



US Army Corps
of Engineers
Alaska District

Public Notice of Application for Permit

Regulatory Division (1145)
CEPOA-RD
44669 Sterling Highway, Suite B
Soldotna, Alaska 99669-7915

PUBLIC NOTICE DATE: 6 April, 2018

EXPIRATION DATE: 7 May, 2018

REFERENCE NUMBER: POA-1991-836

WATERWAY: Kenai River

Interested parties are hereby notified that a Department of the Army permit application has been received for work in waters of the United States (U.S.) as described below and shown on the enclosed project drawings.

All comments regarding this Public Notice should be sent to the address noted above. If you desire to submit your comments by email, you should send it to the Project Manager's email as listed below or to regpagemaster@usace.army.mil. All comments should include the Public Notice reference number listed above.

All comments should reach this office no later than the expiration date of this Public Notice to become part of the record and be considered in the decision. Please contact Andy Mitzel at (907) 753-2689, by fax at (907) 420-0813, or by email at andy.mitzel@usace.army.mil if further information is desired concerning this notice.

APPLICANT: Alaska Department of Transportation & Public Facilities, Attention: Brian Elliott, PO Box 196900, Anchorage, AK 99519.

LOCATION: The project site is located within Sections 19, 25-30, 36, T. 5 N., R. 3 W., Sections 23, 24, 26-32, T. 5 N., R. 4 W., Sections 35, 36, T. 5 N., R. 5 W., Seward Meridian; USGS Quad Maps Seward B-8, Seward C-8, and Kenai B-1; Latitude 60.51° N., Longitude 149.90° W.; near Cooper Landing, Alaska.

SPECIAL AREA DESIGNATION: The project is located within the Chugach National Forest and the Kenai National Wildlife Refuge.

PURPOSE: The applicant's stated purpose is to bring the highway up to current standards for a rural principal arterial to efficiently and safely serve through-traffic, local community traffic, and traffic bound for recreation destinations in the area, both now and in the future. In achieving this transportation purpose, Alaska Department of Transportation & Public Facilities (AKDOT&PF) and Federal Highway Administration (FHWA) recognize the importance of protecting the Kenai River corridor.

PROPOSED WORK: The applicant is proposing to permanently discharge up to 771,510 cubic yards (cy) of Type A, B, and C material into 39.2 acres of waters of the U.S., including wetlands, and relocate up to 5,000 linear feet of stream for the installation and replacement of 61 culverts throughout the project site. In addition to the permanent fill activities, the applicant is also proposing to temporarily fill up to 5.9 acres of wetlands to facilitate the construction. The impacts to waters of the U.S., including wetlands, is for the upgrading of four miles of the existing Sterling Highway and the construction of 10 new miles of road north of Cooper Landing, Alaska.

The proposed project would improve a total of four miles of existing highway at both ends of the Cooper Landing Bypass project. This would involve the straightening and widening of the existing highway to incorporate passing and turning lanes and meet current design standards. Travel and passing lanes would be 12 feet wide, paved shoulders would be eight feet wide, and all major intersections would have right and left-turn lanes. An obstruction-free clear zone 30 feet wide would be developed and maintained on each side of the traveled way. The proposed road design typically employs 6:1 side slopes within the clear zone for safety, which would transition to steeper slopes beyond the clear zone. The steepest slopes recommended for embankment stability are 2:1 side slopes or 1.5:1 riprap slopes plus a guard rail at the outside of the shoulder. Additionally, this portion the proposed project would improve drainage by replacing 20 existing culverts along existing highway and stabilize the riverbank at one location on the Kenai River.

The proposed construction of 10 miles of new highway north of Cooper Landing designed to meet current design standards for a rural principal arterial road classification. This portion of the project would involve the construction of 12 feet wide travel and passing lanes with eight feet wide paved shoulders, and all major intersections would have right and left-turn lanes. An obstruction-free clear zone 30 feet wide would be developed and maintained on each side of the traveled way. In addition to the road, the applicant is proposing to construct trailhead, parking, and trail re-routes for Resurrection Pass and Bean Creek trails. The new road construction would also involve the installation of 41 new culverts along the new alignment.

All work would be performed in accordance with the enclosed plan (sheets 1-23), dated January 22, 2018 and January 25, 2018.

ADDITIONAL INFORMATION:

A permit application under Title XI of the Alaska National Interest Lands Conservation Act (ANILCA) has been submitted to the Corps of Engineers, (Corps) FHWA, U.S. Forest Service, and the U.S. Fish and Wildlife Service.

The FHWA has prepared a Final Environmental Impact Statement (FEIS) for the proposed project, with the Corps acting as a cooperating agency during the EIS process. This public notice reflects the applicant's preferred alternative only. The other alternatives that were considered are available in the FEIS, which is available at: <http://www.sterlinghighway.net/>. Each alternative will be evaluated to determine if it meets the overall project purpose. If the overall project purpose is met, those alternatives, and the applicant's preferred alternative, will be evaluated under the Environmental Protection Agency's 404(b)(1) guidelines to determine which is the least environmentally damaging practicable alternative (LEDPA).

Additional authorizations that would be required for the proposed project:

Agency	Permit/Approval
U.S. Fish and Wildlife Service	Coordination in compliance with the Fish and Wildlife Coordination Act, Bald Eagle Protection Act, and Migratory Bird Treaty Act.
Forest Service	Land Use
ADNR Division of Mining, Land, and Water	Material Sales Contract
ADNR Division of Mining, Land, and Water	Temporary Water Use Authorization
ADF&G	Title 16 Fish Habitat Permits
ADEC Division of Water	APDES Notice of Intent

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

a. Avoidance: The applicant has proposed the following avoidance measures:

Project-wide avoidance measures incorporated into preliminary project design:

- Existing highway alignment was incorporated for use to avoid unnecessary impacts to undisturbed wetlands.
- The new Juneau Creek Bridge designed to span the stream to avoid placing fill below ordinary high water of this anadromous fish stream.
- No new bridges would be constructed or existing bridges would be replaced over the Kenai River.

Avoidance measures that would be incorporated into final design:

- Small alignment modifications, steepening side slopes and refining where passing lanes begin and end – to avoid and/or minimize impacts in wetlands and other waters.
- Examine the return loop area south of the existing highway near MP 55.6 for opportunities to reduce the size of the loop.

Avoidance measures that would be implemented during construction are listed below.

- Staging areas and temporary construction roads would be located in uplands to the extent practicable.
- Cleared vegetation and unusable soils would not be permanently deposited in wetlands.
- Construction limits would be clearly staked prior to construction to ensure that ground disturbance avoids adjacent wetlands and other waters of the U.S. Grubbing would be avoided outside of the construction footprint.
- At no time would the construction activities result in a migration barrier for adult or juvenile salmonids or other fish. Construction would be timed to avoid critical fish spawning and migration periods. Specific timing windows for in-water work would be established during permitting. These mitigation measures would minimize the potential for impacts related to food availability for bears and other wildlife.

b. Minimization: The applicant has proposed the following minimization measures:

The following measures have been incorporated into the preliminary design to minimize impacts.

- The area at MP 57 has been redesigned to pull the highway back from the river. Riprap is still necessary, but the highway has been shifted farther from the river. Passing lanes have been reduced in this area as well, minimizing width.
- Construction staging and disposal areas have been sited to minimize impacts on wetlands and waterbodies.

Minimization measures would be incorporated into the final design:

- Small alignment modifications, steepening side slopes and refining where passing lanes begin and end – to minimize impacts in wetlands and other waters.
- The final roadway design would be based on the minimum-width fill footprint necessary to provide a stable road base with a low-profile embankments.
- The Juneau Creek Bridge drainage would be designed to direct rainwater runoff beneath the bridge and promote retention of natural vegetation buffer between the Resurrection Pass Trail and the bridge abutment.
- Design would include standard engineering considerations to avoid and minimize the potential for erosion near surface drainage ways.
- Anadromous fish stream crossings would be designed to minimize impacts on stream function and hydrology, and would be designed to meet the Alaska Department of Fish and Game (ADF&G)–DOT&PF Memorandum of Agreement requirements for fish passage. Anadromous fish stream culverts would be bottomless arch culverts or would be fully embedded with streambed material where possible.

- Riprap would be used as appropriate to stabilize toes of slopes at ponds and stream crossings and would incorporate vegetation where practicable.
- Culverts would be installed through fill slopes in appropriate locations to maintain existing flow patterns for surface water.
- Vegetated roadside swales would be designed to keep surface water within the natural drainage basins and filter stormwater prior to entering streams.
- Road slopes would be revegetated using native species and annual nurse crops.
- Replacement of existing culverts that are undersized or perched to improve fish passage to upstream habitat along the highway segments that would be reconstructed.

The following measures would be incorporated into project specifications for implementation during construction to minimize impacts to wetlands and other waters of the U.S.

- Staging areas and temporary construction roads would be located in uplands to the extent feasible. Where temporary fill would be required, the construction contractor would be required to place temporary fill on geotextile mats or other suitable materials of sufficient thickness to facilitate the removal of the fill.
- Stream banks at all culverts and bridge crossings would be recontoured to approximate original conditions and reseeded with native vegetation to minimize erosion.
- To lessen the potential impact of vegetation removal along the Bean Creek Trail, trailside areas disturbed by vegetation removal along the trail would be reseeded.
- To minimize the spread of invasive plant species, only Alaska native plant species would be used for reseeding and vegetating disturbed areas, per Alaska Department of Natural Resources' (ADNR's) *A Revegetation Manual for Alaska*. Additional measures would be incorporated to minimize the potential spread of existing invasive plants.
- To minimize the potential to spread or introduce invasive plant species, only clean fill material, such as mulch, topsoil, and seeds, would be used during construction and maintenance activities.
- The contractor would be required to use contaminant-free embankment and surface materials in construction.
- No vehicles or equipment would be fueled or serviced within 100 feet of wetlands or fish-bearing streams, with the exception of "low-mobility" equipment used for pile driving, drilled shaft construction, or other bridge construction. A plan would detail the process for fueling this equipment within 100 feet of wetlands or fish-bearing streams. Fuel would be stored a minimum of 100 feet from any wetland or water body.
- To minimize and prevent spills or leakage of hazardous materials during construction, standard spill prevention measures would be implemented in accordance with the contractor's approved Spill Prevention, Control, and Countermeasures Plan. Spill response equipment would be readily available and construction personnel would be trained in spill response.

- Erosion and sedimentation control measures would be employed prior to ground disturbing activity. Permanent erosion control measures would be employed as early in construction as practical.
- Best Management Practices (BMPs) developed in accordance with DOT&PF's *Alaska Storm Water Pollution Prevention Plan (SWPPP) Guide* (DOT&PF 2011b) and Alaska Department of Environmental Conservation's (ADEC's) *Alaska Storm Water Guide* (ADEC 2011) would be employed to control erosion and capture sediment.
- Silt fences would be used adjacent to waterways just beyond the estimated toe of fill.
- Ditch check-dams would be used to reduce erosion during construction.
- Sedimentation basins would be used during construction, as necessary.
- Temporary diversions within fish-bearing streams would allow for fish passage and would be restored to natural conditions upon construction completion.
- Stipulations would be included in the required SWPPP and ADEC Section 401 Water Quality Certification that would also address the removal of erosion and sediment control measures.
- Temporary material storage piles would not be placed in the 100-year floodplain during the rainy season unless the following conditions were met: (1) storage would not occur when flooding was imminent; and (2) if storage piles consisted of erodible material, they would be covered with plastic tarps (or similar) and surrounded with compost berms or other erosion control devices.
- To meet requirements of the Migratory Bird Treaty Act, clearing of vegetation would occur before or after the bird nesting season (from May 1 to July 15 in Southcentral Alaska).

c. Compensatory Mitigation: The applicant has stated the following regarding compensatory mitigation for unavoidable losses of waters of the U.S.:

DOT&PF's preference for mitigation is to pay an in-lieu-fee to an approved in-lieu-fee provider. If in-lieu-fee credits are not available during final design, DOT&PF will coordinate with the U.S. Forest Service on needed project(s) to benefit waters of the U.S. on adjacent lands.

WATER QUALITY CERTIFICATION: A permit for the described work will not be issued until a certification or waiver of certification, as required under Section 401 of the Clean Water Act (Public Law 95-217), has been received from the Alaska Department of Environmental Conservation.

CULTURAL RESOURCES: The lead Federal agency, FHWA, is responsible for compliance with the requirements of Section 106 of the National Historic Preservation Act. The Corps will review Federal Highway Administration's documentation and either concur with their documentation or continue to work with them until any issues are resolved. A permit for the described work will not be issued until the Section 106 process has been completed and the Corps concurs with FHWA's work or documentation.

ENDANGERED SPECIES: No threatened or endangered species are known to use the project area.

The lead Federal agency, FHWA, is responsible for compliance with the requirements of Section 7 of the Endangered Species Act. The FHWA has determined the described activity would have no effect on any listed or proposed threatened or endangered species, and would have no effect on any designated or proposed critical habitat, under the Endangered Species Act of 1973 (87 Stat. 844). Therefore, no consultation with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (NMFS) is required. However, any comments they may have concerning endangered or threatened wildlife or plants or their critical habitat will be considered in our final assessment of the described work.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH).

The project area is within the known range of the Chinook (*Oncorhynchus tshawytscha*), chum (*Oncorhynchus keta*), Coho (*Oncorhynchus kisutch*), pink (*Oncorhynchus gorbuscha*), and sockeye (*Oncorhynchus nerka*) salmon.

The lead Federal agency, FHWA, is responsible for compliance with the requirements of EFH. The FHWA has coordinated regarding EFH, and NMFS provided a letter stating that the project will have no more than a minimal impact and will not result in any substantive adverse effect to EFH.

TRIBAL CONSULTATION: The Alaska District fully supports tribal self-governance and government-to-government relations between Federally recognized Tribes and the Federal government. Tribes with protected rights or resources that could be significantly affected by a proposed Federal action (e.g., a permit decision) have the right to consult with the Alaska District on a government-to-government basis. Views of each Tribe regarding protected rights and resources will be accorded due consideration in this process. This Public Notice serves as notification to the Tribes within the area potentially affected by the proposed work and invites their participation in the Federal decision-making process regarding the protected Tribal right or resource. Consultation may be initiated by the affected Tribe upon written request to the District Commander during the public comment period.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, reasons for holding a public hearing.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts, which the proposed activity may

have on the public interest, requires a careful weighing of all the factors that become relevant in each particular case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. The outcome of the general balancing process would determine whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur. The decision should reflect the national concern for both protection and utilization of important resources. All factors, which may be relevant to the proposal, must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria (see Sections 320.2 and 320.3), a permit will be granted unless the District Commander determines that it would be contrary to the public interest.

The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

AUTHORITY: This permit will be issued or denied under the following authorities:

(X) Perform work in or affecting navigable waters of the United States – Section 10 Rivers and Harbors Act 1899 (33 U.S.C. 403).

(X) Discharge dredged or fill material into waters of the United States – Section 404 Clean Water Act (33 U.S.C. 1344). Therefore, our public interest review will consider the guidelines set forth under Section 404(b) of the Clean Water Act (40 CFR 230).

(X) Transportation and utility systems in and across, and access into, conservation system units – Title XI, Alaska National Interests Lands Conservation Act (PL 96-487; 94 Stat. 2371)

Project drawings and a Notice of Application for State Water Quality Certification are enclosed with this Public Notice.

District Commander
U.S. Army, Corps of Engineers

Enclosures

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF WATER
401 Certification Program
Non-Point Source Water Pollution Control Program

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WQM/401 CERTIFICATION
555 CORDOVA STREET
ANCHORAGE, ALASKA 99501-2617
PHONE: (907) 269-7564/FAX: (907) 334-2415

NOTICE OF APPLICATION FOR STATE WATER QUALITY CERTIFICATION

Any applicant for a federal license or permit to conduct an activity that might result in a discharge into navigable waters, in accordance with Section 401 of the Clean Water Act of 1977 (PL95-217), also must apply for and obtain certification from the Alaska Department of Environmental Conservation that the discharge will comply with the Clean Water Act, the Alaska Water Quality Standards, and other applicable State laws. By agreement between the U.S. Army Corps of Engineers and the Department of Environmental Conservation, application for a Department of the Army permit to discharge dredged or fill material into navigable waters under Section 404 of the Clean Water Act also may serve as application for State Water Quality Certification.

Notice is hereby given that the application for a Department of the Army Permit described in the Corps of Engineers' Public Notice No. **POA-1991-836, Kenai River**, serves as application for State Water Quality Certification from the Department of Environmental Conservation.

After reviewing the application, the Department may certify there is reasonable assurance the activity, and any discharge that might result, will comply with the Clean Water Act, the Alaska Water Quality Standards, and other applicable State laws. The Department also may deny or waive certification.

Any person desiring to comment on the project, with respect to Water Quality Certification, may submit written comments to the address above by the expiration date of the Corps of Engineer's Public Notice.