



US Army Corps  
of Engineers  
Alaska District

# Public Notice of Application for Permit

Juneau Field Office  
Regulatory Division (1145)  
CEPOA-RD  
PO Box 22270  
Juneau, Alaska 99802-2270

<b>PUBLIC NOTICE DATE:</b>	<b>December 11, 2014</b>
<b>EXPIRATION DATE:</b>	<b>January 12, 2015</b>
<b>REFERENCE NUMBER:</b>	<b>POA-2009-264</b>
<b>WATERWAY:</b>	<b>Portage Bay</b>

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Interested parties are hereby notified that a Department of the Army permit application has been received for work in waters of the United States as described below and shown on the enclosed project drawings.

Comments on the described work, with the reference number, should reach this office no later than the expiration date of this Public Notice to become part of the record and be considered in the decision. Please contact Randal Vigil at (907) 790-4491 or by email at Randal.P.Vigil@usace.army.mil if further information is desired concerning this notice.

**APPLICANT:** City of Kake, PO Box 500, Kake, AK 99830.

**AGENT:** Christopher Floyd, U.S. Army Corps of Engineers-Alaska District, CEPOA-EN-CW-ER, PO BOX 6898, JBER, AK 99506-0898, 907-753-2700

**LOCATION:** The project site is located within Section 10, T. 57 S., R. 73 E., Copper River Meridian; USGS Quad Map Petersburg D-6; Latitude 56.949° N., Longitude 133.895° W.; Portage Bay Harbor; in Kake, Alaska.

**PURPOSE:** The applicant's stated purpose is to "demolish the deteriorating existing boat launch ramp at Kake's Portage Bay small boat harbor and replace it with a similar structure at the same location."

**PROPOSED WORK:** The applicant request authorization for the following work that would occur in and over Portage Bay, a navigable water of the United States (U.S.):

1. Dredge approximately 850 cubic yards (cy) of gravel and native marine sediment from approximately 0.83-acre below the Mean High Water Mark (approximate elevation +13.1 feet above the 0.0 foot contour) (MHW) including the removal of concrete planks and wood sleepers (100 total concrete planks (or fragments thereof), 16-foot long by 2-foot wide and approximately 400 running feet of 12-inch-wide timber sleepers) to demolish the existing boat launch;
2. Unconfined disposal of the approximately 850 cy of dredged gravel and native marine sediment by placement into approximately 0.2-acre below the plane of the High Tide Line (approximately +18.0 feet above the 0.0 foot contour) (HTL);

3. Place 285 cy embankment rock, 90 cy aggregate base course and rock spalls, 78 total concrete planks (2-foot wide by 26-foot long), 465 running feet of creosote-treated 4-inch by 12-inch timber sleepers into approximately 0.83-acre below the HTL to construct a new boat launch;

4. Install below the MHW one 250-foot long boarding float, composed of 12 total 20-foot long by 8-foot wide, expanded polystyrene coated with polyethylene, glulam (i.e., construction members formed from glue-laminated wood) frame floats with timber decking, that would be secured to the seafloor by 6 total 12-inch diameter steel piles.

All work would be performed in accordance with the enclosed plan (sheets 1-2), dated 16 Oct 2014 and (sheet 3), dated 25 Nov 2014.

**ADDITIONAL INFORMATION:** The applicant submitted to the U.S. Army Corps of Engineers (USACE), Regulatory Division an Environmental Assessment and Finding of No Significant Impact dated July 2014, for the proposed project that references a sediment characterization and analysis report (USACE 2013), for the project location. According to the applicant's report, no historical or current contamination exists at the proposed dredge site. A determination of suitability for in-water disposal of dredged material would be made in consultation with the State and Federal agencies.

**APPLICANT PROPOSED MITIGATION:** The applicant proposes the following mitigation measures to avoid, minimize, and compensate for impacts to waters of the United States from activities involving discharges of dredged or fill material.

**a. Avoidance:** "The project cannot avoid the placement of materials in waters of the U.S., as the boat ramp must extend well below the high tide line in order to be functional."

**b. Minimization:** "The project will minimize impacts to the marine environment through:

- Placing the new boat ramp within the footprint of the old boat ramp.
- Installing a boarding float adjacent to the new boat ramp, which will improve the efficiency of boat launching, and reduce foot traffic and other impacts to the adjacent tidelands.
- Working in-the-dry (i.e., avoiding work within tidelands while they are submerged).
- Prohibiting storage of fuels within the intertidal zone. The contractor will prepare a spill response plan and have adequate spill response materials at the project site to effectively limit and clean up any release of fuel or lubricants.
- Disposal of the concrete and timber debris from the old ramp at an appropriate off-site facility.
- Minimizing the risk of injurious water-propagated noise to any marine mammals by establishing a marine observation area during pile-driving or drilling within submerged sediment. The observation area will include marine waters within an 800-meter-radius of the project site (as stipulated by the National Marine Fisheries Service)."

**c. Compensatory Mitigation:** "Unoccupied city land tends to be heavily forested; creation of a new upland disposal site would impact the terrestrial habitat involved far more than leaving the material in the intertidal zone adjacent to where it originated.

Placement of the excavated/dredged material is expected to create a mound on the intertidal slope occupying about 0.2-acre between +10 feet and +2 feet Mean Lower Low Water (MLLW), essentially pushing the +10-foot-MLLW contour seaward about 50 feet along a front roughly 35 feet wide. The intertidal zone at that location consists of a mix of sand, gravel, and cobbles, with very sparse vegetation such as rockweed growing on cobbles and bedrock outcroppings. The mix of marine sediment and gravel to be disposed would not differ greatly from the coarse sediments currently present, and would recruit a similar community of marine organisms. The creation of the disposal mound would add some minor vertical structure to the intertidal slope, and extend the available habitat for upper-intertidal species.

No special aquatic sites, such as wetlands or eelgrass beds, exist at the project site. The intertidal substrate is too coarse to meet the definition of a “mudflat”.

In 2013, the Corps sampled and analyzed the marine sediment proposed to be dredged from the toe of the ramp. The sediment was found to be essentially free of chemical contamination and to meet sediment screening values for in-water disposal of dredged material. The gravel base-course has not been tested, but such coarse material would not be expected to entrain chemical contamination.

The placement of this material constitutes a modification, rather than a loss, of a small area of intertidal habitat, and the placed sediment is expected to provide suitable substrate for local intertidal communities. Compensatory mitigation is therefore not warranted for this project.”

**WATER QUALITY CERTIFICATION:** A permit for the described work will not be issued until a certification or waiver of certification, as required under Section 401 of the Clean Water Act (Public Law 95-217), has been received from the Alaska Department of Environmental Conservation.

**CULTURAL RESOURCES:** The latest published version of the Alaska Heritage Resources Survey (AHRs) has been consulted for the presence or absence of historic properties, including those listed in or eligible for inclusion in the National Register of Historic Places. There is an unevaluated property in the vicinity of the worksite. It has been designated **PORTAGE BAY MIDDEN (PET-00253)**. Because the property has been determined to be outside of the project area, no further action is required. Consultation of the AHRs constitutes the extent of cultural resource investigations by the District Commander at this time. This application is being coordinated with State Historic Preservation Officer (SHPO). Any comments SHPO may have concerning presently unknown archeological or historic data that may be lost or destroyed by work under the requested permit will be considered in our final assessment of the described work.

**ENDANGERED SPECIES:** The project area is within the known or historic range of the Humpback Whale (*Megaptera novaeangliae*), and Steller Sea Lion (*Eumetopias jubatus*) Western Distinct Population Segment.

We have determined the described activity may affect the endangered Humpback Whale (*Megaptera novaeangliae*), and Steller Sea Lion (*Eumetopias jubatus*) Western Distinct Population Segment. We have initiated the appropriate consultation procedures under section 7 of the Endangered Species Act with the National Marine Fisheries Service. Any comments they may have concerning endangered or threatened wildlife or plants or their critical habitat will be considered in our final assessment of the described work.

**ESSENTIAL FISH HABITAT:** The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH).

The project area is within the known range of the Chinook (*Oncorhynchus tshawytscha*), chum (*Oncorhynchus keta*), Coho (*Oncorhynchus kisutch*), pink (*Oncorhynchus gorbuscha*), and sockeye (*Oncorhynchus nerka*) salmon.

We have determined the described activity may adversely affect EFH in the project area for the following species the Chinook (*Oncorhynchus tshawytscha*), chum (*Oncorhynchus keta*), Coho (*Oncorhynchus kisutch*), pink (*Oncorhynchus gorbuscha*), and sockeye (*Oncorhynchus nerka*) salmon. The proposed project location is near-shore habitat primarily for adult and juvenile salmon migration, which provides refuge from predators and opportunity to rest. The proposed project would involve pile driving, dredging, and filling activities, which may increase the potential for injury or mortality to salmon from pressure waves generated from pile driving, elevation of suspended particulates within the water column, and/or loss of habitat. This Public Notice initiates EFH consultation with the NMFS. Any comments or recommendations they may have concerning EFH will be considered in our final assessment of the described work.

**TRIBAL CONSULTATION:** The Alaska District fully supports tribal self-governance and government-to-government relations between Federally recognized Tribes and the Federal government. Tribes with protected rights or resources that could be significantly affected by a proposed Federal action (e.g., a permit decision) have the right to consult with the Alaska District on a government-to-government basis. Views of each Tribe regarding protected rights and resources will be accorded due consideration in this process. This Public Notice serves as

notification to the Tribes within the area potentially affected by the proposed work and invites their participation in the Federal decision-making process regarding the protected Tribal right or resource. Consultation may be initiated by the affected Tribe upon written request to the District Commander during the public comment period.

**PUBLIC HEARING:** Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, reasons for holding a public hearing.

**EVALUATION:** The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts, which the proposed activity may have on the public interest, requires a careful weighing of all the factors that become relevant in each particular case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. The outcome of the general balancing process would determine whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur. The decision should reflect the national concern for both protection and utilization of important resources. All factors, which may be relevant to the proposal, must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria (see Sections 320.2 and 320.3), a permit will be granted unless the District Commander determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

**AUTHORITY:** This permit will be issued or denied under the following authorities:

(X) Perform work in or affecting navigable waters of the United States – Section 10 Rivers and Harbors Act 1899 (33 U.S.C. 403).

(X) Discharge dredged or fill material into waters of the United States – Section 404 Clean Water Act (33 U.S.C. 1344). Therefore, our public interest review will consider the guidelines set forth under Section 404(b) of the Clean Water Act (40 CFR 230).

District Commander  
U.S. Army, Corps of Engineers

Enclosures

# STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION  
DIVISION OF WATER  
401 Certification Program  
Non-Point Source Water Pollution Control Program

DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
WQM/401 CERTIFICATION  
410 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1795  
PHONE: (907) 465-5321/FAX: (907) 465-5274

## NOTICE OF APPLICATION FOR STATE WATER QUALITY CERTIFICATION

Any applicant for a federal license or permit to conduct an activity that might result in a discharge into navigable waters, in accordance with Section 401 of the Clean Water Act of 1977 (PL95-217), also must apply for and obtain certification from the Alaska Department of Environmental Conservation that the discharge will comply with the Clean Water Act, the Alaska Water Quality Standards, and other applicable State laws. By agreement between the U.S. Army Corps of Engineers and the Department of Environmental Conservation, application for a Department of the Army permit to discharge dredged or fill material into navigable waters under Section 404 of the Clean Water Act also may serve as application for State Water Quality Certification.

Notice is hereby given that the application for a Department of the Army Permit described in the Corps of Engineers' Public Notice No. **POA-2009-264, Portage Bay**, serves as application for State Water Quality Certification from the Department of Environmental Conservation.

After reviewing the application, the Department may certify there is reasonable assurance the activity, and any discharge that might result, will comply with the Clean Water Act, the Alaska Water Quality Standards, and other applicable State laws. The Department also may deny or waive certification.

Any person desiring to comment on the project, with respect to Water Quality Certification, may submit written comments to the address above by the expiration date of the Corps of Engineer's Public Notice.