



US Army Corps
of Engineers
Alaska District

Special Public Notice

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

ISSUANCE DATE:	May 3, 2019
REFERENCE NUMBER:	POA- 2007-00541-M2
EXPIRATION DATE:	June 3, 2019

SPECIAL PUBLIC NOTICE SPN-2007-00541-M2
Notice of Intent to Re-issue General Permit RGP-07
Statewide Rural Development
(Formerly General Permit 2007-00541-M1)

The public is hereby notified that the Alaska District, U.S. Army Corps of Engineers (USACE) is proposing to re-issue Regional General Permit (RGP) POA-2007-00541-M2 (RGP-07), Rural Development, for an additional five years. The activities covered under RGP-07 and the RGP general and special conditions remain the same. A copy of the RGP-07 is attached.

The Corps of Engineers (Corps) is soliciting and accepting comments for the next 30 days on our intent to modify and re-issue this RGP. Comments on the described work, with the reference number, should reach this office no later than the expiration date of this Public Notice (PN) to become part of the record and be considered in the decision. Please contact Michael R. Gala at 907-753-2821, toll-free from within Alaska at (800) 478-2712, by fax at (907) 753-5567, or by email at michael.r.gala@usace.army.mil if further information is desired concerning this notice.

Regional General Permits are considered appropriate for the activities which are substantially similar in nature, cause only minimal adverse environmental impacts when performed separately, would have only minor cumulative effects on water quality, and would provide more effective administration of the Rivers and Harbors Act without creating an undue burden on the public.

If re-issued this RGP will be in effect for five more years and will be re-named RGP-07 (POA-2007-00541-M2). The activities intended for re-authorization under this RGP are essentially the same, with the following changes:

1. General and Special Conditions were updated to be consistent with the 2017 NWP re-issuance.
2. Updated the limitations of the RGP.
3. Updated the RGP Application Form.
4. Removed Part II: Private Residential Subdivision Developments, throughout the State of Alaska from the RGP authorization.

PURPOSE: The RGP was developed to streamline the permitting process for rural development within the state of Alaska.

AUTHORIZED ACTIVITIES: The discharge of dredged and/or fill material into waters of the United States (U.S.) for the purpose of constructing residential housing, and community infrastructure such as schools, daycare and eldercare centers, utility buildings, health clinics, multi-use centers, water & wastewater treatment facilities, and the ancillary driveways, utilities, yards, and access roads associated with these developments

WATER QUALITY CERTIFICATION: The RGP 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 (ADEC).

BACKGROUND: RGP-07 was originally issued November 21, 2007, in order to expedite rural development. RGP-07 authorized the discharge of dredged and/or fill material into waters of the U.S. for the purpose of constructing and/or expanding building foundation pads, utilities, roads, driveways, and parking areas for residential and community developments. The RGP also authorizes mechanized land clearing and other activities that will result in a re-deposition of dredged material into waters of the U.S. On December 12, 2012, the RGP was re-issued for an additional five years, which expired December 31, 2017. The Corps has issued two time extensions, with the newest extending the RGP to May 1, 2019. Since RGP-07 initial issuance the permit has been utilized 134 times and authorized the discharge of dredged and/or fill material into 57.78-acres of wetlands.

ENDANGERED SPECIES: The Corps has conditioned the RGP to protect threatened and endangered species.

Preliminary, the described activity will not affect endangered or threatened species, under the Endangered Species Act of 1973 (87 Stat. 844). This application is being coordinated with U.S. Fish and Wildlife Service and the National Marine Fisheries Service. 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).

Preliminarily, the described activity with special conditions would have no more than minimal impact and would not result in any substantive adverse effects on EFH. This Public Notice initiates the EFH Consultation with NFMS. Any comments or recommendations they may have concerning EFH will be considered in our final assessment of the described work.

CULTURAL RESOURCES: The Corps has conditioned the RGP to protect cultural resources.

Any comments the State Historic Preservation Officer has 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.

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.

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

**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 Corps of Engineers intends to re-issue Department of the Army **Regional General Permit 07, Statewide Residential Development** for an additional five years. The RGP reissuance is described in Special Public Notice POA-2007-00541 and 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 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.

**DEPARTMENT OF THE ARMY
GENERAL PERMIT**

Permittee: The General Public

Permit No. RGP-07, Rural Development (POA-2007-541-M2)

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

Issuance Date: TBD

Expiration Date: TBD + 5 years

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

GENERAL PERMIT AUTHORIZATIONS

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

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

AUTHORIZED ACTIVITIES

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

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

The RGP-07, Rural Development, does not authorize any single and complete project¹ that would exceed 5 acres of permanent loss of waters of the U.S. Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a general permit authorization. When RGP limits would be exceeded, the proposed projects may be eligible for review and authorization by an individual permit.

Excluded areas and activities

- 1) Excluded include those areas within the city and municipal boundary limits of Anchorage, Palmer, Wasilla, Fairbanks, Juneau/Douglas, Homer, Seward, Kenai, Soldotna, Bethel, Nome and the coastal boundary of the Aleutians West Coastal Resource Service Area. The Aleutians West Coastal Resource Service area extends from Unalga Pass in the east to Attu Island in the west, encompassing all land and water areas to the three-mile offshore territorial limit. This includes the communities of Unalaska, Atka, and Nikolski, but does not include Adak Island.
- 2) Under this RGP, dredged and/or fill material may not be discharged into:
 - a. any non-tidal open waterbody (i.e. streams, rivers, ponds, lakes) (except for the construction of linear projects (utilities, roads, etc.);
 - b. permanently flooded wetlands (except for the construction of linear projects (utilities, roads, etc.);
 - c. any tidal waters; or
 - d. any wetlands within 300 feet of any waters of the U.S. listed in a thru c above;
- 3) Activities denied any required local, State or Federal authorization is not authorized by the RGP.
- 4) Activities that the Corps determines may result in more than minimal adverse impacts on aquatic resources or other public interest factors. The District will notify the applicant that the project does not qualify for the RGP and instruct the applicant on the procedures to seek authorization under a standard Department of the Army (DA) permit. The District may also, on a case-by-case basis, require a standard DA permit for unauthorized activities.
- 5) Activities specifically excluded from this RGP are discharges of dredged and/or fill material into waters of the U.S. for the construction of power generation plants, fuel storage areas, material barrow sites, work associated with the gas and oil industry, or any project involving the use or storage of hazardous wastes or hazardous substances as part of its principal purpose.
- 6) This RGP does not apply to state-designated Critical Habitat Areas, Game Refuges and Sanctuaries, and habitat areas identified as important by the Alaska

¹ As defined at 33 CFR 330.2(i)

Department of Fish and Game unless the activity is specifically authorized by the agency with jurisdiction over these lands.

APPLICATION PROCEDURES

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

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

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

Corps Verification Process

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

RESTRICTIONS

The work authorized by this RGP is also subject to the following general conditions and any special conditions necessary to reduce impacts to the minimum level.

Special Conditions:

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

- 1) The fill area shall be minimized by consolidating activities and uses of the fill. For example, utility lines (water, electrical, telephone, sewer, etc.) shall be located within the road or driveway fill when practicable.
- 2) The boundaries of the permitted fill area in wetlands shall be staked and/or flagged prior to construction to prevent inadvertent encroachment of adjacent wetlands.
- 3) Natural drainage patterns shall be maintained in the project area using appropriate ditching, culverts, storm drain systems, and/or other measures, without introducing ponding or drying. Excessive ponding and/or dewatering of areas adjacent to fills indicate non-compliance with this condition.
- 4) During excavation and fill placement, heavy equipment must not be operated in wetlands outside the authorized excavation and fill area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
- 5) No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). The material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
- 6) No fill or construction materials shall be stockpiled in wetlands, outside of the project boundary which shall be staked, or otherwise delineated, prior to any mechanized land clearing or fill placement.
- 7) Temporary storage of excavated and/or excess material on-site must be managed to prevent sediment from being carried into adjacent wetlands and waters, and to prevent leachate from causing odor problems or degradation of water quality. Unusable or excess material must be disposed of at an approved disposal site.
- 8) Prior to construction, erosion control measures, such as silt fencing, sediment traps, or water diversion structures, must be properly deployed and installed. During construction, silt and sediment from the site work must be prevented from entering wetlands or water bodies outside the authorized project limits. Methods shall be implemented to filter or settle out suspended sediments from all construction-related wastewater prior to its direct or indirect discharge into any natural body of water.
- 9) All exposed fills (including side slopes) and disturbed areas shall be stabilized immediately after construction to prevent erosion. Re-vegetation of the disturbed areas shall begin as soon as site conditions allow. Species to be used for seeding and planting shall follow this order of preference:
 - a. Species native to the site.

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

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

- 10) Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA approved state or local floodplain management requirements. Fuel storage tanks shall be located above the 100-year flood level and must be designed to withstand a 100-year flood event when a 100-year flood level has been established for a site. If the 100-year flood level has not been established for a site, the tank flood design shall be developed by an engineer to withstand flood levels based on anecdotal evidence, physical evidence, climate data, and good engineering judgment.
- 11) Material must be available at the site to contain and clean up incidental spills and leaks, and must be used to contain and clean up any petroleum product spilled as a result of construction activity.
- 12) The proposed activity shall not be located within one-half mile of an eagle nest site unless the U.S. Fish and Wildlife Service determines that the activity will not impact the Eagles. The applicant has additional responsibilities to protect eagles under provisions of the Bald and Golden Eagle Protection Act (16 U.S.C. 668a-d) <http://www.fws.gov/midwest/Eagle/guidelines/index.html>.
- 13) No cultural resources shall be adversely affected by activities authorized by this RGP. If the permittee discovers any previously undiscovered archeological, paleontological, or historic resource, while conducting activities authorized by this RGP, the District Commander (DC) must be immediately notified by calling (800) 478-2712. The Corps will notify the SHPO, and the coastal district (if within a coastal district), of what has been found. The Corps or the appropriate federal land manager 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) Federal applicants must provide evidence that they have initiated consultation with other agencies as required by the National Environmental Protection Act.
- 15) No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
- 16) No subsistence resources shall be adversely impacted by activities.
- 17) The Migratory Bird Treaty Act prohibits the willful killing or harassment of migratory birds. Where practicable, clearing, excavation, and fill activities shall

be completed before or after the nesting season to avoid impacts to breeding migratory birds unless the site has been sufficiently disturbed or altered during non-breeding periods (e.g., with fill, plastic, or other materials) to eliminate suitable nesting habitat (for example, the work area could be cleared of vegetation before the breeding season. This would render the area unsuitable for breeding birds before their arrival and facilitate work during the breeding season without impacts to birds. However, large areas should not be stripped of vegetation months before initiating work, which could result in even greater damage caused by excessive erosion). Nesting seasons vary throughout the state, and U.S. Fish and Wildlife or the Corps should be contacted to determine when these disturbance activities should be avoided. For further information, you may look at the USFWS site, http://alaska.fws.gov/fisheries/fieldoffice/anchorage/pdf/vegetation_clearing.pdf

- 18) Prior to fill placement and installation of an on-site wastewater treatment system (including mounded systems or package plants) within the fill site or contiguous wetlands, on-site sewage system design plan approval shall be obtained from the Alaska Department of Environmental Conservation.
- 19) The proposed operation activity shall be in compliance with applicable State of Alaska, Department of Environmental Conservation, Alaska Pollution Discharge Elimination System Permit.
- 20) The permittee shall contact the Alaska Department of Transportation and Public Facilities if proposed access roads are connected to the State road system. This will ensure that the access roads and driveway widths are sufficient to meet State standards.
- 21) Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance. The permittee must maintain the lands and facilities subject to this RGP in good condition and in conformance with the terms and conditions of this RGP. The permittee is not relieved of this requirement even if the activity is abandoned. The permittee may transfer the permit to a third party in compliance with condition number 22 below. Should the permittee cease to maintain the authorized activity or should they desire to abandon the project without a transferee, then the permittee must obtain approval from this office, which may require restoration of the area.
- 22) If the permittee sells the property associated with a RGP verification, the permittee may transfer this RGP verification to the new owner by submitting a letter to the Corps to validate the transfer. A copy of this RGP verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this RGP are still in existence at the time the property is transferred, the terms and conditions of this RGP, including any special conditions, will continue to be binding on the new

owner(s) of the property. To validate the transfer of this RGP and the associated liabilities associated with compliance with its terms and conditions, the signature of the transferee and date appear below.”

(Transferee signature)

(Date)

(Printed name)

- 23) Any activity being performed under this permit may be summarily suspended, in whole or in part, upon a finding by the DC that there is noncompliance with any of the terms or conditions of this RGP, or that there is noncompliance with a related nationwide or individual permit, or that there is a violation of Federal law associated with the activity, or that the immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate: (1) the extent of the suspension; (2) the reasons for such action; and (3) any corrective or preventive measures to be taken by the permittee which are deemed necessary by the DC to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of such notice. Within 10 days following receipt of a notice of suspension, the permittee may request a public hearing in order to present information relevant to a decision as to whether the authorization should be reinstated, modified, or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee, if no hearing is requested, the authorization will either be reinstated, modified, or revoked.
- 24) The permittee shall allow the DC or their authorized representative(s) to inspect authorized work at any time deemed necessary to assure that on-going and completed work is in compliance with the terms and conditions of this RGP.
- 25) All activities identified and authorized herein shall be undertaken in a manner that is consistent with the terms and conditions of this RGP, and any activities undertaken by the permittee that are not specifically identified and authorized herein shall constitute noncompliance with the terms and conditions of this RGP, and consequently, a violation of the Clean Water Act, which may result in the modification, suspension, or revocation of any authorization by the Corps in whole or in part, and in the institution of such legal, administrative, or judicial proceedings as the United States Government may consider appropriate, whether or not these permits have been previously modified, suspended, or revoked in whole or in part.

26) Fill shall only be placed in wetlands for house pads, drives, or septic systems when lots have been sold for residential construction, or if the applicant chooses to build homes for sale, model, or personal use.

27) Measures should be implemented to prevent the introduction and spread of invasive plant and animal species, such as washing equipment to remove dirt and debris that might harbor invasive seeds before entering the job site, using weed-free fill, disposing of spoil and vegetation contaminated with invasive species appropriately, and revegetating with local native plant species.

General Conditions:

- 1) Permit Expiration. The RGP-07 expires on _____. Unless activities authorized under the RGP-07 have commenced construction or are under contract to commence construction by [pending], 2022, the time limit for completing work ends upon the expiration date of RGP-07. Activities authorized under RGP-07 which have commenced construction or are under contract to commence construction by _____, will have until _____, to be completed under the terms and conditions of RGP-07, unless the District Engineer's discretionary authority is exercised on a case-by-case basis to modify, suspend, or revoke the authorization.
- 2) Verification. Written verification that the project may proceed under RGP-07 must be received from this office prior to commencing construction.
- 3) Avoidance and Minimization. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on-site).
- 4) Fill Dimensions. Residential and community developments or the addition of fill to any existing subdivision or development must meet the following criteria:
 - a. Total fill area will not cumulatively exceed five acres of impacts (i.e. roads in combination with house pads, driveways and other fill on individual lots) in wetlands.
 - b. Fill pads for a single residential structure and associated development will not exceed a footprint size of 0.30 acres in wetlands (i.e., total fill for the house pad, parking area, utility lines, and driveway will not exceed 0.30 acres in wetlands).
 - c. Access roads will not cumulatively exceed 2,000 feet long by 30 feet wide footprint dimensions in wetlands. Access roads are defined as any road

constructed primarily to access a community project or more than residential lots.

- d. Residential driveways are limited to a maximum footprint dimension of 200 feet long by 30 feet wide in wetlands, and are defined as a connecting link of fill between a road and an individual house.
- 5) Contractor Notification. All contractors involved in this RGP authorized activity must be provided copies of this permit in its entirety. A copy shall remain on site at all times during construction. A complete copy of these documents shall remain on site at all times during implementation of the authorized activity.
- 6) Impacts to Adjacent Waters of the U.S. In order to comply with this RGP, activities must not adversely affect adjacent waters or wetlands by causing ponding, drainage, siltation or inadvertent fill. Culverting, buffer zones, or other methods may be required to ensure compliance with this condition.
- 7) Suitable Fill Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
- 8) Permafrost. If permafrost is present, sufficient fill (or other methods of insulation) must be placed on the ground to provide thermal stability. Signs of thermokarsting or standing water indicate non-compliance with this condition.
- 9) Water Quality Certification. You must comply with all conditions specified as part of the Alaska Department of Environmental Conservation Water Quality Certification, which is part of this RGP.
- 10) Endangered Species. The activity must not jeopardize the continued existence of any threatened or endangered species, as identified under the Endangered Species Act, nor endanger the critical habitat of such species.
- 11) Essential Fish Habitat. The activity must not adversely affect Essential Fish Habitat (EFH).
- 12) Historic and Archaeological Sites. This RGP does not authorize activities, including the use of material, borrow sites, in or that adversely affect known historic properties listed or potentially eligible for the National Register of Historic Places, nor any such sites listed or found to be potentially eligible in the future. The permittee must stop work when cultural resources are inadvertently discovered during the course of work and notify the Corps. The Corps would enter into consultation with the Alaska State Historic Preservation Office to determine if historic properties would be affected by the permitted work. Work

shall resume after cultural resources have been evaluated pursuant to Section 106 of the National Historic Preservation Act.

- 13) Maintenance. You must maintain the authorized activity in good state, and in conformance with the terms and conditions of this RGP.
- 14) Inspections. You must permit the District Engineer, or his designated representatives, to inspect the authorized activity at any time deemed necessary to ensure that it is being, or has been accomplished in accordance with the terms and conditions of this RGP.
- 15) Modification by Other Authorizations. If the work proposed under this RGP is subsequently modified by any other Federal, State, or local governmental authorization, a re-verification by the Corps to perform activities under this RGP may need to be obtained.
- 16) Hazardous Materials. This RGP does not apply to any project involving the use or storage of hazardous wastes or hazardous substances as part of its principal purpose. These materials are defined in the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act (RCRA), 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Contact the Alaska Department of Environmental Conservation or the U.S. Environmental Protection Agency for information about hazardous materials.
- 17) Use of Multiple General Permits, including Nationwide Permits. The use of more than one RGP or Nationwide Permit (NWP) for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the RGP and/or NWPs does not exceed the acreage limit of the RGP/NWP with the highest specified acreage limit.

MITIGATION

This RGP is conditioned to prohibit discharges of any fill material within 300 feet of any streams, sloughs, rivers, ponds, lakes, permanently flooded wetlands or tidal waters (except for those excluded areas and activities in section 2 above). This RGP also includes other conditions requiring best management practices to minimize impacts to wetlands. Additionally, a mitigation statement is required with the application showing the avoidance, minimization and compensatory mitigation proposal for unavoidable impacts.

For all other locations covered by this RGP the district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

- a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to wetlands to the maximum extent practicable at the project site (i.e., on-site).
- b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
- c) Compensatory mitigation will be considered on a case by case basis for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR 332.

MONITORING

The Corps will conduct an annual review of all projects authorized during the previous year. Pertinent information from these cases shall be compiled into a report and entered in the official RGP file. Copies of this report shall be made available to the interested public, and to local, state and federal agencies for their information upon request. In addition, periodic field inspections shall be undertaken by this office of projects authorized under this RGP. Reports shall be prepared for all field inspections and entered into the official RGP file. The Regulatory Division shall maintain a file of RGP-related documents and monitoring efforts. The information contained in this RGP file shall provide the basis for the decision whether or not to revise or renew this RGP. If it is determined that projects authorized by this RGP result in greater than minimal adverse environmental impacts, then this RGP shall be modified, suspended, or revoked to prevent further impacts.

COMPLIANCE

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

Failure to comply with this the terms and conditions of this RGP can subject the permittee, as well as contractors or other persons acting for the permittee, to severe penalties. Should the Corps determine that an activity is not in compliance with this RGP, the permittee may be required—at their expense—to implement corrective measures, remove fill and/or restore any areas affected by the noncompliance, in accordance with 33 CFR Part 326 and Section 309 of the Clean Water Act.

Noncompliance could also result in suspension, revocation or modification of the RGP authorization (pursuant to 33 CFR 325.7), initiation of legal action by the Federal Government, issuance of a monetary penalty ranging up to \$52,414 per day of violation, and/or imprisonment for up to one year.

FURTHER INFORMATION:

- 1) **Congressional Authorities.** Authorization to undertake the activities described above is pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Work that also requires authorization under Section 10 of the Rivers and Harbors Act must be authorized separately through nationwide or individual permits.
- 2) **Limits of this authorization.**
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
- 3) **Limits of Federal Liability.** In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
- 4) **Reliance on Applicant's Data.** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information provided by the applicant.

5) **Reevaluation of Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. The permittee fails to comply with the terms and conditions of this permit.
- b. The information provided by the applicant in support of the permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

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

6) **Reevaluation this RGP.** This office may also reevaluate its decision to issue the RGP-02 at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following: significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7.

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

FOR THE DISTRICT COMMANDER:

Sheila Newman
Deputy Chief
Regional Regulatory Division
Alaska District Corps of Engineers

Date

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

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

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

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

Location of the Proposed Project Site:

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

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

The GPA must include:

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

Description of the proposed project:

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

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

Type

Type

Type

Amount in Cubic Yards

Amount in Cubic Yards

Amount in Cubic Yards

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

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

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

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

YES or NO

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

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

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

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

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

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

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

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

YES or NO

If YES, list all species:

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

YES or NO

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

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

YES or NO

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

Jurisdictional Determination

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

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

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

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

Please indicate which you prefer:

NO JD REQUESTED or AJD or PJD

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

SIGNATURE OF APPLICANT DATE

SIGNATURE OF AGENT DATE

Regional General Condition: MITIGATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Applicant Proposed Mitigation Statements

Definitions:

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

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

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

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

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

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

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

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