



US Army Corps
of Engineers
Alaska District

Public Notice of Application for Permit

Juneau Field Office
Regulatory Division (1145)
CEPOA-RD
8800 Glacier Highway, Suite 106
Juneau, Alaska 99801-8079

AFTER-THE-FACT

PUBLIC NOTICE DATE:	January 18, 2013
EXPIRATION DATE:	February 19, 2013
REFERENCE NUMBER:	POA-2012-46
WATERWAY:	Auke Bay

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, by fax at (907) 790-4497, or by email at **Randal.P.Vigil@usace.army.mil** if further information is desired concerning this notice.

APPLICANT: Robin M. Worden, Post Office Box 211574, Auke Bay, Alaska 99821.

LOCATION: The project site is located within Section 22, T. 40 S., R. 65 E., Copper River Meridian; USGS Quad Map Juneau B-2; Latitude 58.382° N., Longitude 134.666° W.; USS 687, Lot 2; 12573 Auke Nu Drive, in Juneau, Alaska.

PURPOSE: The applicant's stated purpose is to provide moorage for his private boat and kayaks and have continuous access to his water craft.

PROPOSED WORK: The applicant requests authorization for the following work in waters and navigable waters of the United States (U.S.):

- a. Discharge below the plane of the high tide line (approximate elevation +20.3 feet above the 0.0 foot contour) approximately 50 cubic yards of shot-rock and 20 cubic yards of imported D-1 fill material to retain approximately 0.014 acres of filled waters of the U.S. and fill an additional approximately 0.048 acres of waters to construct an approximate 10 feet wide by 270 feet long path.

- b. Construct in waters of the U.S. below the mean high water mark (approximate elevation +14.8 feet above the 0.0 foot contour) (MHW), one 50 feet long by 10 feet wide, pile supported (2 each 12 inch diameter, galvanized steel) horizontal float, connected to one 70 feet long by 6 feet wide, pile supported (3 each 12 inch diameter, galvanized steel) perpendicular float, connected to one 214 feet long by 5 feet wide, pile supported (12 each 12 inch diameter, galvanized steel) ramp.

All work would be performed in accordance with the enclosed plan (sheet 1-1), dated December 12, 2012.

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

- a. Avoidance: Complete avoidance of aquatic resources is not possible.

- b. Minimization: The applicant has minimized impacts to waters of the U.S. by proposing a straight line path from his existing driveway to the proposed dock area. The route would take the proposed path through an area of higher tidal elevation that would impact a lesser amount of waters. The route of the proposed path consists mostly of large shale and bedrock.

- c. Compensatory Mitigation: No compensatory mitigation is proposed.

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 are no listed or eligible properties in the vicinity of the worksite. Consultation of the AHRS constitutes the extent of cultural resource investigations by the District Commander at this time, and he is otherwise unaware of the presence of such resources. This application is being coordinated with the State Historic Preservation Office (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*).

We have determined the described activity would have no effect on the Humpback whale or the Steller sea lion, 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 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 pink 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, which may increase the potential for injury or mortality to salmon from pressure waves generated from pile driving. 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 U.S. - Section 10 Rivers and Harbors Act 1899 (33 U.S.C. 403).

(X) Discharge dredged or fill material into waters of the U.S. - 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