



US Army Corps
of Engineers
Alaska District

Public Notice of Application for Permit

KENAI FIELD OFFICE
Regulatory Division (1145)
CEPOA-RD
805 Frontage Road, Suite 200C
Kenai, Alaska 99611-7755

PUBLIC NOTICE DATE:	March 17, 2014
EXPIRATION DATE:	April 17, 2014
REFERENCE NUMBER:	POA-2003-1509
WATERWAY:	Kenai River

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 Andy Mitzel at (907) 283-3519, by fax at (907) 283-3981, or by email at andy.mitzel@usace.army.mil if further information is desired concerning this notice.

APPLICANT: Mr. Jon Faulkner, Kenai Landing, Inc., c/o Land's End, 4786 Homer Spit Rd., Homer, AK, 99603.

AGENT: Mr. Mike Dye, Land's End Acquisition Corporation, c/o Land's End, 4786 Homer Spit Rd., Homer, AK, 99603

LOCATION: The project site is located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8, T. 5 N., R. 11 W., Seward Meridian; USGS Quad Map Kenai C-4; Latitude 60.532° N., Longitude 151.254° W.; Kenai Landing Cottages Subdivision, Tract A; in Kenai, Alaska; Kenai Peninsula parcel number 049-101-23.

SPECIAL AREA DESIGNATION: The project is located within the Kenai River Special Management Area.

PURPOSE: The applicant's stated purpose is to meet the growing need for marine transportation and shore-based services, including "roll-on", "roll-off" freight storage and handling.

PROPOSED WORK: The applicant proposes to excavate 10,000 cubic yards (cy) of silty clay from below the mean high water mark (MHW, 19.8 ft elevation) of the Kenai River, from an area 145 feet long and 80 feet wide in order to construct a 80 foot wide by 380 foot long boat ramp. The work would occur when the water levels are low, and an excavator would be used to remove the material. The dredged area would slope down from the MHW to 0 ft. All work would be performed in accordance with the enclosed plan (sheets 1-5), dated September 7, 2013.

ADDITIONAL INFORMATION:

In addition to work that would occur in waters of the U.S., the applicant is proposing to drive open cell sheet piles above the MHW to stabilize the area from future erosion and allow for the excavation of the boat ramp, if authorized.

The applicant also proposes to excavate 6,000 cy of silt and gravel from between the high tide line (HTL, 25.2 ft elevation) and the MHW, an area 20 foot long by 80 foot wide and 25 feet deep. Above the HTL, the applicant would excavate 4,400 cy of organics and gravel from an area 80 foot wide by 100 foot long. As a result of the proposed project, the HTL would extend further landward in the excavated area.

Columbia Ward Fisheries/Wards Cove Packing Company, the previous operators of the facility, have received several Department of the Army (DA) permits for various activities at this location

On August 27, 1990, a DA Letter of Permission (LOP) was issued for the seasonal installation of 4 mooring buoys and associated anchors and chains in the Kenai River (POA-1990-0337).

On March 13, 1990, a DA permit was issued for the seasonal placement of 21 mooring buoys, associated anchors, and connecting chains in the Kenai River (POA-1989-034). On September 15, 1994, a modification was issued for the additional placement of 10 mooring buoys in the Kenai River (POA-1989-0345).

On June 9, 1982, a DA permit was issued to construct an "L" shaped 170 foot by 20 foot fueling dock with fuel line hoses, a 170 foot by 20 foot slip, a 170 foot by 8 foot support leg for travel lift and five new pile clusters (POA-1982-0170). On May 19, 1993, a modification of the permit was issued to reverse the position of the fueling dock and support leg positions, move the seasonal floating dock and guide pile from the upstream side of the dock to the upstream side of the support leg, and to construct a 1600 square foot steel pile and concrete deck main dock addition (POA-1982-0170).

On April 16, 1982, a DA permit was issued for the construction of a 220 foot by 360 foot pad using 9,000 cubic yards of gravel for the purpose of commercial boat storage (POA-1981-0527). On September 24, 1984, a modification was done on this permit to retain and preserve an existing 360 foot by 320 foot pad using 10,000 cubic yards of gravel fill and to remove an existing fuel dock from the Kenai River (POA-1981-0527).

The original owners of the cannery, Libby, McNeill and Libby, also received several DA permits. On July 23, 1954 a DA permit was issued to construct a small pier and place a fill (POA-1954-0008). On July 5, 1924 a DA permit was issued to maintain wharfs, cannery buildings and boat ways (POA-1924-0009, Kenai River). On April 30, 1946, a DA permit was issued for existing marine structures including 2 floats, 2 gridirons and 6 dolphins (POA-1946-0018, Kenai River).

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 applicant states that it is not possible to avoid waters of the U.S. due to the nature of the project.

b. Minimization: The applicant states that they would minimize impacts by working during periods of low water to reduce the impacts to the aquatic environment. Additionally the work would occur in the September thru October time period to reduce potential impacts to migratory fish. Additionally the applicant has reduced the width of the proposed project from 100 feet wide to 80 feet wide.

c. Compensatory Mitigation: The applicant has stated the compensatory mitigation is not being proposed due to the minimal impacts to waters of the U.S.

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 a registered or eligible property in the vicinity of the worksite. It has been designated KEN-256, Ward Cove Cannery. Because it has been determined to be within the project area, a determination of effect will be made in consultation with the State Historic Preservation Officer (SHPO). Consultation of the AHRs constitutes the extent of cultural resource investigations by the District Commander at this time. 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 Cook Inlet beluga whales (*Delphinapterus leucas*).

We have determined the described activity would have no effect on the Cook Inlet beluga whales, and would have no effect on any designated or proposed critical habitat, under the Endangered Species Act of 1973 (87 Stat. 844). Therefore, no consultation with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service is required. However, 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 Pink salmon (*Oncorhynchus gorbuscha*), Chum salmon (*Oncorhynchus keta*), Sockeye salmon (*Oncorhynchus nerka*), Chinook salmon (*Oncorhynchus tshawytscha*), and Coho salmon (*Oncorhynchus kisutch*).

Preliminarily, we have determined the described activity would not adversely affect EFH in the project area.

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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
555 CORDOVA STREET
ANCHORAGE, ALASKA 99501-2617
PHONE: (907) 269-7564/FAX: (907) 334-2415

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-2003-1509, Kenai River**, 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.