US Army Corps
of Engineers
Alaska District
Regulatory Branch (1145b)
Post Office Box 898
Anchorage, Alaska 99506-0898

Public Notice

Date:
April 23, 2002
Identification No:
SPN-2002-04
In reply refer to above Identification Number
Expiration Date:
April 23, 2007

SPECIAL PUBLIC NOTICE 2002-04
ALTERNATIVE PERMIT PROCESSING PROCEDURE FOR THE DISCHARGE OF DREDGED AND/OR FILL MATERIAL FOR RESIDENTIAL AND INSTITUTIONAL DEVELOPMENTS IN SOUTHEAST ALASKA, PRINCE WILLIAMS SOUND AND THE COPPER RIVER VALLEY

The District Engineer (DE), Alaska District, Corps of Engineers (Corps), has issued an Alternative Permit Processing (APP) procedure 2001-01 (APP 2001-01) for certain activities under authority of Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C. 1344 et seq.) to authorize the placement of dredged and/or fill material and structures into waters of the United States (U.S.), including wetlands, for activities associated with individual and community development, in communities throughout the Alexander Archipelago, Copper River Watershed, and Prince Williams Sound.

In response to revised Special Public Notice 2001-06, dated November 9, 2000, the proposed APP 2001-01 was revised to reflect comments submitted by local, State, and Federal agencies and the interested public. Based on a review of all pertinent information, including a prepared Environmental Assessment, I have concluded that issuance of this procedure will not have more than minimal adverse impact on the environment and is not contrary to the public interest.

This APP establishes an expedited procedure to authorize the discharge of dredged and/or fill material into non-tidal (above the high tide line (HTL)) waters of the U.S. for the primary purpose of construction residential, institutional and community developments in geographic location described below including building pads and attendant features, such as roads, yards, utilities and play areas. This APP is intended to facilitate the development of small projects, either private or public; and is not intended to apply to large, multi-phased development projects in which each phase would qualify under the acreage limitations. This APP can be used more than once for a single and complete project, provided the combined losses of waters of the United States from all of the phases of that single and complete project do not exceed the 3/4-acre or the 200 linear foot limits for access roads and driveways. Projects requiring compensatory mitigation generally will not be authorized under the APP. If the applicant proposes compensatory mitigation as a component of the overall project, the project may be authorized under the APP, if all terms and conditions are met.

Applications under this procedure are restricted to Southeast Alaska, Prince Williams Sound and the Copper River Watershed. The applicable geographic area for this APP is defined as all coastal communities within Prince Williams Sound, including Whittier and Valdez; and all areas east of the Richardson Highway to the Canadian Border; south of the Tok Cut-Off Road and the Alaska Highway from Tok to the Canadian Border; and all communities within the Alexander archipelago and east to the Canadian Border. The APP is not intended for use within City and Borough of Juneau. The APP is excluded for use in the Annette Island Reserve until Environmental Protection Agency issued a Section 401 certification.

Applicants wishing to perform work under APP 2001-01 must review these terms and conditions carefully and submit a letter or application with appropriate information and project drawings to the Corps of Engineers (Corps) to receive confirmation that their work would be covered under this APP. No work can proceed without that confirmation. If the proposed work does not meet the requirements of the terms and conditions, the APP does not apply and the application would be processed under individual permit processing procedures.

APP 2001-01 has been issued for a period of five years, effective the date of the signature shown on the last page of the procedure. The District Engineer may at any time during this five-year period alter, modify, suspend, or revoke this procedure if he/she deems such action to be in the public interest.

Please contact us at (907) 753-2712, toll free in Alaska at (800) 478-2712, email at regpagemaster@poa02.usace.army.mil, or by mail at the letterhead address, if you have questions. For additional information about our regulatory program, visit our web site at www.poa.usace.army.mil/reg.

District Engineer
Alaska District
U.S. Army Corps of Engineers

Attachments

ALTERNATIVE PERMIT PROCESSING PROCEDURE (APP) 2001-01
FOR RESIDENTIAL, INSTITUTIONAL AND COMMUNITY DEVELOPMENTS IN SOUTHEAST ALASKA, PRINCE WILLIAMS SOUND AND COPPER RIVER WATERSHED

INTRODUCTION

This APP procedure is intended to expedite the processing of projects for which all substantive issues can be resolved in an abbreviated time frame and is generally not intended for those project which might require compensatory mitigation. A permit decision will normally be rendered within 30 days as noted under the procedure section. A recipient of a permit shall be referred to as a permittee. All activities authorized by the APP will be subject to the following general and special conditions. Deviation from particular special conditions may be considered on a case-by-case basis.

APPLICABILITY

This APP applies to permit applications for the discharge of dredged and/or fill material in non-tidal waters of the United States (U.S.) for the primary purpose of construction residential, institutional and community developments in geographic location described below including building pads and attendant features, such as roads, yards, utilities and play areas. This APP is intended to facilitate the development of small projects, either private or public; and is not intended to apply to large, multi-phased development projects in which each phase would qualify under the acreage limitations. This APP can be used more than once for a single and complete project, provided the combined losses of waters of the U.S. from all of the phases of that single and complete project do not exceed the 3/4-acre or the 200 linear foot limits for access roads and driveways. Projects requiring compensatory mitigation generally will not be authorized under the APP. If the applicant proposes compensatory mitigation as a component of the overall project, the procedure may be used to authorize the project.

The APP applies to projects throughout Southeast Alaska, Prince Williams Sound and the Copper River Watershed. The applicable geographic area for this APP is defined as all coastal communities within Prince Williams Sound, including Whittier and Valdez; and all areas east of the Richardson Highway to the Canadian Border; south of the Tok Cut-Off Road and the Alaska Highway from Tok to the Canadian Border; and all communities within the Alexander archipelago and east to the Canadian Border. The APP is not intended for use within City and Borough of Juneau.

REQUIREMENTS FOR APP USE

This APP includes the General Conditions listed in Department of Army (DA) Permit, ENG form 1721, Nov 86, a copy of which is attached, and the Special Conditions and Procedures found in the text that follows. All General and Special Conditions shall be met in order for the work to be authorized under the APP. If the proposed work does not meet the requirements of the terms and conditions, this APP will not apply (except as noted above), and the application will be processed as an application for an individual DA permit under the standard processing procedures with a separate Public Notice per 33 CFR 325.2. If work is authorized, failure to comply with these conditions and the terms of the APP may result in suspension of the work, revocation of the authorization, removal of the fill, restoration of the wetlands, and/or imposition of penalties as provided by law. No work shall be performed under this APP until the Corps, as described in paragraphs "C" and "D" under procedures has specifically authorized it.

SPECIAL CONDITIONS

1 The discharge shall be for a single and complete project

2. Land clearing, and fill in wetlands shall be limited to the amount reasonably necessary for the construction of proposed facilities. Dimensions of fill pads for buildings, access roads, driveways, and related features, including yards and gardens, and temporary impacts shall not exceed three-fourths of one (-3/4-) acre within non-tidal[1] waters of the United States, including wetlands. Additionally, within the 3/4 acre, the combined length of access roads shall not exceed 200 linear feet.

[1]Non-tidal waters are waters landward of the high tide line (HTL). At stream mouths the boundary is the tidally influenced area up to the equivalent elevation of the HTL Proposed fills below the HTL are subject to the Corps standard permit review process.

3. The discharge does not cause the loss of greater than 35 linear feet of streambed through culverting. Streams may be culverted for access roads only. The culvert shall not substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species, which normally migrate through the area. Culverts shall be installed to maintain low flow conditions.

4. The discharge does not cause degradation of water quality or changes to the flow characteristics of any stream.

5 Stream channelization or stream relocation cannot be authorized using the APP

6. This APP process may not used to authorize the filling of more than 3/4 acre within a subdivision unless the Corps has pre-determined that the individual and cumulative effects of using the process for the entire subdivision would result in no more than minimal degradation or loss to the aquatic environment.[2] For the purpose of this APP, subdivision is defined as the division of a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, community, or other real estate subdivision, including all parcels and parts thereof.

[2]For the use of the APP to authorize more than an aggregate loss of ¾ acres within a subdivision, the infrastructure (roads, utility mainlines, etc.) shall be permitted via a standard individual permitting process. During that process, the cumulative impacts of developing the entire subdivision will be addressed and mitigated if necessary. Once the cumulative impacts of the entire subdivision have been addressed, individual lot owners may apply for authorization to develop their lots using this procedure.

7. The boundaries of fill areas in wetlands shall be staked or flagged every 35 feet prior to construction to prevent inadvertent encroachment of wetlands.

8. Fuel storage tanks placed within 200 feet of any open water body, shall be of less than 550 gallons capacity, placed within an impermeable dike of 110 percent capacity of the largest independent container, and written leak and spill prevention specifications shall be provided to the Corps. In addition, all fuel storage shall meet all Local, State and Federal storage and handling requirements.

9. Heavy equipment working in wetlands shall be placed on mats, or other measures shall be taken to minimize soil disturbance.

10. Any temporary fills shall be removed in their entirety and the affected areas returned to their preexisting elevation and revegetated with native species.

11. Disturbed ground and exposed soil not covered with fill, structures, or other features shall be stabilized and revegetated with native vegetation species in an appropriate and timely manner to minimize erosion and sedimentation, so that a durable vegetation cover is established and maintained. Native species or native species seed maybe obtained from various private venders.

12. The fill shall consist of clean, uncontaminated gravel or rock or dirt. The use of unsuitable fill material, such as car bodies, broken concrete, asphalt or woodwaste is not authorized under this APP. No pentachlorophenol preservatives or creosote may be used on wooden structures. Any preservative on wooden structures shall be applied by pressure injection using a method that prevents leaching (such as those approved by the Western Wood Preserves Institute).

13. A minimum of 200 feet, including a minimum of 100 feet of "no disturbance/no development", vegetated buffer shall be maintained between the ordinary high water mark[3] (OHW) of open water bodies, including streams, sloughs, rivers, ponds, lakes, estuaries, marine waters, or permanently flooded emergent wetlands, and the proposed facility footprint. The "no disturbance" part of the buffer shall be contiguous with the open water body to provide the maximum protection. The 100 feet outside the "no disturbance/no development" zone, may be used for lawns or utility lines, but may not contain fill material or structures. For the purpose of this APP, small ponded areas within muskegs shall not be considered "open water bodies." For the purpose of this APP, small ponded areas within fens (non-acidic, grass- and sedge-dominated wetlands supported primarily by moving, nutrient rich ground water) are considered "open water bodies".

[3]Measurement of the 200 feet shall start at the OHW for fresh water or mean high water (MHW) for marine water and measurements shall be taken for a horizontal distance of 200 feet. No fill below the HTL shall be authorized using this procedure.

14. Natural drainage patterns shall be maintained using appropriate ditching, culverts, storm drain systems and other measures, to the extent practicable, without introducing ponding or drying. Excessive ponding and/or dewatering of areas adjacent to fill areas shall indicate non-compliance of this condition.

15. The discharge of fill material within 200 feet anadromous fish streams is prohibited unless specifically coordinated with the ADFG and they provide written approval.

16. The Permittee shall stabilize and maintain dredged and/or fill material in areas subject to Corps' jurisdiction so that erosion of sediment into adjacent waters or wetlands is avoided.

17. Excavation of overburden shall be followed by placement of fill within the shortest reasonable time, so that substrate is not left exposed for extended periods

18. Reasonable precautions and controls shall be used during construction to prevent incidental and accidental discharge of petroleum products. Materials such as sorbent pads and booms shall be readily available on-site (if equipment is refueled on-site), and shall be used to contain and cleanup any petroleum product spilled as a result of construction activity.

19. No activity, which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the Corps has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee shall notify the Corps if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places. The Corps shall ensure that the requirements of the National Historic Preservation Act have been satisfied prior to authorizing the activity. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification shall state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

20. If, during construction of the project, previously unknown archeological or historic remains are located, the permittee shall immediately inform this office [(907) 753-2712; (800) 478-2712], local historic councils (if present) and SHPO at (907) 269-8721 of what has been found. The applicant and SHPO shall determine if the remains are eligible for inclusion in the National Register of Historic Places and determine, in consultation with the Council, any appropriate mitigation. The Corps shall function as an interested party.

21. Pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (Act), the proposed activity shall not adversely affect any species listed as threatened or endangered under the Act. Additionally, the proposed activity shall not jeopardize the continued existence of any proposed species under the Act. All applicants, to the best of their knowledge, shall document the presence of listed or proposed species that may be present at the site of the proposed activity during the application process. If listed species are determined to be present; the Corps shall, as required by section 7 of the Act, consult with USFWS and the NMFS. If it is determined that listed species are likely to be adversely affected, and/or proposed species are likely to be jeopardized by the permitted action or related activities, this APP shall not apply to this specific activity, or shall be suspended until Section 7 Consultation is complete.

22. There shall be no discharges authorized in a National Wildlife Refuge, existing or nominated Wild and Scenic River, National Park system unit, or other National Conservation Area lands, including breeding areas for migratory waterfowl without prior consultation with the appropriate agencies and unless the activity is specifically authorized by the appropriate land management agencies prior to initiating the work.

23. There shall be no discharges authorized in designated State Critical Habitat Areas, Game Refuges, Sanctuaries, Areas Which Merit Special Attention (which have been incorporated into the coastal zone management plan) or, breeding areas for migratory waterfowl without prior consultation and unless the activity is specifically authorized by the appropriate land management agencies prior to initiating the work.

24. This APP does not supersede activities currently covered by DA nationwide permits. No additional authorization is required from the DA for nationwide-permitted activities, if all terms and conditions of the applicable nationwide permit(s) are met.

25. This APP may be used in combination with other APP's, nationwide permits and/or general permits provided that the aggregate loss is not greater than ¾ acres or exceed the 200 linear foot limit.

This authorization does not obviate the need for other Federal, State, and local permits, licenses, or approvals that may be required for the proposed work. There shall be no discharges authorized on State land, in State waters, tidelands or submerged land without prior consultation with the land owner and unless the activity is specifically authorized by the appropriate land management agency prior to initiating the work.

OTHER INFORMATION

The Alaska District has fulfilled the Essential Fish Habitat (EFH) consultation requirement with the National Marine Fisheries Service (NMFS). Since the EFH recommendations have been adopted as management area prescriptions, no further EFH consultation is required. In the event that any deviation from these recommendations is proposed, an individual EFH consultation will be necessary.

PROCEDURES

A. An applicant desiring authorization under this APP must submit a description of the proposed work, using an approved DA application form, to:

U.S. Army Corps of Engineers
Regulatory Branch
Post Office Box 6898
Elmendorf AFB, Alaska 99506-6898

An application will be considered complete when the following elements are present:

Plans (8-1/2" x 11") which clearly show the proposed fill and structures to be built thereon, including dimensions, in overview and cross section;

(2) A vicinity map and description of the location of the project, including Section, Township, Range, and Meridian; and legal description if available (lot, block, survey number);

(3) The quantity (in cubic yards), type, and source of fill material to be discharged; amount to be stockpiled and its footprint, `if in wetlands;

Information regarding prior disturbance, if any;

The name and location of the nearest waterbody, as well as any known drainages surrounding the facility;

(6) Documentation of consultation with the local habitat biologist from Alaska Department of Fish and Game;

(7) The purpose of the fill (e.g., foundation for building, road, sewer project etc.);

8) A discussion of other alternatives (location, methods, size) considered; and

9) A plan view drawing showing where you think the wetlands, streams, and ditches are located. Include wetland/uplands boundaries, stream width and flow direction, and high tide line (if project is located near tidally influenced waters). Provide support for your determination with documents such as aerial photography, land-based photography, topographic maps, National Wetland Inventory maps, soil survey maps, or professionally prepared wetland delineation. The Corps will make the final determination of jurisdiction.

The application is considered complete when the applicant furnishes the required information above, documentation of initial consultation with the appropriate agencies on endangered species, essential fish habitat, wildlife hazards, and cultural resources, and appropriate information necessary to demonstrate the project complies with the terms and conditions of this APP. It is recommended that a State of Alaska Coastal Project Questionnaire be completed, if appropriate.

A pre-application meeting may also be scheduled if involved parties are agreeable to such a meeting, or if the proposed project could be considered controversial.

B. When the Corps determines the application is complete, meets the terms and conditions of the procedure, and that there would be minimal impact, the application and supporting material will be faxed to the appropriate commenting agencies and any interested party for a period of 15 calendar days, with a 5-day extension of review period if a reviewing party requests it during the initial 15 day review.

Commenting agencies, the affected coastal district(s), and interested parties have the right to comment within the 15 calendar days via mail, FAX, or e-mail. If the matter is resolved in writing or by telephone, the Corps shall issue the permit.

If any commenting party, within the 15-day review period, justifies in writing, by FAX, e-mail, that the project does not fit the terms of the APP or should not be issued under the APP, the application will be processed under individual DA permit procedures with a separate public notice [33 CFR Part 325.2(a)(1-5)].

Because procedures under the 404(q) Memorandum of Agreement (MOA) fully apply under the APP procedure, NMFS, U.S. Fish and Wildlife Service (USFWS), and/or the Environmental Protection Agency (EPA) may maintain that issues have not been resolved, and request additional time to provide comments. Such requests for time extensions will follow and fully comply with the respective 404(q) MOA. Parties other than Federal agencies will also have an opportunity to provide comments when a time extension has been granted to the federal agencies.

C. Once the decision has been made to authorize the proposed work, a permit will be drafted for the applicant's signature. After the applicant signs two copies of the permit, the Corps will countersign the documents and return one copy to the applicant along with an Authorization Notice. The permit form will carry the following sentence: "Standard procedures [33 CFR Part 325.2(a)] were not followed in granting this authorization."

D. It is the goal of the Corps to render a permit decision within 30 calendar days of the receipt of a complete application. However, work shall not commence until the applicant and the appropriate Corps official have signed the permit.

MONITORING

The applicant shall provide copies of as-built plans (cross sections and plan views) to Corps once each project is finished. These shall be compiled yearly in December or January and, along with a summary of the projects completed and the acreage affected, provided to the commenting agencies and interested parties that request to receive the reports.

This office shall undertake periodic field inspections of projects authorized under the APP. Reports shall be prepared for all field inspections and entered into the official file. The Regulatory Branch shall maintain a file of APP related documents and monitoring efforts. Information contained in the APP file shall provide the basis for the decision whether or not to renew or revise the APP.

EXTENSION, MODIFICATION AND REVOCATION OF ABBREVIATED PERMIT PROCEDURE

This APP will be in effect for a period of 5 years. At the end of the 5-year period, an evaluation of the APP procedure will be made and at that time, it will be decided whether or not this APP should be renewed. This APP may be modified or revoked by issuance of a Public Notice at any time the DE determines that it is appropriate to do so. Following such revocation any future activities in areas covered by this APP will be processed as standard individual permits.

FOR THE DISTRICT ENGINEER:

Glen E. Justis
Alaska District Corps of Engineers

17 April 2002
Date

STATE OF ALASKA
OFFICE OF THE GOVERNOR

TONY KNOWLES, GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF GOVERNMENTAL COORDINATION

☐ SOUTHCENTRAL REGIONAL OFFICE
550 W. 7TH AVENUE, SUITE 1660
ANCHORAGE, ALASKA 99501
PH: (907) 269-7470/FAX: (907) 269-3981

☑ CENTRAL OFFICE
P.O. BOX 110030
JUNEAU, ALASKA 99811-0030
PH: (907) 465-3562/FAX: (907) 465-3075

☐ PIPELINE COORDINATOR'S OFFICE
411 WEST 4TH AVENUE, SUITE 2C
ANCHORAGE, ALASKA 99501-2343
PH: (907) 271-4317/FAX: (907) 272-3829

March 6, 2002

Dr. Janice Stuart
U.S. Army Corps of Engineers
Alaska Region, Regulatory Branch
P.O. Box 898
Anchorage, AK 99506-0898

RECEIVED
MAR 12 2002
REGULATORY BRANCH
Alaska District, Corps of Engineers

Dear Dr. Stuart:

SUBJECT SMALL FILLS APP (APP 2001-01)
STATE I.D. NO. AK 0107-23JJ
FINAL CONSISTENCY FINDING

The Division of Governmental Coordination (DGC) has completed coordinating the State's Alaska Coastal Management Program (ACMP) review of the U.S. Army Corps of Engineers (USACE) consistency determination for the proposed Alternative Processing Procedures for Small Fills in Southeast Alaska and Prince William Sound. The USACE found the project consistent, to the maximum extent practicable, with the enforceable policies of the ACMP. The State has developed this final consistency finding based on reviewers' comments. On March 4, 2002, you concurred with the proposed consistency finding.

Scope of Project Reviewed

The proposed activity is issuance of an Alternative Permit Processing (APP) procedure by the U.S. Army Corps of Engineers for the discharge of dredged and/or fill material for residential, community, and institutional developments in Southeast Alaska. For the purposes of the APP, "Southeast Alaska" is defined as all coastal communities within Prince William Sound, including Whittier and Valdez, and all communities within the Southeast Alaska archipelago and east to the Canadian border. The APP would not be allowed for use within the City and Borough of Juneau, nor would it apply to large, multi-phased development projects in which each phase would qualify under the acreage limitations. The APP would expedite processing for activities associated with construction for residential, institutional and community structures, including mechanized land clearing, removal of organic overburden, and placement of fill material to create upland.

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Residential developments include single and multiple unit developments. Institutional developments are schools, fire stations, government offices, judicial buildings, public works buildings, libraries, hospitals, and places of worship. Community developments could be retail stores, restaurants, business parks, and shopping centers. Attendant features may include, but are not limited to, parking lots, roads, garages, yards, utility lines, stormwater management facilities, playgrounds, provided they are an integral part of the development. The APP could be used more than once for a single and complete project, provided the combined losses of waters of the Unites States from all of the phases of the single and complete project do not exceed the 3/4 acre total or the 200 linear foot limits for access roads and driveways. The APP would be subject to 24 special conditions, listed in the USACE Public Notice of November, 2001. Procedures for the USACE's processing of APP applications were outlined in the USACE Public Notice.

The purpose of the APP is to reduce evaluation time, reduce unnecessary duplication of effort and increase predictability of decision-making on residential, institutional and community projects for which all substantive issues can be resolved during a short review period.

You have agreed to add the following Special Conditions to the APP

1) From the Nationwide Permits, NWP General Condition #4 (Aquatic Life Movement) will be incorporated into APP condition 3.
2) NWP General Conditions 5 (Equipment) and 24 (Removal of Temporary Fills) will be incorporated into the second APP condition 3 (the APP conditions will be renumbered).
3) NWP General Condition 23 (Waterfowl Breeding Areas) will be incorporated into APP conditions 14 or 15.
4) NWP Regional Condition B will be incorporated into second APP condition 4 (APP conditions will be renumbered).

You have also agreed to add the following clause into Special Condition 18 of the APP: "There shall be no discharges authorized on State land, in State waters, tidelands or submerged land without prior consultation with the land owner and unless the activity is specifically authorized by the appropriate land management agency prior to initiating the work."

In addition, after consultations with the State, you agreed to add in a requirement to the Procedures section of the APP for applicants to consult with ADF&G and provide documentation of such consultation to the USACE before the APP application review period begins. You also agreed to allow for a 15-day APP review period, with an automatic 5-day extension if a reviewing party requests it. We appreciate the USACE's willingness to work with the state during this review to address the significant concerns about fish habitat in small streams.

This final consistency finding, developed under 6 AAC 50, applies to the federal consistency determination required for the activity per 15 CFR 930 Subpart C. You will also need the following State authorization for the activity:

Department of Environmental Conservation (DEC)
Certificate of Reasonable Assurance (401)

Consistency Finding

The Alaska Departments of Environmental Conservation, Fish and Game, and Natural Resources and the coastal resource districts of Southeast Alaska and Prince William Sound have reviewed the USACE's proposed activity. Based on that review, the State concurs with your determination that this proposed project is consistent with the ACMP to the maximum extent practicable.

We are able to concur with your determination in part based on your incorporation of 4 alternative measures by reference into General Condition 5 of the APP. These alternative measures will appear as conditions on the 401 Certificate of Reasonable Assurance. Compliance with these conditions will allow APP activities to proceed in a manner consistent to the maximum extent practicable with the ACMP.

General Condition 5 of the APP states "If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions."

The following conditions will be listed on the 401 Certificate of Reasonable Assurance issued by DEC:

1) Culvert installation may not occur within the flowing waters of a stream. Culvert installation techniques such as stream diversion, dam and pump, or stream fluming shall be incorporated into the installation activity to insure that silt laden water is not discharged into a stream as a result of project activities.

2) For fill sites in which an on-site sewage system will be installed, on-site sewage system design plan approval must be obtained from the Alaska Department of Environmental Conservation, prior to fill placement and the installation of any wastewater treatment system (including mounded systems or package plants) within the fill site (the fill or contiguous wetlands).

3) Prior to fill placement, a silt fence must be installed on a line parallel to and within 5' of the proposed fill toe of slope within all wetland areas that contain standing water that is connected to any natural body of water, or where the fill toe is within 25' of such a water body. This structure shall remain in place until construction has been completed. Silt fences would not have to be installed if the construction activity was occurring during the time that the water was in a frozen state.

4) Fill placed during winter construction within wetlands that during the summer contain surface water that is connected to natural bodies of water, must be stabilized or contained in the spring prior to breakup, to insure that silts are not carried from the fill to the natural bodies of water in the summer.

General Comments

The state has the following understanding regarding the specific implementation of the proposed APP:

) We understand that the USACE will clarify that this APP only applies to non tidal waters of the US, including wetlands. Non tidal waters are waters above, that is landward, of the high tide line. We understand that the high tide line will be identified in the final APP as the line the USACE identifies as the boundary. At stream mouths the boundary is the tidally influenced area. Land below the high tide line does not qualify for the APP. Fills below the High Tide Line are subject to the USACE's standard permit review process.

2) Regarding Special Condition #5 of the second set in the public notice, a 200-foot buffer. In the 100 feet outside the 100-foot no disturbance/no development zone the applicant may put in such things as lawns or utility lines but cannot fill or build structures within it. The measurement is a horizontal distance from the stream, a slope distance measurement will not work.

3) The USACE will identify that the measurement begins at the 'Ordinary High Water' line. This buffer applies to land adjacent to 'open water areas' so the filling of land below the Ordinary High Water line will not occur on water bodies that may be State owned.

4) We understand that the USACE will provide the same general type of "PCN" notice on these APP applications that is provided for General Permits.

Advisories

Since the APP provides a very short review window, the State stresses the importance of the USACE carefully reviewing each application for compliance with the provisions for a complete application as outlined in the Procedures Section A. The State frequently receives incomplete applications for review. Incomplete packets make it impossible to provide meaningful comments. Under the procedures provided in Section B, presumably state resource agencies could justify that a project does not qualify under the APP if the packet is incomplete and there is not enough information to determine whether the project could qualify under the APP.

This final consistency finding may include reference to specific laws and regulations, but this in no way precludes the USACE's responsibility to comply with all other applicable State and federal laws and regulations.

This final consistency finding is ONLY for the APP as described. If you propose changes to the approved APP, the USACE must contact this office immediately to determine if further review and approval of the revised APP is necessary. Changes may require amendments to the State approvals listed in this consistency finding.

If the proposed activities reveal cultural or paleontological resources, please stop any work that would disturb such resources and immediately contact the State Historic Preservation Office (907-269-8720.

This final consistency finding is a final administrative decision for purposes of Alaska Appellate Rules 601-612. Any appeal from this decision to the superior court must be made within 30 days of the date of this finding.

If you have any questions regarding this process, please contact me at 907-465-3177 or email Jennifer_Garland@gov.state.ak.us.

Sincerely,

Jennifer R. Garland
Project Analyst

cc:
** Janet Schempf, DFG, Juneau
** Tim Rumfelt, DEC, Anchorage
** Janet Burleson-Baxter, DNR, Juneau
All Southeast Coastal Districts
All Prince William Sound Coastal Districts
Steve Brockmann, FWS, Juneau
Mark Jen, EPA, Anchorage
Linda Shaw, NMFS, Juneau
**=email

T TE OF ALAS A

DEPT. OF ENVIRONMENTAL CONSERVATION

TONY KNOWLES, GOVERNOR

555 Cordova Street
Anchorage, AK 99501-2617
PHONE: (907) 269-7564
FAX: (907) 269-7508
http://www.state.ak.us/dec/

March 8, 2002
Certified Receipt Z 3

RECEIVED
MAR 13 2002
REGULATORY BRANCH
Alaska District, Corps of Engine

Janice Stuart
US Army Corps of Engineers, Alaska District
Regulatory Branch
PO Box 898
Anchorage, AK 99506

Subject: SPN 2001-06, APP for Residential and Institutional Developments Wetland Fills
State I.D. No. AK 0107-23JJ

Dear Dr. Stuart

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 is issuing the enclosed Certificate of Reasonable Assurance for the proposed alternative permit processing procedure for residential and institutional developments in Southeast Alaska.

This certification is one of the approvals required as part of a coastal management consistency determination issued by the Division of Governmental Coordination under AAC 50.070.

Department of Environmental Conservation regulations provide that any person who disagrees with any portion of this action may request an adjudicatory hearing in accordance with 18 AAC 15.200-920. This request should be mailed to the Commissioner of the Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801-1795. Please also send a copy of the request for hearing to the undersigned. Failure to submit a hearing request within thirty days of receipt of this letter constitutes a waiver of that person's right to judicial review of this action.

By copy of this letter we are advising the Division of Governmental Coordination of our actions and enclosing a copy of the certification for their use.

Sincerely,

CCR for Tim Rumfelt

Tim Rumfelt
Environmental Specialist

Enclosure
CC: (with encl.)
Jennifer Garland, DGC
EPA, AK. Operations

"Clean Air, Clean Water"

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CERTIFICATE OF REASONABLE ASSURANCE

A Certificate of Reasonable Assurance, in accordance with Section 401 of the federal Clean Water Act and the Alaska Water Quality Standards, is issued to the Corps of Engineers Alaska District, Regulatory Branch, PO Box 898, Anchorage, Alaska 99506, for the proposed alternative permit processing procedure (APP) to expedite processing permits for activities associated with the construction of residential and institutional developments. These developments include mechanized land clearing, removal of organic overburden, construction of residential, institutional and community structures, and placement of fill material to create uplands.

The proposed APP procedure would apply to projects throughout Southeast Alaska. Southeast Alaska is defined as all coastal communities within Prince Williams Sound, including Whittier and Valdez; all areas east of the Richardson Highway to the Canadian Border; south of the Tok Cut-Off Road and the Alaska Highway from Tok to the Canadian Border and all communities within the Southeast Alaska archipelago and east to the Canadian Border. The APP is not intended for use within the City and Borough of Juneau.

Public notice of the application for this certification was given as required by 18 AAC 15.180.

Water Quality Certification is required under Section 401 because an activity will be authorized by a Corps of Engineers permit identified as SPN 2001-06, Alternative Permit Processing Procedure for Residential and Institutional Developments in Southeast Alaska, Prince Williams Sound and the Copper River Valley, and a discharge may result from the activity.

Having reviewed the application and comments received in response to the public notice, the Alaska Department of Environmental Conservation 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 Clean Water Act, the Alaska Water Quality Standards, 18 AAC 70, and the Standards of the Alaska Coastal Management Program, 6 AAC 80, provided that the following stipulations are adhered to. These stipulations were adopted pursuant to 6 AAC 50 (Project Consistency with the Alaska Coastal Management Program) and are necessary to ensure that your project is consistent with the ACMP:

1 Culvert installation shall not occur within the flowing waters of the stream. Culvert installation techniques such as stream diversion, dam and pump, or stream fluming shall be incorporated into the installation activity to insure that silt-laden water is not discharged into the stream as a result of this activitv.

2. For fill sites in which an on-site sewage system will be installed, on-site sewage system design plan approval shall be obtained from the Alaska Department of Environmental Conservation, prior to fill placement and the installation of any wastewater treatment system (including mounded systems or package plants) within the fill site (the fill or contiguous wetlands). For sites which will have sewage marine outfalls, design plans for said outfalls shall also be approved by the Alaska Department of Environmental Conservation, prior to fill placement of outfall installation.

   Prior to fill placement, a silt fence shall be installed on a line parallel to and within 5' of the proposed fill toe of slope within all wetland areas that contain standing water that is connected to any natural body of water or where the fill toe is within 25' of such a water body. This structure shall remain in place until construction has been completed. Silt fences would not have to be installed if the construction activity was occurring during the time that the water was in a frozen state.

4. Fill placed during winter construction within wetlands that during the summer contain surface water that is connected to natural bodies of water, must be stabilized or contained in the spring prior to breakup, to insure that silts are not carried from the fill to the natural bodies of water in the summer.

Date 3 8 02

CCB for Tim Rumfelt

Tim Rumfelt
Environmental Specialist