



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 13, 2013
EXPIRATION DATE:	March 15, 2013
REFERENCE NUMBER:	POA-2012-633
WATERWAY:	Hastings Creek

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 **Mary Romero** at (907) 753-2773, toll free from within Alaska at (800) 478-2712, by fax at (907) 753-5567, or by email at **mary.r.romero@usace.army.mil** if further information is desired concerning this notice.

APPLICANT: Mr. Lloyd Gilman, Pro-West Contractors, 5461 E. Mayflower Lane Suite 2, Wasilla, Alaska; (907) 373-8055.

LOCATION: The project site is located within Sections 8 & 9, T. 12 S., R. 32 W., Kateel River Meridian; USGS Quad Map Nome B-1; Latitude 64.458114° N., Longitude 165.104686° W.; approximately ten miles east of Nome, Alaska, just north of the Council Road.

PURPOSE: The applicant's stated purpose is the development of a gravel pit for upgrades to the Nome Council Road.

PROPOSED WORK: The proposed work would authorize the mechanized land clearing of 8.32 additional acres of jurisdictional wetlands to extract 400,000 cubic yards of gravel for the upgrades to the Nome Council Road. All work would be performed in accordance with the enclosed plan (sheets 1-15), dated December, 7, 2012.

ADDITIONAL INFORMATION: In a letter dated August 2, 2012, the U.S. Army Corps of Engineers (Corps) sent a jurisdictional determination for POA-2012-633, Hastings Creek, indicating the Corps had determined the subject property did not contain waters of the U.S. under the Corps jurisdiction. That determination was based on an August 1, 2012, letter provided by a consultant, containing photos and narrative about a site visit conducted May 22, 2012. The letter stated the site was generally

dry and sandy, no frozen soils were encountered, and there were no areas of visible surface water or seasonally inundated locations.

On August 15, 2012, the Corps visited the project site along with personnel from the Alaska Department of Transportation and Public Facilities (ADOT&PF). Observations made during the site visit demonstrate that the project area does contain wetlands based on the predominance of hydrophytic vegetation, hydric soils, and wetland hydrology; permafrost was present at 17 inches below ground surface in the pit. Photos were taken during the site visit and show surface water and saturation at the soil surface in numerous areas.

Because work done last summer was based on incorrect information for which the Corps provided a negative jurisdictional letter the Corps plans to review only the remaining proposed work area when considering a permitting decision.

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: No gravel extraction would occur in Hastings Creek or within 200 feet of the ordinary high water mark of the tidal creek.

b. Minimization: Pro-West contractors would minimize impacts by only extracting gravel that is needed for the road project from mile 4-16 of the Council Highway. They would also include a minimum buffer zone of 200+ feet of undisturbed tundra as a filter to any silt that may try to leave the work area.

c. Compensatory Mitigation: For compensation the applicant would remove or restore any areas that are negatively impacted by any runoff from the gravel extraction operation. The applicant cannot foresee a need for monetary compensation as the land owner of the property the creek flows through is the same owner as the pit and they are already being compensated for the gravel extraction.

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 two unevaluated properties in the vicinity of the worksite. They have been designated NOM-00011, Hasting Creek, Iditarod National Historic Trail, NDE and NOM-00066, NDE. Because these properties have 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 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 Candidate Species Kittlitz's Murrelet (*Brachyramphus brevirostris*).

We are currently gathering information regarding this species and have yet to make

a determination of effect. Should we find that the described activity may affect the species listed above, and/or its designated critical habitat, we will follow the appropriate consultation procedures under section 7 of the Endangered Species Act of 1973 (87 Stat. 844). Any comments the U.S. Fish and Wildlife Service or the National Marine Fisheries Service 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.

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 authority:

(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

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-2012-633, Hastings Creek, 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.