



US Army Corps
of Engineers
Alaska District

Special Public Notice

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

ISSUANCE DATE:	November 28, 2023
REFERENCE NUMBER:	POA-2007-00541-M3
EXPIRATION DATE:	November 28, 2028

REISSUANCE OF REGIONAL GENERAL PERMIT (RGP) POA-2007-00541-M3 (RGP-07) STATEWIDE RURAL DEVELOPMENT

The United States (U.S.) Army Corps of Engineers (Corps), Alaska District, in accordance with regulations pursuant to Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C. 1344 et. Seq.), has reissued Regional General Permit (RGP-07) POA-2007-00541-M3. This RGP expires on November 28, 2028.

RGP changes after the public notice:

- Included language under the Maximum Acreage Limitations that states the amount of impacts authorized by this RGP shall not exceed 200 acres statewide for the next five years. If that threshold is met, the RGP will no longer be used and the proposed projects may be eligible for review and authorization by an individual permit.
- The RGP excluded area was amended to include Ketchikan, Kodiak, Kenai, Fairbanks NorthStar Boroughs and Big Lake.
- Revised the minimum distance that dredged and/or fill material may not be discharged to within 300 feet of open waterbodies (i.e., streams, rivers, ponds, lakes) or within 500 feet of anadromous waters for non-linear projects (utilities, roads, etc.).
- General Condition #10 was added that states floodplain integrity and connectivity shall be maintained at floodplain crossings by installing properly sized culvert(s) and/or bridges that allow high water in the floodplain to pass with minimal backwater impoundment upstream and minimal diversion of high water from the floodplain downstream.
- General Condition #14 was added that states no subsistence resources shall be adversely impacted by activities.
- General Condition #29 was added that states in addition to 'Excluded areas and activities', wetlands and waters that have been locally or otherwise identified as being unique or rare in their region, those which have significant importance to the quality and

quantity of water for humans and wildlife, or those of critical importance to fish and wildlife species, shall be excluded from this permit (i.e., deep peat bogs, fens, Estuarine and nearshore systems, headwater streams, Palustrine Emergent *Arctophila fulva* wetlands on the North Slope, etc.).

- General Condition #30 was added that states National Wild and Scenic Rivers System. Regardless of permanent or temporary impact status no RGP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or Study River (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.
- Revised language under Restrictions that the work authorized by this RGP is also subject to the following general conditions and any special conditions determined to be necessary to ensure impacts remain no more than minimal on a case-by-case **and cumulative basis**.
- General Condition #31 was updated to include that the Self-Certification shall include proof of compliance of appropriate general conditions (i.e., no erosion/sloughing into adjacent waters and wetlands, proper installation of hydrologic passage and natural drainage patterns, use of native plants in reseeding).
- Included Sections regarding Monitoring and Compliance Language.
- Include a Definitions section.

All authorized activities must be in accordance with the general conditions of the RGP. You may view a copy of the RGP under the Regional General Permits at: <https://www.poa.usace.army.mil/Missions/Regulatory/Permits/Regional-General-Permits/>, or by requesting a hard copy.

Any questions or requests for additional information should be directed to regpagemaster@usace.army.mil, (907) 753-2712, toll-free from within Alaska at (800) 478-2712.

District Commander
U.S. Army, Corps of Engineers

Enclosures

**DEPARTMENT OF THE ARMY
GENERAL PERMIT**

Permittee: The General Public

Permit No. RGP-07, Rural Development (POA-2007-00541-M3)

Issuing Office: U.S. Army Engineer District, Alaska

Issuance Date: November 28, 2023

Expiration Date: November 28, 2028

NOTE: The term “wetlands”, as used in this permit, refers to jurisdictional wetlands, a category of waters of the United States (U.S.). The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the Regulatory Division of the Alaska District, Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the District Engineer.

GENERAL PERMIT AUTHORIZATIONS

The general public is authorized to perform work in accordance with the terms and conditions of the Regional General Permit (RGP) specified below, after satisfying all applicable permit terms and conditions.

Under the authority of Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C.), the Secretary of the Army authorizes the discharge of dredged and/or fill material into wetlands within specific areas of Alaska, for the purpose of rural development.

AUTHORIZED ACTIVITIES

The RGP-07, Rural Development, authorizes the discharge of dredged and/or fill material into waters of the U.S. for the purpose of constructing and/or expanding building foundation pads, utilities, roads, driveways, and parking areas for residential and community developments. The RGP also authorizes mechanized land clearing and other activities that will result in a re-deposition of dredged material into waters of the U.S.

Residential and community developments are defined as residential housing, and community infrastructure such as schools, daycare and eldercare centers, utility buildings, health clinics, multi-use centers, water & wastewater treatment facilities, fire stations, solid waste facilities and the ancillary driveways, utilities, yards, and access roads associated with these developments.

¹ As defined at 33 CFR 330.2(i)

Maximum Acreage Limitations

The RGP-07, Rural Development, does not authorize any single and complete project¹ that would exceed 5 (five) acres of permanent loss of waters of the U.S. Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a general permit authorization. When RGP limits would be exceeded, the proposed projects may be eligible for review and authorization by an individual permit. In addition, the amount of impacts authorized by this RGP shall not exceed 200 acres statewide for the next five years. If that threshold is met, the RGP will no longer be used and the proposed projects may be eligible for review and authorization by an individual permit.

Excluded areas and activities

- 1) Excluded include those areas within the city and municipal boundary limits of Anchorage, Palmer, Wasilla, Big Lake, Fairbanks including Fairbanks North Star borough, Badger, Juneau/Douglas, Homer, Seward, Kenai, Soldotna, Ketchikan, Bethel, Annette Island, Denali National Park, and the coastal boundary of the Aleutians West Coastal Resource Service Area. This includes the communities of Unalaska, Atka, and Nikolski, but does not include Adak Island.
- 2) Unless this office makes a written determination concluding that the discharge would result in no more than minimal adverse environmental impacts and expressly waives this exclusion, under this RGP, dredged and/or fill material may not be discharged into:
 - a. any non-tidal open waterbody (i.e. streams, rivers, ponds, lakes) (except for the construction of linear projects (utilities, roads, etc.);
 - b. permanently flooded (inundated) wetlands (except for the construction of linear projects (utilities, roads, etc.);
 - c. any tidal waters; or
 - d. any wetlands within 300 feet of any waters of the U.S. listed in a thru c above or within 500 feet of anadromous waters.
- 3) Activities denied any required local, State or Federal authorization is not authorized by the RGP.
- 4) Activities that the Corps determines may result in more than minimal adverse impacts on aquatic resources or other public interest factors. The District will notify the applicant that the project does not qualify for the RGP and instruct the applicant on the procedures to seek authorization under a standard Department of the Army (DA) permit. The District may also, on a case-by-case basis, require a standard DA permit for unauthorized activities that may otherwise meet the terms and conditions of the RGP.
- 5) Activities specifically excluded from this RGP are discharges of dredged and/or fill material into waters of the U.S. for the construction of power generation plants, fuel storage areas, material barrow sites, work associated with the oil and gas industry, or any project involving the use or storage of hazardous wastes or

¹ As defined at 33 CFR 330.2(i)

hazardous substances as part of its principal purpose.

- 6) This RGP does not apply to state-designated Critical Habitat Areas, Game Refuges and Sanctuaries, and habitat areas identified as important by the Alaska Department of Fish and Game unless the activity is specifically authorized by the agency with jurisdiction over these lands.

APPLICATION PROCEDURES

Individuals wishing to perform work under this RGP must submit to this office a complete General Permit Application (GPA) Form (Enclosure 1) or ENG Form 4345. The GPA must contain the following information at a minimum:

- 1) Name, address, and phone number of the applicant.
- 2) Location of the proposed work to include Section, Township, Range; and/or latitude/longitude; city/town, and a locality map.
- 3) A detailed description of the project, its purpose, the waters of the U.S., including wetlands clearing identified on the plans, and the project dimensions including the size of the fill area, fill quantity and type of fill to be used.
- 4) Plan drawings, including a plan view and a cross-section view with dimensions of the project, showing the layout of the driveway, pads, and structures in relation to other features. Drawings do not have to be prepared by a professional but, should be clear and easily understood.
- 5) A mitigation statement consisting of Part B of the GPA (enclosure 1).

The application and drawings should be sent to: U.S. Army Corps of Engineers, Regulatory Division, Post Office Box 6898, JBER, Alaska 99506-0898, or by email to regpagemaster@usace.army.mil.

Corps Verification Process

The information provided will be reviewed by the Corps for compliance with the terms and conditions of the RGP. Normally, within 30 days of receiving the required information, a letter will be sent from this office to the applicant verifying whether or not the proposed project may proceed under the terms and conditions of the RGP or if additional information is required.

RESTRICTIONS

The work authorized by this RGP is also subject to the following general conditions and any special conditions determined to be necessary to ensure impacts remain no more than minimal on a case-by-case and cumulative basis.

¹ As defined at 33 CFR 330.2(i)

General Conditions:

Verifications under this RGP include general conditions that this office determines are necessary to ensure compliance with the terms and conditions of the RGP and to ensure that the activity will not result in more than minimal individual or cumulative adverse effects to the aquatic environment or other public interest factors.

- 1) The dredged and/or fill area shall be minimized by consolidating activities and uses. For example, utility lines (water, electrical, telephone, sewer, etc.) shall be located within the road or driveway fill when practicable.
- 2) The boundaries of the permitted dredged/fill area in wetlands shall be staked and/or flagged prior to construction, to prevent inadvertent encroachment into adjacent wetlands or placement of material beyond those limits identified in the plans submitted by the permittee.
- 3) Natural drainage patterns shall be maintained in the project area using appropriate ditching, culverts, storm drain systems, and/or other measures, without introducing ponding or drying. Excessive ponding and/or dewatering of areas adjacent to fills indicate non-compliance with this condition.
- 4) During construction activities including excavation and the discharge of dredged or fill material, heavy equipment must not be operated in wetlands outside the authorized disturbance areas that have been staked and/or flagged as required in General Condition 2 above. Heavy equipment working in wetlands or mudflats outside of the authorized fill/dredge footprint must be placed on mats, or other measures must be taken to minimize/prevent soil disturbance.
- 5) No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). The material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
- 6) Temporary storage of excavated and/or excess material on-site must be managed to prevent sediment from being carried into adjacent wetlands and waters, and to prevent leachate from causing degradation of water quality. Unusable or excess material must be disposed of in uplands or at a location approved by this office.
- 7) Prior to construction, erosion control measures, such as silt fencing, sediment traps, or water diversion structures, must be properly deployed and installed. During construction, silt and sediment from the site work must be prevented from entering wetlands or water bodies outside the authorized project limits. Methods shall be implemented to filter or settle out suspended sediments from all construction-related wastewater prior to its direct or indirect discharge into any natural body of water. The structures may be used to delineate project boundaries if installed prior to regulated activities.

¹ As defined at 33 CFR 330.2(i)

- 8) All exposed fills (including side slopes) and disturbed areas shall be stabilized immediately after construction to prevent erosion. Re-vegetation of the disturbed areas shall begin as soon as site conditions allow. Species to be used for seeding and planting shall follow this order of preference:

- a. Species native to the site.
- b. Species native to the area.
- c. Species native to the state.

Active sloughing, increased water turbidity and sediment in drainage ditches, streams, sloughs, and/or adjacent wetlands will be considered evidence of insufficient stabilization.

- 9) Dredged/fill material within 100-Year Floodplains. The activity must comply with applicable FEMA approved state or local floodplain management requirements where present. Fuel storage tanks shall be located outside wetlands and above the 100-year flood level and must be designed to withstand a 100-year flood event when a 100-year flood level has been established for a site. If the 100-year flood level has not been established for a site, the tank flood design shall be developed by an engineer to withstand flood levels.
- 10) Floodplain integrity and connectivity shall be maintained at floodplain crossings by installing properly sized culvert(s) and/or bridges that allow high water in the floodplain to pass with minimal backwater impoundment upstream and minimal diversion of high water from the floodplain downstream.
- 11) Material must be available at the site to contain and clean up incidental spills and leaks and must be used to contain and clean up any petroleum product spilled as a result of construction activity.
- 12) If human remains, historic resources, or archaeological resources are encountered during construction, all ground disturbing activities shall cease in the immediate area and you shall immediately (within one business day of discovery) notify the U.S. Army Corps of Engineers (Corps), Alaska District, Regulatory Office at (907) 753-2712 or emailing regpagemaster@usace.army.mil. Upon notification the Corps shall notify the appropriate Tribal Historic Preservation Office (THPO) and State Historic Preservation Office (SHPO). Based on the circumstances of the discovery, equity to all parties, and consideration of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. After such notification, project activities on federal lands shall not resume without written authorization from the Corps. After such notification, project activities on tribal lands shall not resume without written authorization from the SHPO and the Corps.
- 13) No activity or its operation may impact reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

¹ As defined at 33 CFR 330.2(i)

- 14) No subsistence resources shall be adversely impacted by activities.
- 15) The Migratory Bird Treaty Act prohibits the willful killing or harassment of migratory birds. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable. Nesting seasons vary throughout the state, for further information, you may look at the USFWS site,
http://alaska.fws.gov/fisheries/fieldoffice/anchorage/pdf/vegetation_clearing.pdf
- 16) Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance. The permittee must maintain the lands and facilities subject to this RGP in good condition and in conformance with the terms and conditions of this RGP.
- 17) If the permittee sells the property associated with an RGP verification, the permittee may transfer this RGP verification to the new owner by submitting a letter to the Corps to validate the transfer. A copy of this RGP verification must be attached to the letter, and the letter must contain the applicants full name, address, phone number, and the following statement and signature: "When the structures or work authorized by this RGP are still in existence at the time the property is transferred, the terms and conditions of this RGP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this RGP and the associated liabilities associated with compliance with its terms and conditions, the signature of the transferee and date appear below."

(Transferee signature)

(Date)

(Printed name)

- 18) The permittee shall allow the DE or their authorized representative(s) to inspect authorized work at any time deemed necessary to assure that on-going and completed work is in compliance with the terms and conditions of this RGP.
- 19) All activities identified and authorized herein shall be undertaken in a manner that is consistent with the terms and conditions of this RGP, and any activities undertaken by the permittee that are not specifically identified and authorized herein shall constitute noncompliance with the terms and conditions of this RGP, and consequently, a violation of the Clean Water Act. Appropriate enforcement procedures will be determined on a case-by-case basis commensurate with the degree of severity and flagrancy.
- 20) Measures shall be implemented to prevent the introduction and spread of invasive plant and animal species, such as washing equipment to remove dirt

¹ As defined at 33 CFR 330.2(i)

and debris that might harbor invasive seeds before entering the job site, using weed-free fill, disposing of spoil and vegetation contaminated with invasive species appropriately, and revegetating with local native plant species.

- 21) Permit Expiration. The RGP-07 expires on November 28, 2028. Unless activities authorized under the RGP-07 have commenced, the time limit for completing work ends upon the expiration date of RGP-07. Activities authorized under RGP-07 which have commenced construction or are under contract to commence construction by November 28, 2028, will have until 12 months, to be completed under the terms and conditions of RGP- 07, unless the District Engineer's discretionary authority is exercised on a case- by-case basis to modify, suspend, or revoke the authorization.
- 22) Verification. Written verification that the project fits the terms and conditions under RGP-07 must be received from this office prior to commencing regulated activities.
- 23) Avoidance and Minimization. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on-site).
- 24) Contractor Notification. All contractors involved in this RGP authorized activity must be provided copies of this permit in its entirety. A copy shall remain on site at all times during construction. A complete copy of these documents shall remain on site at all times during implementation of the authorized activity.
- 25) Permafrost. If permafrost is present, sufficient fill (or other methods of insulation) must be placed on the ground to provide thermal stability. Signs of thermokarsting or standing water indicate non-compliance with this condition.
- 26) Water Quality Certification. You must comply with all conditions specified as part of the Alaska Department of Environmental Conservation (ADEC) Water Quality Certification, which is part of this RGP.
- 27) Endangered Species. The activity must not jeopardize the continued existence of any threatened or endangered species, as identified under the Endangered Species Act, nor endanger the critical habitat of such species.
- 28) Essential Fish Habitat. The activity must not adversely affect Essential Fish Habitat (EFH).
- 29) In addition to 'Excluded areas and activities', wetlands and waters that have been locally or otherwise identified as being unique or rare in their region, those which have significant importance to the quality and quantity of water for humans and wildlife, or those of critical importance to fish and wildlife species, shall be excluded from this permit (i.e., deep peat bogs, fens, Estuarine and

¹ As defined at 33 CFR 330.2(i)

nearshore systems, headwater streams, Palustrine Emergent *Arctophila fulva* wetlands on the North Slope, etc.).

- 30) National Wild and Scenic Rivers System. Regardless of permanent or temporary impact status no RGP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or Study River (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.
- 31) Self-Certification: Within 60 days of completion of the work authorized by this permit, the Permittee shall complete the attached “Self-Certification Statement of Compliance” form and submit it to this office. The Self-Certification shall include proof of compliance of appropriate general conditions (i.e., no erosion/sloughing into adjacent waters and wetlands, proper installation of hydrologic passage and natural drainage patterns, use of native plants in reseeding). In the event that the completed work deviates in any manner from the authorized work, the Permittee shall describe the deviations between the work authorized by this permit and the work as constructed on the “Self-Certification Statement of Compliance” form. The description of any deviations on the “Self-Certification Statement of Compliance” form does not constitute approval of any deviations by this office.
- 32) Modification by Other Authorizations. If the work proposed under this RGP is subsequently modified by any other Federal, State, or local governmental authorization, the permittee shall inquire with this office as to whether a re-verification under this RGP is required to be obtained. This office will review the changes and provide the permittee a written response (email or letter) as to if the activities would need re-verification, a nationwide permit and/or authorization under Standard Permitting procedures.
- 33) Use of multiple General Permits. The use of more than one GP for a single and complete project is prohibited.

MONITORING

The Corps will conduct an annual review of all projects authorized during the previous year. Pertinent information from these cases shall be compiled into a report and entered in the official RGP file. Copies of this report shall be made available to the interested public, and to local, state and federal agencies for their information upon request. In addition, periodic field inspections shall be undertaken by this office of projects authorized

¹ As defined at 33 CFR 330.2(i)

under this RGP. Reports shall be prepared for all field inspections and entered into the official RGP file. The Regulatory Division shall maintain a file of RGP-related documents and monitoring efforts. The information contained in this RGP file shall provide the basis for the decision whether or not to revise or renew this RGP. If it is determined that projects authorized by this RGP result in greater than minimal adverse environmental impacts, then this RGP shall be modified, suspended, or revoked to prevent further impacts.

COMPLIANCE

Compliance with the RGP requires strict adherence to the terms and conditions specified both herein and any special conditions within the verification. Corps representatives may inspect sites to determine whether the work is being, or has been, performed in conformance with the terms and conditions of this RGP.

Failure to comply with this the terms and conditions of this RGP can subject the permittee, as well as contractors or other persons acting for the permittee, to severe penalties. Should the Corps determine that an activity is not in compliance with this RGP, the permittee may be required—at their expense—to implement corrective measures, remove fill and/or restore any areas affected by the noncompliance, in accordance with 33 CFR Part 326 and Section 309 of the Clean Water Act. Noncompliance could also result in suspension, revocation or modification of the RGP authorization (pursuant to 33 CFR 325.7), initiation of legal action by the Federal Government, issuance of a monetary penalty ranging up to \$52,414 per day of violation, and/or imprisonment for up to one year.

FURTHER INFORMATION:

- 1) **Congressional Authorities.** Authorization to undertake the activities described above is pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Work that also requires authorization under Section 10 of the Rivers and Harbors Act of 1899 must be authorized separately through nationwide or individual permits.
- 2) **Limits of this authorization.**
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
- 3) **Limits of Federal Liability.** In issuing this permit, the Federal Government does not assume any liability for the following:

¹ As defined at 33 CFR 330.2(i)

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
- 4) **Reliance on Applicant's Data.** The determination of this office that verifications of this RGP are not contrary to the public interest will be made on a case-by-case basis and in reliance on the information provided by the applicants.
- 5) **Reevaluation of Decision.** This office may reevaluate its decision on individual verifications of this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. The permittee fails to comply with the terms and conditions of this permit.
 - b. The information provided by the applicant in support of the permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate.

- 6) **Reevaluation this RGP.** This office may also reevaluate its decision to issue the RGP-07 at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following: significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7.

¹ As defined at 33 CFR 330.2(i)

Definitions:

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm

¹ As defined at 33 CFR 330.2(i)

surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Nontidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

¹ As defined at 33 CFR 330.2(i)

Open water: An open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high-water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High-Water Mark: The term ordinary high-water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Reestablishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. The purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Reestablishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

¹ As defined at 33 CFR 330.2(i)

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality.

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a General Permit authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high-water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high-water marks, are not considered part of the stream bed.

¹ As defined at 33 CFR 330.2(i)

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States. Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: A waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

This General Permit becomes effective when the federal official, designated to act for the Secretary of the Army, has signed below.

FOR THE DISTRICT COMMANDER:



P. Allen Atkins
North Section Chief
Alaska District Corps of Engineers

November 27, 2023

Date

¹ As defined at 33 CFR 330.2(i)

U.S. Army Corps of Engineers, Alaska District
GENERAL PERMIT APPLICATION FORM

May be used instead of Form ENG 4345 to request verification under a Regional General Permit (RGP)

Applicant:	Phone:
Address:	Fax:
City, State, Zip:	Cell/Direct Line:
Point of Contact:	e-mail:

Agent:	Phone:
Address:	Fax:
City, State, Zip:	Cell/Direct Line:
Point of Contact:	e-mail:

Location of the Proposed Project Site:

Nearest Waterway:	
Section, Township, Range, and Meridian (if known):	
Latitude and Longitude (Decimal Degrees, NAD-83):	
Nearest City:	Subdivision:
Borough:	USGS Quad(s) (if known):
Driving Directions to Site:	

Project purpose:
Have any permits been issued for this site or project in the past (if known)?

The GPA must include:

- Drawings of the site and project plans (For more information on acceptable drawings and plans, please visit our website at <http://www.poa.usace.army.mil/Missions/Regulatory/Permits/> and click on “Guide to Drawings”)
- Delineation of wetlands, other special aquatic sites (riffle and pool complexes, sanctuaries and refuges, mudflats, vegetated shallows, and/or coral reefs), and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. If you need guidance please contact the Corps for further information.

Description of the proposed project:

Provide surface area of impacts in wetlands or other waters of the U.S. or linear feet for streams and rivers.

Provide information on type(s) (i.e. sand, gravel, cobble, topsoil etc...) of Material Being Discharged and the Amount of Each Type in Cubic Yards:

Type

Type

Type

Amount in Cubic Yards

Amount in Cubic Yards

Amount in Cubic Yards

Describe methods for rehabilitation of disturbed areas. If you intend to use other locally-obtained native materials, identify the source.

You must satisfy the requirements in Regional General Condition (Attached).

Describe how you will satisfy the requirement that you avoid and minimize adverse impacts to wetlands and other waters to the maximum extent practicable. Examples of avoidance measures include site selection, routes, design configurations, etc... Minimization measures include limiting fill discharges to the minimum amount/size necessary to achieve the project purpose.

Would your proposed project result in the loss of greater than 1/10 of an acre of wetlands?

YES or NO

If YES, describe your proposed compensatory mitigation to offset unavoidable impacts to waters of the U.S., or, alternatively, why compensatory mitigation is not appropriate or practicable for your project. Compensatory mitigation may involve the restoration, enhancement, establishment (creation), and/or the preservation of aquatic sites.

Information for the following section can be found at locations listed below:

U.S. Fish and Wildlife Service and the National Marine Fisheries Service or their world wide Web pages at <http://www.fws.gov> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/>

Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer

Information on the location of the USACE projects in Alaska are listed on the world wide web pages at <http://www.poa.usace.army.mil/About/Offices/Construction-Operations/Rivers-and-Harbors/> and at <http://www.poa.usace.army.mil/About/Offices/Construction-Operations/Erosion-and-Flood-Mitigation/>.

For a full list of Nationwide Permit General Conditions please visit our web page at <http://www.poa.usace.army.mil/Missions/Regulatory/Permits/Nationwide-Permits/>

Verification from the Corps must be received if your project is located in any of the areas listed below

Are there any listed species or designated critical habitat that might be affected or is in the vicinity of the project, or is the project located in designated critical habitat? Federal agencies must provide the appropriate documentation to demonstrate compliance with the agency's procedures for compliance with the ESA. Information on the location of threatened or endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. (see General Condition 18 and 22)

YES or NO

If YES, list all species:

Are there historic properties (listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties) that the proposed activity may have the potential to effect? Federal agencies must provide documentation demonstrating compliance with the Section 106 of the National Historic Preservation Act. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer. (see General Condition 20)

YES or NO

If YES, state which property or properties may be affected and/or attach a vicinity map indicating the location of the historic property or properties.

Are there any U.S. Army Corps of Engineers (USACE) federally authorized Civil Works projects (i.e. 'Harbor, Navigation Channel, flood control, etc.') in the vicinity of your project?

YES or NO

If YES, state which USACE project is in the vicinity of your project.

Jurisdictional Determination

The Corps has received new guidance (Regulatory Guidance Letter 16-01) which states that the Corps will only complete a jurisdictional determination (JD) form if the applicant requests it. In other words, if the applicant does not request a JD, we can proceed straight into our permit evaluation, without completing a JD form.

If you wish to obtain a JD there are two types you may request:

An Approved Jurisdictional Determination (AJD) is completed when we can state definitively that we do or do not have authority over the aquatic resource in question. Approved JDs often require a site visit during the growing season. An AJD is appealable and expires after five years.

A preliminary jurisdictional determination (PJD) is when the Corps determines that we may have authority over the aquatic resources in the project area. A PJD often doesn't require a site visit and is expedited. It is not appealable and does not expire. Applicants who want a JD may request a PJD because it is often more expedient than an AJD.

Please indicate which you prefer:

NO JD REQUESTED or AJD or PJD

Application is hereby made for a permit or permits to authorize the work described in this preconstruction notification form. I certify the information in this preconstruction notification form is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT

DATE

SIGNATURE OF AGENT

DATE

Regional General Condition: MITIGATION

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2)–(14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to

ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWP.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

Applicant Proposed Mitigation Statements

Definitions:

Enhancement: the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

In-lieu fee program: a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument. <https://ribits.usace.army.mil/>

Mitigation bank: a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument. <https://ribits.usace.army.mil/>

Permittee-responsible mitigation: an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

Practicable: available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Preservation: the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Restoration: the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Environmental
Conservation

DIVISION OF WATER

Wastewater Discharge Authorization Program

555 Cordova Street
Anchorage, Alaska 99501-2617
Main: 907.269.6285
Fax: 907.334.2415
<https://dec.alaska.gov/water/wastewater/>

October 26, 2023

U.S. Army Corps of Engineers Regulatory Division, Alaska District
Attn: P. Allen Atkins, North Section Chief
P.O. Box 6898
JBER, AK 99506-0898

Re: USACE Rural Development Regional General Permit Reissuance
POA-2007-00541-M3 (RGP-07), Statewide Waters

Dear Mr. Atkins,

In accordance with Section 401 of the Federal Clean Water Act of 1977 and provisions of the Alaska Water Quality Standards, the Department of Environmental Conservation (DEC) is issuing the enclosed water quality certification that the discharge from the proposed project will comply with water quality requirements for the placement of dredged and/or fill material in waters of the U.S., including wetlands and streams, associated with the proposed project: *USACE Regional General Permit – RGP-07, Rural Development (POA-2007-00541-M3)*.

A person authorized under a provision of 18 AAC 15 may request an informal review of a contested decision by the Division Director in accordance with 18 AAC 15.185 and/or an adjudicatory hearing in accordance with 18 AAC 15.195 – 18 AAC 15.340. See DEC's "Appeal a DEC Decision" web page <https://dec.alaska.gov/commish/review-guidance/> for access to the required forms and guidance on the appeal process. Please provide a courtesy copy of the adjudicatory hearing request in an electronic format to the parties required to be served under 18 AAC 15.200.

By copy of this letter we are advising the U.S. Army Corps of Engineers of our actions and enclosing a copy of the certification for their use.

Sincerely,

A handwritten signature in black ink, appearing to read "James Rypkeena".

James Rypkeena
Program Manager, Storm Water and Wetlands

Enclosure: 401 Water Quality Certificate

cc: Carolyn Farmer, USACE

Megan Marie, ADF&G
USFWS Field Office Anchorage
Matthew LaCroix, EPA AK Operations
Kelly McDonald, EPA AK Operations

Water Quality Certification

In accordance with Section 401 of the Federal Clean Water Act (CWA) and the Alaska Water Quality Standards (18 AAC 70), a water quality certification is issued to the U.S. Army Corps of Engineers Regulatory Division, Alaska District; Attn: P. Allen Atkins, North Section Chief; P.O. Box 6898; JBER, AK 99506-0898 that the discharges from the proposed projects issued under the *USACE Regional General Permit – RGP-07, Rural Development (POA-2007-00541-M3)* will comply with water quality requirements for the placement of dredged and/or fill material in waters of the U.S. including wetlands and streams.

A state issued water quality certification is required under Section 401 because the proposed activities will be authorized by a U.S. Army Corps of Engineers permit *RGP-07, Rural Development (POA-2007-00541-M3)* and a discharge of pollutants to waters of the U.S. located in the State of Alaska may result from the proposed activity. Public notice of the application for this certification was given as required by 18 AAC 15.180 in the joint Corps and DEC Public Notice POA-2007-00541-M3 posted from August 4, 2023 to October 5, 2023.

Project Purpose, Description, and Location

Project Purpose: The applicant's stated purpose is to streamline the permitting process for rural development within the state of Alaska.

Project Description: The regional general permit authorizes the discharge of dredged and/or fill material into waters of the U.S. for the purpose of constructing and/or expanding building foundation pads, utilities, roads, driveways, and parking areas for residential and community developments. The RGP also authorizes mechanized land clearing and other activities that will result in a re-deposition of dredged material into waters of the U.S.

Residential and community developments are defined as residential housing, and community infrastructure such as schools, daycare and eldercare centers, utility buildings, health clinics, multi-use centers, water & wastewater treatment facilities, fire stations, solid waste facilities and the ancillary driveways, utilities, yards, and access roads associated with these developments.

Maximum Acreage Limitations

The RGP-07, Rural Development, does not authorize any single and complete project¹ that would exceed 5 (five) acres of permanent loss of waters of the U.S. Single and complete non-linear projects may not be "piecemealed" to avoid the limits in a general permit authorization. When RGP limits would be exceeded, the proposed projects may be eligible for review and authorization by an individual permit. In addition, the amount of impacts authorized by this RGP shall not exceed 200 acres statewide for the next five years. If that threshold is met, the RGP will no longer be used and the proposed projects may be eligible for review and authorization by an individual permit.

Excluded areas and activities

1. Excluded include those areas within the city and municipal boundary limits of Anchorage, Palmer, Wasilla, Matanuska-Susitna, Big Lake, Fairbanks including Fairbanks NorthStar boroughs, Badger, Juneau/Douglas, Homer, Seward, Kenai, Soldotna, Ketchikan, Bethel, Annette Island, Denali National Park, and the coastal boundary of the Aleutians West Coastal Resource Service Area. This includes the communities of Unalaska, Atka, and Nikolski, but does not include Adak Island.
2. Unless Corps makes a written determination concluding that the discharge would result in no more than minimal adverse environmental impacts and expressly waives this exclusion, under this RGP, dredged and/or fill material may not be discharged into:
 - a. any non-tidal open waterbody (i.e. streams, rivers, ponds, lakes) (except for the construction of linear projects (utilities, roads, etc.);

¹ As defined at 33 CFR 330.2(i)

- b. permanently flooded (inundated) wetlands (except for the construction of linear projects (utilities, roads, etc.);
 - c. any tidal waters; or
 - d. any wetlands within 300 feet of any waters of the U.S. listed in a thru c above or within 500 feet of anadromous waters.
3. Activities denied any required local, State or Federal authorization is not authorized by the RGP.
4. Activities that the Corps determines may result in more than minimal adverse impacts on aquatic resources or other public interest factors. The District will notify the applicant that the project does not qualify for the RGP and instruct the applicant on the procedures to seek authorization under a standard Department of the Army (DA) permit. The District may also, on a case-by-case basis, require a standard DA permit for unauthorized activities that may otherwise meet the terms and conditions of the RGP.
5. Activities specifically excluded from this RGP are discharges of dredged and/or fill material into waters of the U.S. for the construction of power generation plants, fuel storage areas, material barrow sites, work associated with the oil and gas industry, or any project involving the use or storage of hazardous wastes or hazardous substances as part of its principal purpose.
6. This RGP does not apply to state-designated Critical Habitat Areas, Game Refuges and Sanctuaries, and habitat areas identified as important by the Alaska Department of Fish and Game unless the activity is specifically authorized by the agency with jurisdiction over these lands.

RGP-07 was originally issued on November 21, 2007, in order to expedite rural development. RGP-07 authorized the discharge of dredged and/or fill material into waters of the United States for the purpose of constructing and/or expanding building foundation pads, utilities, roads, driveways, and parking areas for residential and community developments. The RGP also authorizes mechanized land clearing and other activities that will result in a re-deposition of dredged material into waters of the United States. On December 10, 2012, the RGP was re-issued for an additional five years, which expired December 10, 2017. The Corps re-issued again on September 6, 2019, for another five years, which is due to expire on September 30, 2024. Since the initial issuance of RGP-07, the permit has been utilized 198 times and authorized the discharge of dredged and/or fill material into 100.93-acres of wetlands across the state.

Project Location: The proposed activity is statewide.

Antidegradation Analysis Finding

Pursuant to the Department's Antidegradation Policy and Implementation Methods at 18 AAC 70.015 and 18 AAC 70.016, DEC finds that the project would comply with the requirements for Tiers 1 and 2 regarding water quality impacts to receiving water immediately surrounding the dredge or fill material pursuant to the Corps evaluation and findings of no significant degradation under 33 U.S.C. 1344 and under 40 CFR 230. The use of appropriate best management practices and erosion and sediment control measures would adequately protect the existing water uses and the level of water quality necessary to protect existing uses. Any potential water quality degradation is expected to be temporary and limited and necessary to accommodate important social and/or economic development in the area.

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

The Department of Environmental Conservation (DEC) reviewed the application and certifies that there is reasonable assurance that the proposed activity, as well as any discharge which may result, will comply with applicable provisions of Section 401 of the CWA and the Alaska Water Quality Standards, 18 AAC 70, provided that the following additional measures are adhered to.

Pursuant to 18 AAC 70.020(a) and the Toxics and Other Deleterious Organic and Inorganic Substances in 18 AAC 70.020(b), the following conditions are designed to reduce pollutants from construction activity to ensure compliance with the applicable water quality standards.

Pollutants/Toxics

1. Fuel storage and handling activities for equipment must be sited and conducted so there is no petroleum contamination of the ground, subsurface, or surface waterbodies.
2. During construction, spill response equipment and supplies such as sorbent pads shall be available and used immediately to contain and cleanup oil, fuel, hydraulic fluid, antifreeze, or other pollutant spills. Any spill amount must be reported in accordance with Discharge Notification and Reporting Requirements (AS 46.03.755 and 18 AAC 75 Article 3). The applicant must contact by telephone the DEC Area Response Team for (Central Alaska at 907-269-3063; Northern Alaska at 907-451-2121; Southeast Alaska 907-465-5340) during work hours or 1-800-478-9300 after hours. Also, the applicant must contact by telephone the National Response Center at 1-800-424-8802.
3. Construction equipment shall not be operated below the ordinary high-water mark if equipment is leaking fuel, oil, hydraulic fluid, or any other hazardous material. Equipment shall be inspected daily for leaks. If leaks are found, the equipment shall not be used and pulled from service until the leak is repaired.
4. Fill material (including dredge material) must be clean soil, sand, gravel or rock, free from petroleum products and toxic contaminants in toxic amounts.

Turbidity, Erosion and Sediment Control

5. Runoff discharged to surface water (including wetlands) from a construction site disturbing one or more acres must be covered under Alaska's General Permit for Storm Water Discharges from Large and Small Construction Activities in Alaska (CGP, AKR100000, 18 AAC 83). The CGP requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For projects that disturb more than five acres, this SWPPP must also be submitted to DEC prior to construction along with the Notice of Intent (NOI). For more information see DEC's website for the CGP at <https://dec.alaska.gov/water/wastewater/stormwater/construction>, or call 907-269-6285.
6. Excavated or fill material, including overburden, shall be placed so that it is stable, meaning after placement the material does not show signs of excessive erosion. Indicators of excess erosion include gullyng, head cutting, caving, block slippage, material sloughing, etc. The material must be contained with siltation best management practices (BMPs) to preclude reentry into any waters of the U.S., which includes wetlands.
7. Include the following BMPs to handle storm water and total storm water volume discharges as they apply to the site:
 - a. Divert storm water from off-site around the site so that it does not flow onto the project site and cause erosion of exposed soils;
 - b. Slow down or contain storm water that may collect and concentrate within a site and cause erosion of exposed soils;
 - c. Place velocity dissipation devices (e.g., check dams, sediment traps, or riprap) along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters.

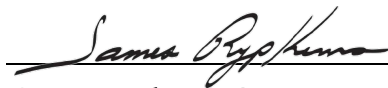
Vegetation Protection and Restoration

8. Any disturbed ground and exposed soil not covered with fill must be stabilized and re-vegetated with endemic species, grasses, or other suitable vegetation in an appropriate manner to minimize erosion and sedimentation, so that a durable vegetative cover is established in a timely manner.
9. All work areas, material access routes, and surrounding wetlands involved in the construction project shall be clearly delineated and marked in such a way that equipment operators do not operate outside of the marked areas.
10. Natural drainage patterns shall be maintained, to the extent practicable, without introducing ponding or drying.

General

11. DEC coordinates with several regulatory programs to review the impacts of proposed projects. A Section 401 Certification does not release the applicant from obtaining all necessary federal, state, and local permits, nor does it limit more restrictive requirements set through any such program. It does not eliminate, waive, or vary the applicant's obligation to comply with all state water statutes and rules through construction, installation, and operation of the project or mitigation, including, but not limited to the APDES permitting program 18 AAC 83 and 18 AAC 72.
12. USACE has stated that projects shall be reviewed under the federal rules in place at the time the application is received. This project and its mitigation were reviewed under the federal and state statutes and laws in place at the time the application was received. If the USACE determines any part or condition of this Certification is not lawful or is waived and unenforceable, the determination shall apply only to the part or condition so determined. The determination shall not apply to nor invalidate any remaining parts or conditions of this Certification. If the USACE makes such a determination, the applicant remains responsible for meeting state water quality statutes and rules, and if a violation occurs, may be subject to state enforcement (18 AAC 70.010).
13. This Certification does not release the applicant from any liability, penalty, or duty imposed by Alaska or federal statutes, regulations, rules or local ordinances, and it does not convey a property right or an exclusive privilege.

Date: October 26, 2023



James Rypkema, Program Manager
Storm Water and Wetlands