Public Notice

US Army Corps
of Engineers
Alaska District
Regulatory Branch (1145b)
105 Trading Bay Road, Suite 105
Kenai, Alaska 99611-7717

Date: April 16, 2004
Identification No: SPN 2004-04

In reply, refer to the above Identification No.

SPECIAL PUBLIC NOTICE No. 2004-04

GENERAL PERMIT GP 2003-1

BANK STABILIZATION WITHIN THE KENAI PENINSULA BOROUGH, ALASKA

The District Engineer (DE), Alaska District, U.S. Army Corps of Engineers has issued a General Permit (GP) 2003-01 under the authority of Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C 1344 et. seq.) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), to authorize the discharge of fill material into waters of the United States within the Kenai Peninsula Borough (KPB) for bank stabilization activities.

In response to Special Public Notice 2003-08, dated December 18, 2003, proposed GP 2003-1 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 permit will not have more than minimal adverse impact on the environment and is not contrary to the public interest. As required by 40 CFR 230.7 (General Permits), attached is our Compliance Determination for the Section 404(b)(1) Guidelines.

The GP authorizes the placement of dredged and/or fill material into waters of the U.S. for the purpose of stabilizing eroding river banks and lake shorelines; and, when relevant to this purpose, the following:

1. The excavation/dredging in Section 10 (Navigable) waters of the U.S., related to specific stabilization and restoration techniques (e.g., trenches for root wads and fans, shallow trenches to partially bury a coir logs, excavating a bench slightly down and into the slope for brush layering, etc.); and/or,

2. The return water from contained disposal areas (temporary and permanent) when dredged material originates from Section 10 (Navigable) waters of the U.S.

Activities not authorized under the GP include:

1. The permanent placement of any excess excavated/dredged material into waters of the U.S., including wetlands;

2. Fills angled beyond a parallel plane with the project's bank or shoreline; and,

3. Projects located in coastal areas/marine waters.

The activites excluded from GP coverage would be subject to other established permit evaluation procudures available to the Alaska District, U.S. Army Corps of Engineers.

All authorized activities must be in accordance with the conditions of the GP, a copy of which, is attached. Failure to comply with the terms and conditions of the permit could result in suspension, modification or revocation of the permit, and/or imposition of penalties as provided by law.

The discharge of dredged and/or fill material authorized under this GP may not be undertaken and completed without prior notification to the Corps of Engineers. As stated under the GP's "Authorization Procedure" (beginning on page 4), a notification of intended activity is required for all proposed projects.

If the proposed work does not meet the GP's terms and conditions, the GP does not apply and the applicant will be required to apply for a different form of authorization.

GP 2003-1 would be valid for a period of five years effective the date of the signature shown on the last page of the permit. The DE may at any time during this five-year period, alter, modify, suspend, or revoke this permit if he deems such action to be in the public interest.

Any questions or requests for additional information should be directed to: Alaska District, Corps of Engineers, ATTN: Mr. Dave Casey, Regulatory Branch, Post Office Box 6898, Elmendorf AFB, Alaska 99506-6898; phone (907) 283-3519, or toll free within Alaska (800) 478-2712.

District Engineer
U.S. Army Corps of Engineers

Attachment

GENERAL PERMIT 2003-1

Under the authority of Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C 1344 et. seq.), and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) the Secretary of the Army, authorizes the placement of dredged and fill material into waters of the United States (U.S.) for the purpose of bank stabilization within the Kenai Peninsula Borough, Alaska.

This General Permit 2003-1 (GP) is valid for a period of five years from the date of issuance. The District Engineer (DE) of the Alaska District, Corps of Engineers (Corps) may, at any time during this period, alter, modify, or revoke the permit if he deems such action to be in the public interest.

AUTHORIZED ACTIVITIES:

The GP authorizes the placement of dredged and/or fill material into waters of the U.S. for the purpose of stabilizing eroding river banks and lake shorelines; and, when relevant to this purpose the following:

1. The excavation/dredging in Section 10 (Navigable) waters of the U.S., related to specific stabilization and restoration techniques (e.g., trenches for root wads and fans, shallow trenches to partially bury a coir logs, excavating a bench slightly down and into the slope for brush layering, etc.); and/or,

2. The return water from contained disposal areas (temporary and permanent) when dredged material originates from Section 10 (Navigable) waters of the U.S.[1]

ACTIVITIES NOT AUTHORIZED UNDER THE GP:

1. The permanent placement of any excess excavated/dredged material into waters of the U.S., including wetlands;
2. Fills angled beyond a parallel plane with the project's bank or shoreline;
3. Projects located in coastal areas / marine waters.

TIME PERIOD TO COMPLETE PROJECTS AND PROJECT TIME EXTENSIONS:

The permittee has two years from the date of the DE's verification letter to construct the project unless the verification letter is dated within the last 24 months (the 4th and 5th years) of the authorization. Verifications made within the last two years of the GP's expiration date shall expire with the GP.

If any permittee requires additional time, a request may be made to the DE and so long as the work is underway, the DE will grant up to 12 months of additional time to complete the project. The permittee's request for a time extension should be made at least 30 days prior to their relevant expiration date.

PROJECT MODIFICATIONS:

If changes to the verified project's plans or location of the work are necessary for any reason, revised plans should be submitted to the DE promptly. Federal law requires approval before construction is begun; if the changes are unobjectionable, approval will be issued without delay.

INSPECTION:

The DE, or his designated representative, may inspect sites of authorized work to determine that the work is being, or has been, performed in conformance with the terms and conditions of this GP. In the event that work is not being, or has not been, performed in compliance with this GP, appropriate measures shall

[1] The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though when the disposal itself occurs on an upland and does not require a Section 404 permit. This satisfies the technical requirement for a Section 404 permit for the return water since the quality of the return water is controlled by the State of Alaska through the Section 401 certification procedures.

be taken to resolve the violation, potentially including a requirement to obtain an individual permit, even though others in the same area are not required to do so.

GENERAL CONDITIONS:

All activities identified and authorized by this permit shall be consistent with the following conditions:

1. All work shall occur when the work area is completely dewatered (i.e. during periods of low water).

2. No equipment shall operate or work in any flowing or standing water.

3. For spruce-tree revetment projects that deteriorate or are no longer viable, all visible cables and anchors that remain below the OHWM (or high tide line (HTL) in tidal waters) shall be removed.

4. The temporary storage of any necessary excavated material shall be located above the OHWM (or HTL in tidal waters) and shall be managed to prevent erosion of the material. Any excess excavated material shall be permanently disposed at a Corps approved disposal site.

5. Unsuitable material shall not be used. This includes but is not limited to trash, metal debris, car bodies, overburden material, woodwaste and asphalt. Material used for construction or discharged must also be free from toxic pollutants in toxic amounts defined by Alaska State Law and the Toxic Pollutants List in Section 307 of the Clean Water Act.

6. The wooden portions of any project shall not be treated with any preservative containing creosote or pentachlorophenol.

7. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.

8. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Commander (oan), 17th Coast Guard District, P.O. Box 25517, Juneau, Alaska 99802, (907) 463-2269.

9. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

10. The proposed activity shall not adversely affect any designated critical habitat or species listed as threatened or endangered under the Endangered Species Act of 1973, as amended. In addition, the proposed activity shall not jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat.

11. You must maintain the lands and facilities subject to this GP in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 12 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain approval from this office, which may require restoration of the area.

12. If you sell the property associated with your GP, you must obtain the signature of the new property owner, along with appropriate documentation to record the transaction, and submit them to this office to validate the transfer of this authorization.

13. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this GP, you must immediately notify this office, and the State Historic Preservation Office of what you have found. The Corps will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

14. You must comply with the conditions specified in the state 401 water quality certification associated with this GP. For your convenience, a copy of the certification is attached to the GP.

PENALTIES FOR VIOLATIONS:

All work performed shall be in compliance with the terms and conditions of this GP. Failure to comply with the terms and conditions of this GP may result in suspension of the work, revocation of the permit, ordered removal of dredged and/or fill material or other structures, restoration of waters and/or wetlands, and/or imposition of penalties as provided by law.

The discharge of dredged and/or fill material not in accordance with the terms and conditions of this GP is a violation of:

1. Section 301 of the Clean Water Act (33 U.S.C. 1319) and upon conviction thereof is punishable, in accordance with Section 309 of the Clean Water Act (33 U.S.C. 1319), by a fine of not less than $2,500, nor more than $25,000, per day of violation, or by imprisonment of not more than one year, or both. That individual is also subject to a civil penalty not to exceed $25,000 per day of the violation; and/or,

2. Section 12 of the Rivers and Harbors Act (33 UCS 406) providing penalties of not less than $500, and not more than $2,500, per day of violation or by imprisonment of up to one year, or both.

LIMITS OF THIS AUTHORIZATION:

1. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

2. This permit does not grant any property rights or exclusive privileges.

3. This permit does not authorize any injury to the property or rights of others.

4. This permit does not authorize interference with any existing or proposed Federal Project.

LIMITS OF FEDERAL LIABILITY:

In issuing this permit, the Federal Government does not assume any liability for the following:

1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

2. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the U.S. in the public interest.

3. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

4. Design or construction deficiencies associated with the permitted work.

5. Damage claims associated with any future modification, suspension, or revocation of this permit.

AUTHORIZATION PROCEDURE:

A notification of intended activity is required for all proposed projects[2]. The notification must include the following information[3]:

1) The name address and telephone number of the project proponent;
2) The project location;
3) Brief description of the proposed project and the project's purpose;
4) A map and plans, including plan view and cross-section view of the project, depicting the stabilization method(s). Plan drawings need to show the location of the waterbody, the ordinary high water mark (OHWM) or Mean High Water (MHW) and High Tide Line (HTL) for tidal waters on the cross-section view, and location of any temporary stockpile areas and/or permanent overburden fills; and,
5) Photographs or any other information that would verify that the proposed work meets the conditions of the GP.
6) All applicants with projects on riverine or lacustrine systems that propose a non-bioengineered design shall also provide an alternative analysis consisting of bioengineered methods which were considered and rational as to why these alternatives are not the applicant's preferred alternative.
7) All persons proposing activities in legislatively designated special areas must present proof of application for a Special Area Permit from ADF&G. Applicable legislatively designated special areas located in whole or part within the Kenai Peninsula Borough include the following State Game Refuges (SGR), Critical Habitat Areas (CHA) and Sanctuaries; Homer Airport CHA, Anchor River and Fritz Creek CHA, Fox River flats CHA, Kalgin Island CHA, McNeil River SGR, McNeil River State Game Sanctuary, Redoubt Bay CHA, Trading Bay SGR, and Susitna Flats SGR.

The Corps will provide a pre-construction notification (PCN) to the Local, State, and Federal resource agencies when the proposal includes:

A. More than 250 linear feet, or greater than 1 cubic yard per linear foot of fill; *or*,

B. Methods and techniques, not contained in Streambank Revegetation and Protection: A Guide for Alaska (Mulberg and Moore, 1998) to include, revisions made to this source; *or*,

C. Vegetated cribbing.

Additionally, based on the DE's discretion, a PCN will be sent for any proposal that merits one.

For proposals requiring a PCN, resource agencies shall be given 10 calendar days, from the date of the Corps' facsimile, to send comments. During this time, an agency may request and be granted 15 additional calendar days to provide substantive, site-specific written comments. When an agency chooses not to comment on a PCN, the Corps will interpret this to mean the agency has no objections to the proposal.

Or alternatively, for all projects that fall under this general permit that are not part of a USFWS funded program and that do not require circulation of a PCN shall be sent to the State Historic Preservation Office (SHPO) for a cultural resources review and comment. The comment period will be 10 days and will include the option of requesting a ten day extension. If comments are not received by the DE within this timeframe, the DE may issue the general permit. If the DE and SHPO agree to a different programmatic approach that provides the same or greater level of assurance that archeological and historic sites will be appropriately identified, the agreed upon process will supersede this requirement.

When a resource agency raises a concern over a proposal, the DE will discuss the concern with the commenting agency, fully consider the matter and document, in the associated proposal's administrative record, how the resource agencies' concerns were considered.

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[2] Mailing instructions can be obtained by calling the Corps at (907) 753-2712 or (907) 283-3519.
[3] As an alternative an applicant may elect to submit either the Kenai River Center's Multi-Agency Permit Application or application form, ENG Form 4345, Jul 97.

EVALUATION CRITERIA USED FOR PROJECT VERIFICATIONS:

In reviewing all proposed projects for this GP, the DE will determine whether or not the proposal:

1) Is consistent with the GP; and,
2) Will result in more than minimal individual or cumulative adverse environmental effects; and,
3) Is contrary to the public interest.

After this determination is made, the DE will notify the applicant in writing to verify the proposal either qualifies for the GP, which may include special conditions necessary to avoid and minimize impacts to the aquatic environment, or it does not qualify for the GP and standard individual permit is required.

Should a standard individual permit be required, the DE will publish a public notice in accordance with 33 CFR Part 325.3(d).

REEVALUATION OF PERMIT DECISION:

The Corps may reevaluate its decision to verify a GP authorization to any permittee at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

1. The permittee fails to comply with the terms and conditions of this permit.

2. The information provided by the permittee in support of the application proves to have been false, incomplete or inaccurate.

3. Substantial new information surfaces, which this office did not consider in reaching the original public interest determination.

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 you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

MODIFICATION, REVOCATION AND EXTENSION OF THE GENERAL PERMIT:

Should, at any time, the DE determine that the individual or cumulative effects of the activities authorized herein are having an unacceptable adverse effect upon the public interest, the DE may modify or revoke this GP with the issuance of a Public Notice. Should the DE revoke the GP, all new applications will be evaluated under other available permit application review procedures. The DE will also decide on a case-by-case basis if prior GP verifications should be revoked, suspended, or modified.

The DE, during the fifth year of the GP, will review the GP along with the work verified under it in order to determine if the GP should be modified, extended, or discontinued.

FOR THE DISTRICT ENGINEER:

William A. Keller

William A. Keller, Chief
South Section
Regulatory Branch
Alaska District, U.S. Army Corps of Engineers

4/12/04
Date

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 U.S. Army Corps of Engineers, Alaska District, Regulatory Branch, 105 Trading Bay Road, Suite 105, Kenai, Alaska 99611, for the proposed General Permit GP 2003-01, for bank stabilization within the Kenai Peninsula Borough, Alaska. The objective of the GP is to expedite the permitting process, focus attention to designs which have a greater potential to harm the environment, and allow the Corps to better allocate regional resources. The GP will authorize the placement of dredged or fill material, under specified conditions, into the waters of the U.S. for the purpose of stabilizing eroding river banks and lake shorelines.

The proposed general permit will cover the entire Kenai Peninsula Borough, in southcentral Alaska.

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 proposed activities will be authorized by Corps of Engineers General Permit GP 2003-01, and a discharge may result from the proposed 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 general permit, as well as any discharge which may result, will comply with applicable provisions of Section 401 of the Clean Water Act and the Alaska Water Quality Standards, 18 AAC 70, provided that the following alternative measure is adhered to.

1. Materials such as sorbent pads and spill containment apparatus shall be available on-site, and shall be used to contain and cleanup any petroleum product spilled as a result of construction activity.

Date 3/30/04

T Rumfelt

Tim Rumfelt
Environmental Specialist

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ALASKA COASTAL MANAGEMENT PROGRAM
FINAL CONSISTENCY RESPONSE
CONCURRENCE

DATE ISSUED: MARCH 23, 2004

PROJECT TITLE: PROPOSED GENERAL PERMIT 2003-01, KPB BANK STABILIZATION ACTIVITIES

STATE ID. NO.: AK 0312-15AA

AFFECTED COASTAL RESOURCE DISTRICT(S): KENAI PENINSULA BOROUGH

PROJECT DESCRIPTION: Except for the water quality issues addressed through the DEC 401 Certification process, the activity subject to this consistency review is the proposed issuance of General Permit (GP) 2003-01 **(as described in the 4th draft and modified as noted in bold below)** for the discharge of fill material into waters of the United States within the Kenai Peninsula Borough (KPB) for bank stabilization activities. The objective of the GP authorization is to: 1. Expedite the permitting process by relieving the regulatory burden of a pre-construction notice on applicants proposing sound bioengineered designs; 2. Focus attention to those stabilization designs which have a greater potential to harm the aquatic environment by requiring a Pre-Construction Notification (PCN) in order to determine if the proposal qualifies for the GP or requires an individual permit; and 3. Allow the Department Engineer (DE) to better allocate regional resources towards projects having greater potential to harm the aquatic environment. The draft proposed GP includes authorized activities, general conditions and authorization procedures, and would be valid for a period of five years from the date of issuance. The proposed GP would apply to the entire Kenai Peninsula Borough.

The 4th draft of the General Permit is further modified as follows:

- **"ACTIVITIES NOT AUTHORIZED UNDER THE GP"**
  # 3. Projects located in coastal areas/marine waters.

THE FOLLOWING ALTERNATIVE MEASURES HAVE BEEN INCORPORATED INTO THE PROJECT PROPOSAL BY THE U.S. ARMY CORPS OF ENGINEERS (COE):

1. All persons proposing activities in legislatively designated special areas must present proof of application for a Special Area Permit from ADF&G. Applicable legislatively designated special areas located in whole or part within the Kenai Peninsula Borough include the following State Game Refuges (SGR), Critical Habitat Areas (CHA) and Sanctuaries; Homer Airport CHA, Anchor River and Fritz Creek CHA, Fox River flats CHA, Kalgin Island CHA, NcNeil River SGR, NcNeil River State Game Sanctuary, Redoubt Bay CHA, Trading Bay SGR, and Susitna Flats SGR.

2. All projects that fall under this general permit that are not part of a USFWS funded program and that do not require circulation of a PCN shall be sent to the State

Historic Preservation Office (SHPO) for a cultural resources review and comment. The comment period will be 10 days and will include the option of requesting a ten day extension. If comments are not received by the U.S. Army Corps of Engineers (COE) within this timeframe, the COE may issue the general permit. If the COE and SHPO agree to a different programmatic approach that provides the same or greater level of assurance that archeological and historic sites will be appropriately identified, the agreed upon process will supersede this requirement.

CONSISTENCY STATEMENT: OPMP concurs with the consistency determination submitted by the U.S. Army Corps of Engineers.

AUTHORIZATIONS: State agencies shall issue the following authorizations within five days after OPMP issues the final consistency determination that concurs with the applicant's consistency certification, unless the resource agency considers additional time to be necessary to fulfill its statutory or regulatory authority.

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

DEC will review any activities subject to DEC permits, certifications, approvals, and authorizations for consistency with 6AAC 80.140. The issuance of the permits, certifications, approvals, and authorizations by DEC establishes consistency with 6AAC 80.140 for those specific activities.

Please note that, in addition to their consistency review, State agencies with permitting responsibilities will evaluate this proposed project according to their specific permitting authorities. Agencies will issue permits and authorizations only if they find the proposed project complies with their statutes and regulations in addition to being consistent with the coastal program. An agency permit or authorization may be denied even though the State concurs with the ACMP. Authorities outside the ACMP may result in additional permit/lease conditions. If a requirement set out in the project description (per 6AAC 50.265) is more or less restrictive than a similar requirement in a resource agency authorization, the applicant shall comply with the more restrictive requirement. Applicants may not use any State land or water without DNR authorization.

APPEAL: This final consistency response is a final administrative order and decision under the ACMP and for purposes of Alaska Appellate Rules 601-612. Any appeal from this decision to the superior court of Alaska must be made within thirty (30) days of the date this determination is issued.

ADVISORIES:

DNR Division of Mining Land and Water has provided the following advisory:

- Please be advised that any use of state owned land managed by the Department of Natural Resources, Division of Mining, Land and Water (DNR/DMLW) may require a land use authorization and a separate public notification process. This includes use of state owned uplands, tidelands or submerged lands. Applicants are responsible to

ascertain whether their proposed project or activity is located on state land and whether an authorization is required from DNR. Applicants are also advised that unauthorized use of state land, tide or submerged land, water or materials is subject to trespass action by the State. Applicants should contact the DNR Public Information Center at 550 W. 7th Avenue, Suite 1260; Anchorage, AK 99501-3564 or call (907) 269-8499 to confirm whether their project is located on state land.

Placing riprap or other suitable bank stabilization material to prevent erosion of a contiguous privately owned upland parcel if no more than one cubic yard of material per running foot is placed onto state shoreland and the project is otherwise within the scope of the U.S. Corps of Engineers nationwide permit on bank stabilization is considered a generally allow use by DNR/DMLW and, as such, requires no DNR/DMLW authorization. Note: DNR/DMLW has not determined if the general permit substitutes for a nationwide permit in this definition of a generally allowed use. Applicants are advised to contact DNR/DMLW to determine whether authorization is required.

Please be advised that although OPMP concurs with your determination that the project is consistent to the maximum extent practicable with the ACMP, the COE is still required to meet all applicable State and federal laws and regulations. Your consistency finding may include reference to specific laws and regulations, but this in no way precludes the COE's responsibility to comply with other applicable laws and regulations.

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) so that consultation per section 106 of the National Historic Preservation Act may proceed.

Final Consistency Determination Prepared By:
Susan E. Magee, Project Review Supervisor
550 W. 7th Avenue, Suite 1660
Anchorage, AK 99501
(907) 269-7472

S E Magee

Susan E. Magee

3-23-04

Date