



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

<b>PUBLIC NOTICE DATE:</b>	<b>November 14, 2019</b>
<b>EXPIRATION DATE:</b>	<b>December 16, 2019</b>
<b>REFERENCE NUMBER:</b>	<b>POA-2017-00546</b>
<b>WATERWAY:</b>	<b>Stariski Creek</b>

---

Interested parties are hereby notified that a Department of the Army (DA) 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 (PN) 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](mailto:regpagemaster@usace.army.mil). All comments should include the PN reference number listed above.

All comments should reach this office no later than the expiration date of this PN to become part of the record and be considered in the decision. Please contact Mr. Ben Polley at (907) 753-2627, by fax at (907) 420-0813, or by email at: [Benjamin.L.Polley@usace.army.mil](mailto:Benjamin.L.Polley@usace.army.mil) if further information is desired concerning this notice.

**APPLICANT:** Mr. Cap Shafer, Trimark Earth Reserve, LLC, 34481 North Fork Road, Anchor Point, AK 99556

**AGENT:** Ms. Gina DeBardelaben, McLane Consulting, Inc., PO Box 468, Soldotna, AK 99669

**LOCATION:** The project site is located within Sections 1 & 12, T. 4 S., R. 15 W., and Sections 6 & 7, T. 4 S., R. 14 W., Seward Meridian; USGS Quad Map Seldovia D-5; near Latitude 59.8527° N., Longitude 151.7726° W.; Kenai Peninsula parcels 165-012-16, 165-012-73, and 165-012-72; near Anchor Point, Alaska.

**PURPOSE:** The applicant's stated purpose is to access the eastern side of Stariski Creek in order to extract gravel for commercial purposes.

PROPOSED WORK: The applicant proposes to: discharge 7,078.6 cubic yards (CY) of Kenai Peninsula Borough (KPB) Type I material, 587.2 CY of ADOT gabion rock, and 67.3 CY of channel substrate into 1.623 acres of waters of the U.S., including wetlands, for the purpose of constructing a private access road, across streams and through wetlands, to upland locations for the purpose of extracting gravel from the upland locations. The road would be 6,775 linear feet (LF) in length, of which 2,011 LF (70,443 square feet (SF)) would be constructed in wetlands. It would begin at the Sterling Highway near mile post 150.5 and proceed easterly, across Stariski Creek, an un-named tributary to Stariski Creek, and wetlands adjacent to these streams to terminate on upland ridges east of Stariski Creek. Stream crossings would impact 145 LF (272.5 SF) of stream bed.

Where the access road would cross wetlands, it would have a driving surface width of no more than 30 feet. The maximum base width of the road would be no more than 35 feet. The road would be constructed of KPB Type I material and be no less than 30 inches thick. It would be underlain by non-woven geotextile fabric and geogrid would be used to stabilize gravel where necessary, as determined in the field.

Rock underdrains would be constructed at a frequency of at least one per every 100 feet of road alignment. These underdrains would be 15 feet in length and the full width of the road. They would be constructed by placing no less than 18 inches of ADOT gabion rock (4-12 inches in least diameter) between two layers of non-woven geotextile fabric. The underdrains would be topped by no less than 18 inches of KPB Type 1 material.

A 53-foot long, dual rail car bridge would be used to cross Stariski Creek. The bulkheads for the bridge would be placed above the ordinary high water mark (OHWM) of Stariski Creek and the bridge would span the creek. No in-stream work would be required for the construction of the bridge.

East of Stariski Creek, the road would cross a tributary to Stariski Creek at three points. The crossing at STA 43+61 would utilize an 87-inch x 63-inch x 55-foot corrugated steel arch pipe underlain by non-woven geotextile fabric and by no less than six inches of KPB Type I bedding material. Up to 51.3 CY of native channel material would be discharged inside the pipe. A meandering channel, no less than 30 inches wide at low water, would be formed within the pipe. Small boulders (12-inch) would be installed at 6-foot intervals. Up to 40.3 CY of KPB Type I material would be discharged into an area no larger than 137.5 SF below the OHWM of the un-named tributary as part of the installation of the arch pipe.

The crossings at STA 32+14 and STA 42+68 would each utilize a 36-inch x 45-foot culvert. The culverts would be embedded 0.5-feet below grade and up to 8 CY of substrate material would be discharged within each culvert. Up to 4.5 CY of KPB Type I material would be discharged into an area no larger than 67.5 SF below the OHWM of the un-named tributary as part of the installation of each culvert.

Temporary stream diversions would be constructed prior to arch pipe/culvert installation. Total temporary impacts to waters of the U.S. would be no more than 21 CY of NFS gravel

discharged into 189 SF of waters of the U.S. Upstream and downstream flows would be contained by utilizing 1 CY supersacks and/or sandbags filled with gravel and underlain with an impermeable liner. For each crossing, up to 7 CY of gravel would be temporarily discharged into no more than 63 SF of waters of the U.S. Stream flow would be diverted around the crossing via pump. The pump inlet would be screened to ensure fish are not drawn into the pump and the outlet would have an energy dissipating system. De-watering pumps would be utilized to ensure the site is de-watered prior to arch pipe/culvert installation. All temporary fills would be removed following completion of arch pipe/culvert installation. Excavation within wetlands for culvert installation would be kept within the impact footprint or removed to an upland location. There would be no side-casting of spoils outside of the proposed impact footprint in wetlands.

All work would be performed in accordance with the enclosed plan (sheets 1-16), dated October 29, 2019.

ADDITIONAL INFORMATION:

The applicant states the following permits have been obtained: ADF&G Habitat Permits FH18-V-252 & FH18-V-253; KPB Conditional Use Permit (CUP); and KPB Conditional Land Use Permit (CLUP).

Material extraction would occur predominantly in KPB parcel 165-012-72. This parcel is 297.3 acres in size. The USACE has determined the extent of waters of the U.S. on this parcel to be approximately 217 acres. On their application for the KPB CLUP, the applicant stated that the cumulative acres to be disturbed would be 240 acres. On their application for a DA permit, the applicant stated the proposed road would be used to “access two upland ridges with the combined upland extraction area of approximately 58 acres”.

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

a. Avoidance:

- Reduce driving width of roads through wetlands from an industry standard of 40 feet to 30 feet;
- Construct road in waters of the U.S. with 2:1 shoulder slopes;
- Limit final surface grade of road through waters of the U.S. to 12 inches;
- Keep bridge elevation to a minimum height to reduce the footprint of the approaches to the bridge;
- Fill area boundaries will be clearly delineated in the field to avoid accidental impacts from equipment operation and fill material placement;
- In waters of the U.S., contractors would not discharge fill (including clearing debris), remove native materials, or run equipment outside the designated construction zone;

- In waters of the U.S., mechanized land clearing would be limited to 35 feet. Line of site would be maintained by clearing vegetation by hand;
- Waters of the U.S. would be avoided by siting access in the most immediate, perpendicular access locations;
- Material site extraction would maintain a minimum 100-foot undisturbed natural setback from riparian wetlands.

b. Minimization:

- Only clean, non-frost susceptible gravel fill would be used to minimize the potential for sedimentation;
- Rock underdrains would be installed in the road embankment when bisecting waters of the U.S. to allow for groundwater flow. The underdrains would be the full width of the road, be at least 15 feet in length, and installed at a minimum frequency of at least one per 100 feet of road alignment;
- Sheet pile bulkheads would be installed at bridge crossing location to reduce the amount of gravel from entering Stariski Creek;
- An ADF&G permitted arch-culvert would be utilized at the stream crossing at STA 43+61. The stream at STA 7+65 and STA 32+14 would be crossed utilizing 36-inch culverts;
- The applicant would develop and utilize a Storm Water Pollution Prevention Plan and perform weekly inspections;
- Schedule permitting, work would be completed during frozen ground conditions.

c. Compensatory Mitigation: The applicant proposes that the mitigation requirements would be fulfilled by the project design, site scoping, and protection of salmon rearing habitat. No compensatory mitigation has been proposed.

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

CULTURAL RESOURCES: The latest published version of the Alaska Heritage Resources Survey (AHRS) has been consulted for the presence or absence of historic properties, including those listed in or eligible for inclusion in the National Register of Historic Places. There are no cultural resources in the permit area or within the vicinity of the permit area. The permit area has been determined to be the footprint of the proposed road within waters of the U.S.; the road in uplands between STA 1+00 and STA 1+71 and all upland locations between STA 3+83 and the terminus of the road; and the entirety of the KPB parcel 165-012-72. Consultation of the AHRS constitutes the extent of cultural resource investigations by the Corps at this time, and we are otherwise unaware of the presence of such resources. The Corps has made a No Historic Properties Affected (No Effect) determination for the proposed

project. This application is being coordinated with the State Historic Preservation Office (SHPO). Any comments SHPO may have concerning presently unknown archeological or historic data that may be lost or destroyed by work under the requested permit will be considered in our final assessment of the described work. The Corps is requesting the SHPO's concurrence with this determination.

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

We have 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 rearing coho salmon (*Oncorhynchus kisutch*).

We are currently gathering information regarding this species and have yet to make a determination of effect. Should we find that the described activity may affect the species listed above, we will follow the appropriate course of action under Section 305(b)(2) of the Magnuson-Stevens Act. Any comments the National Marine Fisheries Service and/or the Alaska Department of Fish & Game may have concerning essential fish habitat will be considered in our final assessment of the described work.

**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 PN serves as notification to the Tribes within the area potentially affected by the proposed work and invites their participation in the Federal decision-making process regarding the protected Tribal right or resource. Consultation may be initiated by the affected Tribe upon written request to the District Commander during the public comment period.

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

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

The Corps of Engineers (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 authority:

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

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

District Commander  
U.S. Army, Corps of Engineers

Enclosures

# STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION  
DIVISION OF WATER

Wastewater Discharge Authorization Program (WDAP) / 401 Certification

DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
WDAP/401 CERTIFICATION  
555 CORDOVA STREET  
ANCHORAGE, ALASKA 99501-2617  
PHONE: (907) 269-6285 | EMAIL: [dec-401cert@alaska.gov](mailto:dec-401cert@alaska.gov)

## 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 (PN) Reference Number **POA-2017-00546, Stariski Creek**, serves as application for State Water Quality Certification from the Department of Environmental Conservation.

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

Any person desiring to comment on the project with respect to Water Quality Certification, may submit written comments to the address above or via email to [dec-401cert@alaska.gov](mailto:dec-401cert@alaska.gov) by the expiration date of the Corps of Engineer's Public Notice. All comments should include the PN reference number listed above. Mailed comments must be postmarked on or before the expiration date of the public notice.

### Disability Reasonable Accommodation Notice

The State of Alaska, Department of Environmental Conservation complies with Title II of the Americans with Disabilities Act of 1990. If you are a person with a disability who may need special accommodation in order to participate in this public process, please contact Theresa Zimmerman at 907-465-6171 or TDD Relay Service 1-800-770-8973/TTY or dial 711 within 5 days of the expiration date of this public notice to ensure that any necessary accommodations can be provided.