



US Army Corps
of Engineers
Alaska District

Public Notice of Application for Permit

Regulatory Division (1145)
CEPOA-RD
Post Office Box 6898
JBER, Alaska 99506-0898

PUBLIC NOTICE DATE:	February 12, 2013
EXPIRATION DATE:	March 14, 2013
REFERENCE NUMBER:	POA-2010-772
WATERWAY:	EL CAPITAN PASSAGE

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 **Estrella Campellone** at (907) 753-2518, toll free from within Alaska at (800) 478-2712, by fax at (907) 753-5567, or by email at **Estrella.f.campellone@usace.army.mil** if further information is desired concerning this notice.

APPLICANT: John Dunbar, Kiewit Infrastructure West Company, 2000 W. International Airport Road C-6, Anchorage, Alaska 99502. Telephone: 907-518-1847.

AGENT: Laura Gurley, PND Engineers, Inc., 811 First Avenue, Suite 570, Seattle, WA 98104. Telephone: 206-624-1387.

LOCATION: The project is located in the Tongass National Forest, southeast Alaska, within Township 67 S, Range 79 E, Sections 4, 5, 8, 9, 17-20 and 29-32 and Township 68 S, Range 79 E, Sections 5-8 and 17-20, Copper River Meridian, USGS Quad Map Craig D-4 and Petersburg A-4. The north end of the project (at Neck Lake) starts at Latitude 56.0898 N, Longitude -133.2160 W; the end location (approximately Sarkar Creek) is at Latitude 55.4513 N, Longitude 133.2667 W between Whale Pass and Naukati, and between milepost 81.4 and milepost 93.4, on Prince of Wales Island, Alaska.

SPECIAL AREA DESIGNATION: The project is located within the Tongass National Forest.

PURPOSE: The applicant's stated purpose is to upgrade and expand approximately 12 miles of existing dirt road FH43 to current ADOT&PF standards and improve safety for motorized and non-motorized users.

PROPOSED WORK: Placement of 333,340 cubic yards of fill material in 33.48 acres of waters of the U.S, including wetlands, as per the following table:

Table 1: Total Impacts in waters of the U. S., including wetlands.

Wetland	Area (acres)	Fill amount (cubic yards)
Forested Wetlands	25.20	332,340
Mosaic Forested Wetlands	0.45	
Forested/Scrub-shrub	1.48	
Scrub-shrub	3.51	
Emergent	2.21	
Total Wetlands	32.85	
Other Waters of the U.S.(WOUS)		1,000
Intermittent Streams	0.15	
Perennial Streams	0.33	
Beaver Pond	0.15	
Total WOUS	0.63	
TOTAL IMPACTS	33.48	333,340

The expansion and upgrading of FH43 would include the widening and paving of FH43 from 22 feet wide to 24 feet wide drive lane. Safety features include signage, guardrails, shoulders, and pullouts. Also, approximately 70 substandard culverts would be replaced and 17 culverts would be upgraded to allow for fish passage. Two new bridges at Chum Creek and Tunga Creek would be installed. The above project also includes the construction of retaining walls for road stability and access roads to waste disposal sites. All work would be performed in accordance with the enclosed plan (sheets 1-33), dated January 17, 2012.

ADDITIONAL INFORMATION: This is a design-build project proposal.

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 and minimization: Every attempt has been made to avoid environmental impacts resulting from this project, including the use of the existing road alignment and choosing whenever possible, upland areas as waste disposal sites. Upon review of the wetland delineation, initially proposed disposal sites were eliminated when containing high value wetlands. Also, the footprint of waste disposal sites was reshaped to exclude high value wetlands. Sites initially proposed for material disposal were reevaluated and the number of sites reduced. Overall, the project was reduced from the proposed 40.66 acres of fill evaluated during the NEPA process to 33.48 (including streams) acres for avoidance and minimization purposes. Best management practices are proposed including ensuring avoidance of impacts to waters beyond the project footprint, no construction of new staging areas, heavy equipment or work performed outside of the authorized impact area, and stabilization of all disturbed areas, stockpiles, and fill areas during project construction using temporary erosion control measures. Minimization measures were also incorporated in the design, selecting existing quarries and logged sites over pristine areas. Minimization would also include implementing water

quality measures and monitoring as per the APDES general permit, prevention of deleterious material from entering the waters of the U.S., and timing restriction when working in anadromous streams.

- b. Compensatory Mitigation: The applicant is proposing permittee-responsible compensatory mitigation. This includes a combination various restoration and enhancement projects to be implemented in cooperation with the U.S. Forest Service on Prince of Wales Island, Tongass National Forest. These projects include in-stream enhancement, riparian thinning, and removal or replacement of fish barrier culverts (see attached draft Compensatory Mitigation Options Statement). The applicant is working with U.S. Forest Service to determine the extent of their projects in terms of existing and projected change in functions and values of the enhanced streams, stream classification, areas, lineal feet, monitoring protocol, etc. If the proposed permittee-responsible mitigation projects are not eligible or only provide partial credit for the compensatory mitigation required, the applicant would make use of the In-Lieu-Fee program for the balance of the mitigation. The In-Lieu-Fee program would be executed through the Southeast Alaska Land Trust or other entity approved by the Corps.

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 PET-00004. Because it has been determined to be outside of the project area, the Corps has made a 'no potential to cause effects' determination. No further action is required.

ENDANGERED SPECIES: No threatened or endangered species are known to use the project area.

We have determined the described activity would have no effect on any listed or proposed threatened or endangered species, 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).

No EFH species are known to use the project area.

We have determined the described activity would not adversely affect EFH in the project area.

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) 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).

Project drawings and a Notice of Application for State Water Quality Certification are enclosed with this Public Notice.

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

JUNEAU

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-2010-772, El Capitan Passage, 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.