project and means to avoid or mitigate such impacts. As of April 23rd, 2024, USACE has not been notified of this proposed plan of operations.

**DMLW Response:** Comment noted. As a general stipulation of the issued Plan of Operations Approval, operations under the approval "shall be conducted in conformance with applicable Federal, State, and local laws and regulations now, hereafter, in effect during the life of the approval" which includes the Clean Water Act. Additionally, the Division has included protective stipulations regarding stream fording, including driving equipment through any adjacent wetlands to Plateau Creek.

The US Army Corps of Engineers is a participating agency in the Application for Permits to Mine in Alaska (APMA) application program and the APMA serves as a pre-construction notification for a several Nationwide and Regional General Permits, as well as a supplemental document to support the separate application for Individual Permits, all under the Clean Water Act Section 404.

APMA J20245690 was provided to the US Army Corps of Engineers designated APMA program contact as an agency review distribution on via email on April 10, 2024 and was also uploaded to the Interagency APMA Distribution Portal that all of our agency partners, USACE included, utilize to access APMA's. The USACE was offered the opportunity to provide comment as a part of the



agency notice period and provided no comments or concerns about the application to the Division. Accordingly, the statement that “As of April 23rd, 2024, USACE has not been notified of this proposed plan of operations” is incorrect.

The Division is satisfied that no significant, adverse impacts to wetlands will result from the permitted activities.

## **ISSUE TOPIC: FOREST RESOURCES**

**Comment Summary:** Several commenters expressed concern that logging and tree/brush clearing activities would be required for access, sonic drilling pads, trenching and seismic survey lines.

**DMLW Response:** Comment Noted. In accordance with AS 38.05.255(a), the Division has determined that lands subject to this issued permit are “timberlands”. Pursuant to 11 AAC 86.145(a)(3), the locator of a mining claim must purchase timber or make arraignments with the Division of Forestry (DOF) before using or clearing timber from timberlands<sup>52</sup>. During adjudication of the permit, the Division of Forestry was contacted and provided salvage requirements for commercially viable timber that would be harvested during operations authorized by the permit. Stipulations regarding the harvest and salvage have been added to the terms of the issued permit.

Due to past DOF-authorized timber sale activities and the concurrent Baby Brown sale/access roads, the acreage for clearing any mature timber stands is minimal.

## **ISSUE TOPIC: STREAM CROSSING/ FORDING**

**Comment Summary:** Commenters noted objections to stream crossings/fording with equipment of both Glacier and “Plateau” Creek due to fisheries concerns.

**DMLW Response:** Comments Noted. The Division of Forestry and Fire Protection’s (DOF) Glacier Creek Bridge on the Porcupine Road has been installed and will be utilized by Constantine to accomplish the work described in their plan.

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<sup>52</sup> Except for those activities permissible under Generally Allowed Uses of State Lands 11 AAC 96.020.



For road construction and crossings of the upper extent of Plateau Creek, Constantine proposes to install culverts. The Alaska Department of Fish and Game, who has regulatory expertise considering the management and protection of fish, wildlife, and habitat resources will work with Constantine on the installation of the culverts and will issue Fish Habitat Permits if necessary. The Division has included as a stipulation of this permit that Constantine obtain ADFG Habitat Section concurrence on culvert specifications and installation before starting that work, regardless of if a Fish Habitat Permit is required.

If crossing or fording of Plateau Creek is needed during construction activities, the Division has also retained the 2023 protective stipulation regarding stream crossing. It is also of note that Constantine will be operating under the provisions of the Alaska Department of Environmental Conservation's Construction General Permit for Stormwater that has control measures and best management practices to prevent pollutant sedimentation into waterbodies within the project area.

## **ISSUE TOPIC: EXPLOSIVES USE**

**Comment Summary:** Commenters remarked on the use of explosives, purposes of blasting, and concerns (including noise, blasting vibrations, impacts to fisheries, and ANFO).

**DMLW Response:** Comments Noted. The Division's response to these concerns from 2023 remains relevant and instructive in this current APMA J20245690. From 2023- The application proposes utilizing small amounts of dynamite (1/2 pound sticks) to conduct seismic refraction surveys. The seismic refraction method utilizes the refraction of seismic waves by rock or soil layers to characterize the subsurface geologic conditions and geologic structure. It is commonly used throughout Alaska to investigate potential road alignments, pipeline right-of-way scouting, dam and infrastructure sites, and for mine engineering and design studies.

Some commenters incorrectly asserted that blasting is occurring on site for the actual construction of a mine tailings facility or for purported removal of rock. Commenters also incorrectly provided noise decibel data associated with unconfined use of dynamite. The shot holes proposed by Constantine are confined and will be buried in 3-5' below the surface.

The Division conducted a desktop analysis<sup>53</sup> of airblast (noise) based on estimates from the federal Office of Surface Mining and Reclamation Enforcement's Airblast prediction excel. At 1' adjacent to the shot hole, the peak unweighted decibels is less than the open air discharge of a .30-06 rifle commonly used for subsistence and sport hunting. The airblast (noise) attenuates over distance with decibels estimated to drop to around 103(dBA) by 660' distance from the shot.

In consideration of the findings of the desktop analysis; these short, intermittent shots are unlikely to cause a civil nuisance or have adverse impacts on wildlife or other nearby land uses. Additionally, the Division calculated the ground peak particle vibration (PPV) caused by the detonation of the largest single charge in a survey line (2 ½ pounds). These ground vibrations are 0 PPV (in/pers second) at 660' and due to the sitting of the seismic lines will not impact any resident or anadromous fish that may be present in Glacier, Plateau, or the Klehini River. Some commenters remarked about the use of Ammonium Nitrate/Fuel Oil (ANFO) explosives having adverse effects on water quality and fisheries. ANFO explosives were not requested for use, nor are they authorized by the issuance of the Plan of Operations Approval. In contrast, modern, gelatin-based dynamite sticks used by Constantine will not present any environmental concerns.

## **ISSUE TOPIC: BALD EAGLES**

**Comment Summary:** Many commenters remarked on concerns that the activity proposed within the Plan of Operations would have adverse impacts on local Bald Eagle populations, particularly breeding and nesting eagles rearing juveniles in the area.

**DMLW Response:** Comment Noted. Just as in 2023 with the Divisions authorization of activities that are essential the same as those proposed under this current Plan of Operations submission, The Division took a hard look at all factors associated with potential impacts on Golden and Bald Eagles and included pertinent protective stipulations as terms of the Approval.

Constantine operates under a Raptor Management Plan and is committed to an annual survey for Golden and Bald Eagle nesting activity prior to fieldwork. In consideration of known and documented timeframes of the utilization of nests and breeding/rearing periods in the greater Haines area, May is an appropriate time to determine nest locations and occupancy. Constantine proposes a half-mile buffer if an active nest is identified.

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<sup>53</sup> For more information, See Attachment D (Airblast Attenuation Memo from 2023).

In 2023, the Division received comments from the US Fish and Wildlife Service (USFWS) regarding buffers and mitigation measures to prevent adverse impacts on Bald and Golden Eagles, including a reminder that Constantine's activities are subject to the provisions of the federal Bald and Golden Eagle Protection Act (BGEPA). The BGEPA prohibits the take of bald and golden eagles, their parts, nests, and eggs either directly or indirectly. Under the BGEPA, "disturb" means to agitate or bother an eagle to a degree that causes, or is likely to cause: Injury (including a decrease in an eagle's chances of survival). A decrease in its productivity (including by substantially interfering with normal behavioral patterns, including breeding, feeding, or sheltering behavior). Nest Abandonment. The USFWS recommended a buffer of 660 feet of an in-use or alternate nest bald eagle nest unless it involves blasting, in which case the Service recommended a half-mile buffer. Additionally, the Service recommended a half-mile buffer for the more sensitive golden eagle nests.

From the Division's response to the USFWS 2023 buffer comment: DMLW concurs with the Service that avoidance buffers around in-use and alternate nests are necessary for the mitigation of impacts to Bald and Golden Eagles. The applicant has proposed a larger half-mile buffer for project activities. DMLW has reviewed your comment and the Service's National Bald Eagle Management Guidelines NBEMG (2007). DMLW has required a general avoidance buffer for Bald Eagle Nests of 660' from access construction utilizing heavy equipment and at the Geotech drill sites. For the use of small charge explosives during seismic refraction studies, DMLW has conducted a desktop air blast attenuation and vibration study analysis. Our office understands that the Service's recommendations were based on application materials that did not include an estimated sound pressure level or peak particle velocity (ground vibration). As the blasts are contained (buried under 3-5' of soil), the peak linear unweighted decibels of the largest charge shot are anticipated to be around 157 (dB) at the blast site, which is comparable to the open-air firing of a .30-06 rifle commonly used for subsistence and sport hunting. DMLW understands that the half-mile buffer recommendation is derived from the NBEMG Category H (Blasting and other loud, intermittent noises). However, the activity is more suitably related to Construction Category B (660' buffer) or even Cat F which includes firearms discharges due to hunting.

## **ISSUE TOPIC: SUBSISTENCE AND SPORT HUNTING**

**Comment Summary:** General concerns were listed by several commenters regarding subsistence and sport hunting at the Klehini and Plateau sites.

**DMLW Response:** Comments Noted. During agency review, the Division consulted with both the Alaska Department of Fish and Game and the US Fish and Wildlife Service. Neither agency recommended or suggested that any additional permit provisions were needed to mitigate impacts or manage conflict with subsistence or sport hunting in the area. Activities conducted under this Plan of Operations may cause a temporary localized displacement of certain game animals, but overall harvest numbers in the area are not anticipated to be impacted by the issuance of this approval.

## **ISSUE TOPIC: BERRYPICKING, SUBSISTENCE PLANT HARVESTING**

**Comment Summary:** Several Commenters remarked a perception that issuance of this permit will preclude access to permit area for berry picking, traditional subsistence and medicinal plant harvesting<sup>33</sup>.

**DMLW Response:** Comment Noted. As discussed in Issue Topic “Restriction of Public Access” above, issuance of this approval does not provide Constantine with authority to exclude public uses of their state mining claims, except for those limited closures directly related to the seismic line studies and explosives use. Additionally, the applicant has designed their proposed activities to effectively minimize the disturbance outside of existing access roads and the access associated with the Baby Brown Timber sale. Issuance of this Plan of Operations Approval will have no significant impacts to berry picking or plant harvesting.

## **ISSUE TOPIC: HAINES HIGHWAY VIEWSHED**

**Comment Summary:** Some commenters expressed concerns that activities proposed in the application will impact the Haines Highway viewshed.

**DMLW Response:** Comment noted. The Division has reviewed the topography and the view buffers provided by the forest between the project activities. It is unlikely that the activities

proposed will be visible from the highway, except for the already planned and authorized Baby Brown Timber access road to the Plateau site area, and if built the continuation of that road to the edge of the State Forest and onto Mental Health Trust Lands.

## **ISSUE TOPIC: “SARAH CREEK” RESERVATION OF WATER APPLICATION AND SUPPLEMENT**

**Comment Summary:** The Takshanuk Watershed Council provided a 66-page comment submission to the Division that included an application packet and supplemental information for Instream Flow Reservation for a body of water they refer to as Sarah Creek, which is immediately adjacent or potentially within the floodplain of the Klehini River. Takshanuk did not provide any direct comments on the APMA or Plan of Operations Approval requests.

**DMLW Response:** Submission noted. No direct comment on the APMA J20245690 was included, rather Takshanuk provided other documentation in the form described above. The Division’s Mining Section, that adjudicated the APMA/Plan of Operations Approval request forwarded on the provided documents to the Division’s Water Resources Section, as it was unclear at the time if Takshanuk was attempting to apply for or amend/supplement a prior Instream Flow Reservation under the Alaska Water Use Act (AS 46.15).

The Water Resources Section administers that Act, its associated regulations and the application process for Instream Flow Reservations.

Regarding the APMA J20245690/Plan of Operations request, the Division (Mining Section) reviewed the Takshanuk submission and in the information included in the submission to determine if it was applicable to this decision. Upon careful review, the Mining Section determined that the stream reach/body of water described as “Sarah Creek” is located north of the claims with proposed surface disturbance and investigative work and will not be impacted by this Plan of Operations issuance.

## **ISSUE TOPIC: DATA COLLECTED**

Comment: Methodology for all data collected should be accessible to the public at the end of each work season. This is public land being used to prepare for a for-profit project with strict

requirements. It is everyone's business to see that these rules are followed despite the apparent lack of commitment by state agencies to regularly inspect the effects of these preparations. Data should be provided to the public as soon as conclusions are drawn by the permittee and the agency. Section 3.8 Expansion of Environmental Baseline Program refers to data that could no doubt be of interest to many groups and individuals in the Chilkat Valley. Why wouldn't you share this data? Annual (or more frequent) before and after conditions of the streams (8 being tapped during this 5-year plan) should be documented with photographs and the photos should be made public.

**DMLW Response:** Comment Noted. There are no requirements under the stipulations of the issued Plan of Operations Approval for Constantine to provide geological, geophysical, engineering data<sup>54</sup> obtained or the results of the environmental baseline investigations to the Division or the public generally. Likewise, no other agency has requested the Division include any such submission or disclosure requirements within this decision.

## **ISSUE TOPIC: COMPLIANCE SCHEDULE**

**Comment:** A compliance schedule should be established and followed. This should be documented with by whom, when, and where these inspections took place. Glacier Creek was reportedly last inspected by ADF&G in 2021. Anadromous fish were identified as they apparently were in Upper Plateau Creek. Inspections of known anadromous fish streams should take place every year to insure that the population is monitored and to provide a verifiable continuous baseline. If unexpected changes take place, an explanation should be sought and verified.

**DMLW Response:** Comment Noted. As a general goal, the Division aims to conduct regular and recurring inspections / site visits (announced and unannounced) of permitted operations and land use activities on state lands. The tempo and scheduling of these inspections are subject to current Division priorities, staffing and budgetary considerations and are outside the scope of this decision to issue a Plan of Operations Approval. It is also of note that the Division carefully and thoroughly conducts desktop reviews of annual reports and documentation submitted by the applicant to ensure ongoing compliance.

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<sup>54</sup> It is of note that even if Constantine was required by this to submit decision for geological, geophysical, and engineering to the Division, AS 38.05.035(a)(8)(C) provides confidentiality of that type of data at the supplier's request.

The Alaska DNR Division of Forestry and Fire Protection (DOF), as sister agency to the Division “of Mining, Land and Water” (DMLW) conducts routine land management and stewardship inspections within the Haines State Forest/ project area and works cooperatively with DMLW to address any issues or concerns that arise.

Finally, the Division will continue to work closely with the Alaska Department of Fish and Game, which has regulatory expertise considering the management and protection of fish, wildlife, and habitat resources. The timing and scheduling of Fish and Game visits to document fishery resources in the project area is likewise out of the scope of this decision.

## ISSUE TOPIC: MATERIAL SITES

**Comment Summary:** Several comments reference material sites/gravel pits would be required and that use of materials is a disposal of a of an interest in state interest.

**DMLW Response:** Comment Noted. The plan of operations discusses material uses. *“Any new roads, spurs or trails would be constructed using cut and fill construction. Road driving surfaces would be approximately 15 ft. wide. In areas, the road surface may approach up to 30 ft wide to allow safe passage of two-way traffic. Cut and fill volumes for roadbed material, surfacing material, and berm material are anticipated to be net zero. Any additional material needed for surfacing would be sourced from previously existing, active borrow sources and coordinated with DNR if necessary”.*

As previously discussed in this response to comments document, a person who acquires mining rights to located claims also has rights to make use of the corresponding surface estate as “necessary for the prospecting of, extraction of or basic processing of minerals”<sup>55</sup>. The Division has determined<sup>56</sup> since there is no material harvesting being anticipated outside of the authorized road and trail prisms and due to the surface rights associated with Constantine’s active state mining claims that no Material Sale decision and contract is needed at this time. If Constantine requires additional materials outside of that authorized prism, they

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<sup>55</sup> Alaska Const. art VIII § 11, AS 38.05.255 and 11 AAC 86.145.

<sup>56</sup> Consistent with AS 39.05.255 Surface Use of Land or Water, 11 AAC 86.145, AS 38.05 (Article 14. Material Sales) which is AS 38.05.550 through AS 38.05.565, and Division of Mining Land and Water Director Policy File DPF-2023-01 “Sale or disposal of materials for special purposes”.

are advised that coordination with the Division will be required to determine if a AS 38.05.565 special purpose material sale is necessary.



