



February 26, 2024

Honorable Mayor Tom Morphet
Assembly Member Craig Loomis
Assembly Member Gabe Thomas
Assembly Member Kevin Forester
Assembly Member Debra Schnabel
Assembly Member Ben Aultman-Moore
Assembly Member Natalie Dawson

Re: Appeal of FEMA's Decision to De-obligate Funding for Phase I repairs to Porcupine Road

Dear Mayor Morphet,

Constantine North Inc. (Constantine) fully supports the Haines Borough's appeal of the Federal Emergency Management Agency (FEMA's) December 21, 2023, Eligibility Determination Memorandum (DM) de-obligating \$1.436 million for costs related to the repair of the Porcupine Trail Road. As noted in the January 24, 2024, draft appeal letter, this road is multi-use, providing access to the Haines State Forest and the Porcupine Mining District for recreational and commercial benefits. As it is the primary road access to the Palmer Project, Constantine has collaborated with the Borough for several years to repair and maintain a portion of the road at its own expense. This work by Constantine has helped reduce the Haines Borough's financial obligation for maintenance and operation of the road as outlined in the Quit Claim Deed issued by the State of Alaska dated May 25, 2005.

The FEMA relief funding is dedicated to the permanent repairs of damages to the Porcupine Road following the December 2020 disaster and not to support Constantine's annual maintenance and repairs, including those conducted in 2023.

The January 24, 2024, draft appeal provided to the Assembly by Manager, Annette Kreitzer does an admirable job of setting out the reasons why the DM was wrongly decided and should be overturned by Homeland Security. The reasons given in the Manager's letter on pages 5-6 explaining why Constantine's annual maintenance of a small portion of Porcupine Road did not qualify as a "connected action" as claimed by FEMA are effective.

Constantine is willing to assist by providing a cost summary and geographic data of the years in which it maintained portions of the road to gain access to the project site. We agree that Constantine's annual maintenance efforts were not connected to, or dependent upon, the Borough's maintenance and vice versa. Please do not hesitate to reach out should you feel that this information would benefit your appeal.

This overreach by FEMA is a concern for the entire State with the potential for long term negative impacts on future disaster relief efforts. Constantine recommends the Borough copy the Governor's Office and the Congressional Delegation on its appeal and request their support. The Borough's case is strong, and Alaska's statewide elected officials will surely provide help in defending its position.

The Haines Borough and Constantine have benefitted from a long-standing and collaborative effort to ensure safe access to the Porcupine area is possible for all user groups. Constantine stands ready to provide information in support of the appeal.

Regards,

A handwritten signature in cursive script that reads "Peter Mercer".

Peter Mercer, President
Constantine North Inc.

11C1



HAINES BOROUGH, ALASKA
P.O. BOX 1209, HAINES, ALASKA 99827

Annette Kreitzer, Borough Manager
907.766.6404 akreitzer@haines.ak.us

January 24, 2024

Willie G. Nunn
Regional Administrator
FEMA Region 10
P.O. Box 10055
Hyattsville, MD 20782-8055

Re: Eligibility Determination Memorandum Appeal, PA ID 100-99100-00,
FEMA-4585-DR-AK, Project Worksheet (PW) 13 – Porcupine Trail Road

Dear Mr. Nunn,

This letter is in response to the eligibility determination memo (DM) dated December 21, 2023, and received via Grants Portal January 4, 2024. The Haines Borough (Applicant) presents this appeal to the Department of Homeland Security's Federal Emergency Management Agency (FEMA) in response to its denial of funding in the amount of \$1,435,834.75 for costs related to the repair of Porcupine Trail Road.

The DM contains broad generalizations unrepresentative of the project as a whole and unsubstantiated assumptions on which the denial is based. Though not clearly enumerated in the DM, the following claims of non-compliance appear to constitute FEMA's justification for the denial:

1. The work completed by the Applicant exceeded the agreed upon scope of work, and the extraneous work was completed without prior approval by FEMA. This point refers to the claim of road widening.
2. The work completed by a third party constituted a connected action and was completed without prior approval by FEMA. This point refers to alleged connected action work.
3. The work completed by a third party exceeded the agreed-upon scope of work and was completed without prior approval by FEMA. This point refers to assertion of Environmental & Historic Preservation (EHP) noncompliance.

In the following analysis, justification is provided rejecting the claims of the DM and supporting the position of the Applicant. Though the three claims are related and have areas of overlap, each

will be addressed individually to help clearly identify the flaws in FEMA’s determination of ineligibility.

FEMA Claim 1: Averred Road Widening

FEMA claims the Applicant’s work exceeded the agreed-upon scope by widening the roadway beyond the approved 22-foot width. This supposed widening resulted in additional ground disturbance for which a change in scope of work request was not submitted to FEMA, thus depriving FEMA EHP of the opportunity to review for compliance with federal environmental and historic preservation requirements, particularly Section 106.

Timeline of Applicable Events¹:

2/17/2021	Federal disaster declaration.
6/30/2021	Applicant expresses interest in performing permanent repairs to Porcupine Trail Road.
8/26/2021	FEMA performs initial site inspection for Porcupine Trail Road with Applicant and State of Alaska Representatives. During the inspection, FEMA takes all measurements for developing the Damage Description and Dimensions (DDD) captured in the Site Inspection Report (SIR).
7/14/2022	Applicant and State of Alaska DMVA (Recipient) submit SOW change request to separate Porcupine Trail Road into three phases.
7/20/2022	Consolidated Resource Center (CRC) and EHP comment on the SOW change request, stating Phase I work will “reestablish ditches and repair the surface of the roadway in the existing footprint.”
7/21/2022	FEMA requests clarification on limits of work for SOW change request that includes limits shown from back of existing ditch to back of existing ditch.
8/5/2022	FEMA sends letter to AK SHPO with determination of “No Adverse Effects to Historic Properties.”
8/9/2022	AK SHPO provides concurrence with FEMA finding “no historic properties adversely affected.”
10/21/2022	FEMA obligates \$1,398,659.75 for Phase I.
6/14/2023	Phase I reconditioning begins.
7/13/2023	Phase I reconditioning complete.
7/20/2023	The Applicant pays the Contractor in full for Phase I.
7/24/2023	FEMA receives email from Takshanuk Watershed Council (TWC) expressing concerns about Phase I work.
8/31/2023	FEMA performs follow-up site inspection for Porcupine Trail Road.
9/20/2023	FEMA EHP submits Request for Information (RFI) for Porcupine Trail Road.
10/10/2023	Applicant provides response to EHP RFI.
10/30/2023	FEMA informs the Applicant that the project funding will be deobligated.
12/12/2023	Porcupine Trail Road funding is deobligated.
1/4/2024	Applicant receives DM denying eligibility.

Applicant’s Position:

All Phase I work completed by the Applicant was within the agreed upon scope of work and did not increase the amount of ground disturbance. Inconsistent definitions, poor communication, repeated staff turnover within FEMA’s management team, and misunderstanding between

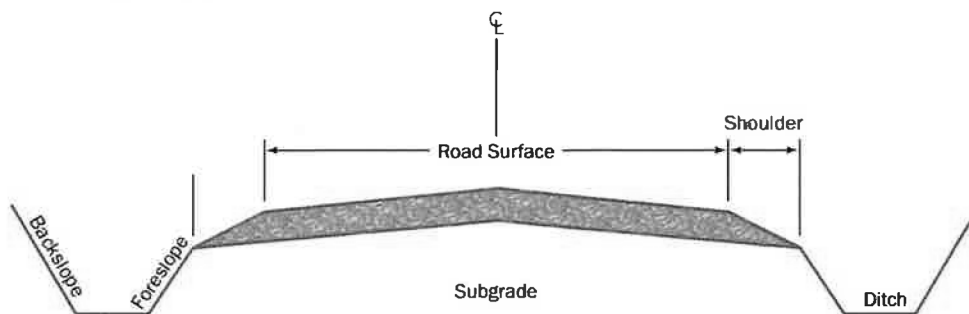
FEMA site inspectors and EHP resulted in EHP's erroneous analysis of the approved scope of work.

Justification:

The DM repeatedly references a road width of 22 feet, a measurement taken during the initial FEMA site visit and subsequently documented in the original site inspection report (SIR)². EHP uses this 22-foot measurement as the basis for its SOW increase/road widening claim, an assumption that is invalid for several reasons:

1. This measurement was not performed by a licensed or qualified surveyor and should not be considered a baseline survey.
2. This measurement is a broad generalization of the SOW and is unrepresentative of the actual pre-existing site conditions. A gravel road is by nature unconfined, resulting in variable widths as determined by the construction equipment used, site constraints, materials available, and many other factors. Therefore, the single 22-foot measurement taken during the original SIR at one distinct location along a 7-mile road is not an accurate or representative measurement that can be applied to the entire road length.
3. This measurement in no way captures the entire agreed upon scope of work as identified in the FEMA SIR², Applicant SOW documents³, or other project documentation. The 22-foot measurement taken during the original SIR only captured the road surface and did not incorporate the width of the shoulder or ditches. Several federal roadway standards^{4,5} – including the FEMA PA policy guide⁶ – draw a clear distinction between the width of the road surface, the width of the shoulder, and the width of the ditch; they are finite features (see figure below). This distinction is critical, because the measurements taken during the follow-up FEMA site visit and subsequently documented in the SIR⁷ attached to the DM show all road surface measurements as *less than* 22 feet. The road could therefore only be interpreted as widened when the shoulder width is added to the road surface width.

FEMA's claim in the DM that *"the average width of the road (including the shoulders...) significantly increased the area of ground disturbance... beyond the FEMA approved scope of work"* relies on a broad generalization of the scope of work and makes an unsubstantiated assumption that the road surface includes the shoulders. This assumption not only defies industry standards of measurement, it goes against the definitions and distinctions put forth in FEMA's own policy guides.



Source: FEMA Hurricane and Flood Mitigation Handbook for Public Facilities - Fact Sheet 1.1: Road and Highway Surfaces

Additional justification for the Applicant can be found in email correspondence between the Applicant and FEMA⁸ where it was clearly identified that the limits of work, as shown on the design drawings, included the 22-foot-wide road surfacing, variable width shoulder, and variable width ditches. It was also noted on the FEMA-approved plans that the existing road width varies. The Applicant also provided FEMA with documented correspondence between the Contractor and the Applicant⁹ during bidding, where clarification was requested regarding the limits of work. The Applicant clearly outlines that the intent of the project is not to widen the road. “Our intent is for the reconditioned road surface to match the existing road surface up to 22 feet wide. Where the existing road surface is less than 22 feet wide, we do not intend to widen the [road] but recondition to match the narrower road.” The work completed did not require any structural fill or road base material and was limited to the reconstruction of the existing roadway.

Conclusion:

The Applicant believes EHP is erroneously claiming unapproved SOW changes in the form of a widened roadway in response to concerns raised by the public and the Chilkat Indian Village (Klukwan). The above analysis and provided documentation demonstrate not only that a SOW change did not occur, but that the Applicant understood and enforced construction of the existing SOW consistent with federal guidelines. Any compliance lapses concerning federal environmental and historic preservation requirements are the result of EHP’s misunderstanding of the scope of work. This is a shortcoming of EHP procedures and should not penalize the Applicant.

FEMA Claim 2: Alleged Connected Action Work

FEMA claims the Applicant allowed third-party work to be performed that qualified as a connected action. FEMA is responsible for reviewing connected actions associated with a proposed project, even if the connected action is independently funded.

Timeline of Applicable Events:

2/17/2021	Federal disaster declaration.
6/28/2021	Porcupine Trail Road is actively washing out.
6/30/2021	Applicant expresses interest in performing permanent repairs to Porcupine Trail Road.
7/5/2021	Temporary Emergency Bypass Road installed as Category B (Cat B) work.
8/26/2021	FEMA performs initial site inspection of Porcupine Trail Road with Applicant and State of Alaska Representatives. During the inspection, FEMA takes all measurements for developing the Damage Description and Dimensions (DDD) captured in the Site Inspection Report (SIR).
11/16/2021	Applicant provides memo on Haines Borough regular maintenance activities.
1/11/2022	Applicant confirms with FEMA the creation of the new temporary access road adjacent to Site 9 as part of Cat B work.
7/14/2022	Applicant and Recipient submit SOW change request to separate Porcupine Trail Road into three phases. Email chain shows archaeological site along Porcupine Trail Road is likely mapped in the wrong location.
1/20/2023	Applicant and Recipient submit SOW change request to increase funding to include Phases II and III construction.
5/31/2023 - 6/13/2023	Third-party work performed. Temporary emergency repair.
6/14/2023	Phase I reconditioning begins.

7/13/2023 Phase I reconditioning complete.
8/31/2023 FEMA performs follow up site inspection for Porcupine Trail Road.
9/20/2023 FEMA EHP submits RFI for Porcupine Trail Road.
10/10/2023 Applicant provides response to EHP RFI.
12/12/2023 Porcupine Trail Road funding is deobligated.
1/4/2024 Applicant receives DM denying eligibility.

Applicant's Position:

The temporary emergency repair work completed by the third party on Porcupine Trail Road does not meet the requirements of a connected action and therefore did not require a FEMA review.

Justification:

The DM asserts that the third-party work was connected to the FEMA approved SOW and references the applicable federal code, but fails to describe or substantiate how the third party work rises to the level of a connected action as outlined under federal code¹⁰.

In federal code, an activity is defined as a connected action if it meets the following requirements:

- i. Automatically trigger other actions.
- ii. Cannot or will not proceed unless other actions are taken previously or simultaneously.
- iii. Are interdependent parts of a larger action and depend on the larger action for their justification.

In FEMA's DM, the Subject Action (the work in contention) is broadly identified as road repairs paid for and performed by a third party. No other scope, activity, or detail is offered to characterize the Subject Action that FEMA is objecting to. The Applicant is therefore forced to draw its own conclusions about the specific nature of the Subject Action, which for the purposes of this appeal we identify as temporary emergency work consisting of placement and grading of roadway material that was performed and paid for by a third party. For the following reasons (corresponding to the requirements above), the Subject Action does not amount to a connected action:

- i. No FEMA approved SOW or actions were triggered by the Subject Action.
 - a. The Phase I SOW was planned, designed, reviewed, and obligated without input from the Subject Action and was triggered specifically by the 2020 flood event.
- ii. The Subject Action proceeded independently of the FEMA approved SOW or action. The FEMA approved SOW or action was not taken previously or simultaneously.
 - a. The Phase I SOW did not affect the Subject Action's ability to proceed. The Phase I SOW was completed after the Subject Action.
- iii. The Subject Action is a part of a larger action, but it does not depend on the larger action for its justification.
 - a. The Subject Action is located along the same road corridor as the FEMA action performed on Porcupine Trail Road for Phase I SOW but does not depend on the

FEMA actions for justification. The Subject action maintains independent justification hence the third-party work and independent funding.

Conclusion:

FEMA’s claim in the DM that “road sections worked on by the third party that were authorized by the applicant are connected actions and must be considered and reviewed by FEMA EHP prior to construction” fails to identify any specific way that the Subject Action met these federal code requirements to elevate it to the level of connected action. It is therefore a fallacious argument to claim that such an action must be considered and reviewed by FEMA EHP.

The requirements necessary for identifying an action as a connected action are clearly and specifically defined in federal code. If the connected action claim were defensible, FEMA easily could have cited specific ways that the Subject Action met any or all of the three requirements. Instead FEMA chose to be vague in its assertion.

Though an action may appear connected due to factors such as physical proximity or scope of work, these alone do not meet the requirements of federal code. The above analysis shows that the work performed by the third party does not meet the requirements of a connected action under federal code. Therefore, review and approval by FEMA was not required for this work.

FEMA Claim 3: Alleged EHP Non-Compliance

FEMA claims the Applicant allowed third-party work to be performed exceeding the agreed upon scope of work. This allegedly resulted in additional ground disturbance for which a change in scope of work request was not submitted, depriving FEMA EHP of the opportunity to review for compliance with federal environmental and historic preservation requirements, in particular Section 106.

Timeline of Applicable Events:

- 2/17/2021 Federal disaster declaration.
- 6/28/2021 Porcupine Trail Road is actively washing out.
- 6/30/2021 Applicant expresses interest in performing permanent repairs to Porcupine Trail Road.
- 7/5/2021 Temporary Emergency Bypass Road installed as Cat B work.
- 8/26/2021 FEMA performs initial site inspection for Porcupine Trail Road with Applicant and State of Alaska Representatives. During the inspection, FEMA takes all measurements for developing the Damage Description and Dimensions (DDD) captured in the Site Inspection Report (SIR).
- 11/16/2021 Applicant provides memo on Haines Borough regular maintenance activities.
- 1/11/2022 Applicant confirms with FEMA the creation of the new temporary access road adjacent to Site 9 as part of Cat B work.
- 5/18/2022 Original EHP REC completed for Cat B work, including Porcupine Trail Road.
- 7/14/2022 Applicant and Recipient submit SOW change request to separate Porcupine Trail Road into three phases. Email chain shows archaeological site along Porcupine Trail Road is likely mapped in the wrong location.
- 8/5/2022 FEMA sends letter to AK SHPO with determination of “No Adverse Effects to Historic Properties.”
- 8/9/2022 AK SHPO provides concurrence with FEMA finding “no historic properties adversely affected.”

8/19/2022 Updated EHP REC to add Version 2 for Phase I SOW.
 1/20/2023 Applicant and Recipient submit SOW change request to increase funding to include Phases II and III construction.
 5/31/2023 - Third-party work performed. Temporary emergency repair.
 6/13/2023
 6/14/2023 Phase I reconditioning begins.
 7/13/2023 Phase I reconditioning complete.
 8/31/2023 FEMA performs follow up site inspection for Porcupine Trail Road.
 9/20/2023 FEMA EHP submits RFI for Porcupine Trail Road.
 10/10/2023 Applicant provides response to EHP RFI.
 12/12/2023 Porcupine Trail Road funding is deobligated.
 1/4/2024 Applicant receives DM denying eligibility.

Applicant’s Position:

The temporary emergency repair work completed by a third party on Porcupine Trail Road qualified for the National Historic Preservation Act (NEPA) Categorical Exclusion (CATEX) and complied with all other local, state, and federal statutes, regulations, and executive orders related to environmental and historic preservation. If an EHP review had been performed in a timely manner all work would have been found to be compliant. The failure of FEMA to coordinate and consult with the Chilkat Indian Village (Klukwan) was a result of flawed EHP procedures, not any shortcoming or negligence of the Applicant.

Justification:

The SOW of the third-party temporary emergency repair work performed was extremely limited and all work was contained within the existing road corridor. No excavation was performed as part of this work and the only earth-disturbing activity was the placement of fill material directly on the preexisting road surface. This work did not involve changes in the location, footprint, alignment or size of the facility and therefore would be excluded from NEPA review¹¹. This work also qualifies for CATEX as there is little or no impact on the environment and there are no “extraordinary circumstances” as defined by DHS¹².

The third-party temporary emergency repair work was performed to make the road passable for the season. It also had the secondary benefit of protecting the Herman Creek salmon spawning beds, a high-value salmon resource, from the river during the summer of 2023. Additionally, the entirety of the Porcupine Trail Road had a Record of Environmental Consideration (REC) performed as part of the Cat B emergency protective measures¹³. The limits of the third-party work were contained within the GPS coordinates listed on the Cat B REC. This REC performed complete reviews for the Clean Air Act (CAA), Coastal Barrier Resources Act (CBRA), Clean Water Act (CWA), Executive Order 11988 – Floodplains, Executive Order 11990 – Wetlands, Executive Order 12989 – Environmental Justice for Low Income and Minority Populations, Endangered Species Act (ESA), Farmland Protection Policy Act (FPPA), Fish and Wildlife Coordination Act (FWCA), Migratory Bird Treaty Act (MBTA), Magnuson-Stevens Fishery Conservation and Management Act (MSA), National Historic Preservation Act (NHPA), and Wild and Scenic Rivers Act (WSRA). Similarly, a REC was performed for Phase I work¹⁴. Though the limits indicated on the REC are specifically for the Phase I SOW, there is correspondence between FEMA Regional Environmental Officer Science Kilner, with State Historic Preservation Officer Judith Bittner

clearly indicating no historical or cultural sites of significance would have been identified within the “Area of Potential Effects” (an area 7.5 miles long by 50-100-feet wide that encompasses all segments for road, ditch, and embankment repair)^{15,16}. The third-party work was contained within this “Area of Potential Effects”.

The Applicant also submitted a SOW change request in January 2023 for the inclusion of Phases II and III work. If FEMA EHP had performed a timely review, a revised REC would have been performed specifically for the locations where the third-party work was performed prior to construction. It stands to reason that this revised REC, with its overlapping GPS coordinates, would have resulted in the same findings of full compliance as the Cat B REC and the Phase I REC.

Neither the Cat B REC nor the Phase I REC identified historic or cultural sites of significance. As such, even if there had been complete and thorough review by EHP, no procedural mechanism would have dictated FEMA contact the Chilkat Indian Village (Klukwan) to learn of the ancestral and contemporary areas of interest or concern. This is not to say sites do not exist in the area, but rather to make the point that even if FEMA EHP had been given the opportunity to review the third-party work prior to the work being performed, FEMA EHP review procedures would not have resulted in the identification of these sites.

Conclusion:

The scope and limit of the third-party temporary emergency repair work was in compliance with all local, state, and federal statutes, regulations, and executive orders related to environmental and historic preservation. This can be observed both by looking at the impacts of the work itself, as well as comparing the limits of the third-party temporary emergency repair work to the limits of the REC performed for both the Cat B work and the Phase I work. Additionally, if FEMA EHP had performed a timely review based on the Applicant’s SOW change request, a REC would have been available and shown full compliance with the third-party work performed. The historic sites identified by Chilkat Indian Village (Klukwan) would not have been identified by the FEMA EHP review procedures and would only have been identified after the fact.

Similar to their strategy in Claim 2: Alleged Connected Action work, FEMA cites applicable federal code in the DM but fails to specify how any project action or work violated that code. The DM states, “*Work completed was found to not meet provisions of National Environmental Policy Act (NEPA Categorical Exclusions (CATEXs)), as defined in 40 C.F.R. § 1508.4.* As a result, FEMA has determined that the project is ineligible for reimbursement,” but no further rationale is given. Asserting that “work completed was found to not meet provisions” but declining to elaborate on those findings is irresponsible and alarming, especially when such an unsubstantiated pronouncement could result in a small community losing nearly \$1.5 million dollars.

Summary Conclusion

To summarize this appeal, the Applicant does not believe that EHP fully understands the SOW for this project, and the DM does not provide sufficient justification or support for the denial of eligibility for this project. The DM continually references applicable statutes, regulations, and policies, but does not fully explain or provide examples of how the project is not in compliance with these statutes, regulations, or policies.

The Applicant has been through a federally declared disaster and has been operating in good faith throughout the public assistance process. FEMA has denied our eligibility and funding, after the community has already paid for and completed the repairs.

FEMA seems to be taking a hard line on this determination and there are some areas of justification that are not being consistently applied. No record could be found or historical knowledge uncovered of a project being denied eligibility based on a connected action. FEMA makes a clear point in its eligibility requirements regarding the historical enforcement of codes and standards, yet is using a previously unenforced code to deny eligibility for temporary emergency repair work performed by a third party. Additionally, the FEMA Policy Guide permits disallowing all or part of the costs of a project if found out of compliance. The decision to deny in full without adequate justification is an indication that specific impacts of concern could not be identified.

We believe that this DM was a direct response from FEMA EHP to appease members of the public who submitted comments objecting to this work. These concerns are questionable and likely unrelated to the project in question..

FEMA completely deobligated this project and issued a DM without addressing the RFI responses or requesting additional clarification. There are many statements of uncertainty and misunderstandings outlined in the DM that could have been clarified or better understood if The Borough had been given the opportunity for further discussions and sharing of information with FEMA. We ask that, in considering this matter, FEMA reflect on its core values: compassion, fairness, integrity and respect.

We hope that you take this opportunity to thoroughly review the information we have provided and provide an eligibility determination that is accurate, fact-based, substantiated, and reflective of FEMA's values.

Sincerely,

Annette Kreitzer

Annette Kreitzer

Haines Borough Manager

CC: Mayor Tom Morphet

Haines Borough Assembly Members

Ed Coffland, P.E., Haines Borough Public Facilities Director

Annelise Silk, Haines Borough Grants & Contracts Administrator

Jenny Belanger, State of Alaska DMVA, DHS&EM

Mike Macans, State of Alaska DMVA, DHS&EM

Alan Cavallo, State of Alaska DMVA, DHS&EM

Garret Gladsjo, P.E., proHNS LLC Principal Engineer

Attachments

¹ Attachment A – Porcupine Trail Road Project Timeline.pdf

² Attachment B – DR4585-AK Haines Borough_WO 71856_DI553459_SIR.pdf

³ Attachment C – Porcupine Trail Road - Phase I Plans

⁷ Attachment D – EHP Site Inspection Report.pdf

⁸ Attachment E – RE_DR-4585 Haines PW 0013 SOW Change Request.pdf

⁹ Attachment F – Q_and_A_HB 22-12

¹³ Attachment G – PA-10-AK-4585-PW-00043_REC 20230621 rework.pdf

- ¹⁴ Attachment H – PA-10-AK-4585-PW-00013_REC_20231219DeObligation-HMP.pdf
¹⁵ Attachment I – 20220805_FEMA_DR4585_PW13_PorcupineRdRepair_SHPO_consult.pdf
¹⁶ Attachment J – 3130-1R FEMA 2022-00986 Porcupine Road_2022Aug09.pdf

References

- ⁴ FEMA Hurricane and Flood Mitigation Handbook for Public Facilities, Fact Sheet 1.1: Road and highway Surfaces; Figure 1.1.1.
⁵ FHWA Gravel Roads Construction & Maintenance Guide; Section 1.1: Understanding the Gravel Road Cross Section; Figure 1.
⁶ PAPPG, at 168
¹⁰ 40 C.F.R. § 1508.25(a)(1)
¹¹ PAPPG, at 142
¹² PAPPG, at 141