



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:	December 19, 2017
EXPIRATION DATE:	January 18, 2017
REFERENCE NUMBER:	POA-2015-564
WATERWAY:	Seldovia Slough

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

Any comments regarding this Public Notice should be mailed to the address noted above. If you desire to submit your comments by email, you should send them to the following email address: Katherine.a.mccafferty2@usace.army.mil. All comments should include the Public Notice reference number listed above.

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 Katherine A. McCafferty, Project Manager, at (907) 753-2692, by fax at (907) 420-0813, or by email if further information is desired concerning this notice.

APPLICANT: Mr. Greg Davis, Precious Earth, Inc., Post Office Box 10808, Bakersfield, California 93389

AGENT: Mr. Zane Henning, Alaska Holdings, LLC. dba Alaska Enviro, Post Office Box 11, Seldovia, Alaska 99663

LOCATION: The project site is located within Section 32, T. 8 S., R. 14 W. and Sec. 6, T. 9 S., R. 14 W., Seward Meridian; USGS Quad Map Seldovia B-5; Latitude 59.433574° N., Longitude 151.717194° W.; Kenai Peninsula Borough parcels 191-130-09, 192-110-07, 192-110-06, 192-110-05, 192-110-04, and 192-110-03; Seldovia, Alaska.

SPECIAL AREA DESIGNATION: The project is located within the Kachemak Bay National Estuarine Research Reserve and the State of Alaska Kachemak Bay Critical Habitat Area.

PURPOSE: The applicant's stated purpose is to install shot quarry rock to protect the northern and eastern shoreline and structures above the shoreline from further erosion and undermining of uplands. The project would also incorporate safe driveway access to Backers Lane from Precious Earth Parkway to help fully realize the use and value of the property for the owner, City of Seldovia and Kenai Peninsula Borough.

PROPOSED WORK: The applicant proposes to permanently discharge up to 10,000 cubic yards of quarry shot rock into a total of 0.88-acres below the high tide line (HTL, 23.1 feet above the mean lower low water elevation of 0 feet) of Seldovia Slough in order to install 770 feet of bank stabilization and a 630 foot long permanent access road to Backer's Lane. A portion of the proposed fill would be placed below the mean high water mark (MHW, 17.0 feet above mean lower low water elevation of 0 feet) of Seldovia Slough, which is a navigable water of the U.S.

The 630 foot long access road would impact 0.43-acres below the HTL, and require 7,500 cubic yards of rock. The road would have a 10 foot wide driving surface and would be up to 30 feet wide at the base. The applicant states that the road would also provide bank stabilization. Up to 680 cubic yards of quarry shot rock are already in place as part of construction of an authorized temporary access road; the applicant proposes to retain this rock. This 680 yards of rock are included in the total proposed fill for the access road.

The 770 feet of bank stabilization would impact 0.45-acres below the HTL, and would require 2,500 cubic yards of rock. The bank stabilization would be up to 50 feet wide.

Up to 5 cubic yards per running foot of quarry shot rock would be placed along the north shoreline and up to 1 cubic yard per running foot of rock would be placed along the east shoreline. Seventy percent of the quarry shot rock would consist of ¾ inch to 1 foot in size and thirty percent of the rock would range from 2 feet to 3 feet in size. Rock would be purchased from local pits in Seldovia.

Work is proposed to begin in May of 2018, and to be completed by December of 2018.

All work would be performed in accordance with the enclosed plan (sheets 1-9, and 11), dated November 20, 2017, and (sheet 10), dated October 26, 2017.

ADDITIONAL INFORMATION:

Other required authorizations:

- Alaska Department of Fish and Game Special Area Permit
- Alaska Department of Natural Resources Tidelands Easement
- Alaska Department of Environmental Conservation Storm Water Pollution Prevention Plan and Notice of Intent

Permitting History:

A Nationwide Permit (NWP) 13, for Bank Stabilization, was issued on February 9, 2016, authorizing the permanent discharge of 311 cubic yards of rock fill into no more than 0.03-acres along 350 linear feet of the north bank of Backer's Island, below the HTL and above the MHW of Seldovia Slough. The NWP 13 also authorized the temporary discharge of up to 7,000 cubic yards of rock into 0.29-acres below the HTL and MHW of Seldovia Slough in

order to construct a temporary access road along the south end of Backer's Island to Backer's Island Lane right-of-way. Up to 680 cubic yards of quarry shot rock has been placed along the isthmus to Backer's Island as part of construction of the temporary access road, however the road was not completed.

Alternatives Considered:

1. Utilization of uplands along the isthmus: The applicant stated that the uplands property along the isthmus is not available as an alternative as the current owner is unwilling to sell the property.
2. Construct an access road along the utility corridor: This option would require blasting the existing 20 foot slope to follow the existing utility easement overland. The applicant has stated that this alternative would result in the removal of twelve 200 year old trees and would create unnecessary environmental and visual impact to the island compared to the proposed placement of rock fill on top of existing rock. The applicant states that the visual appearance of the proposed project would be no different than that of Seldovia Harbor.
3. Access Backers Island by dock: The applicant states that accessing Backers Island by boat or float plane is not feasible as it would not allow for 24 hour safe access. Any required dock would go dry at low tide, and walking from a boat or plane across the beach at low tide would require crossing muddy or slippery beach. In addition, this alternative would not allow emergency personnel to access the island at all times, creating delays in emergency situations.

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 and Minimization: The applicant stated that fill would be placed above the 17-inch MHWL where possible. Driveway access would be limited to one lane width and would be built to only 23 feet in height. The access road width was reduced to 10 feet wide where possible and all slopes were reduced from 3:1 to 2:1. In addition, the road was modified so that it hugs the toe of the cliff along Lot 5, where possible. The rock fill would be discharged at low tide and floating silt fences would be installed to minimize turbidity. In addition, the applicant would stop work if wildlife is present in the project area.

b. Compensatory Mitigation: The applicant states that no compensatory mitigation is needed. One of the stated reasons for the project is to mitigate erosion that is currently undermining uplands and structures erected on the uplands. The applicant states that the bank stabilization and road access would create more ground stability and hiding locations behind large rocks for small crabs and vegetation.

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. We have defined our scope of analysis under Appendix C of 33 CFR 325 (permit area) to be the footprint of the bank stabilization and road project described above.

There are no known cultural resources in the permit area or within the vicinity of the permit area. Consultation of the AHRs constitutes the extent of cultural resource investigations by the Corps of Engineers (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. We have determined that the proposed project would have no effect on historic properties based upon its location in intertidal waters which are subject to disturbance by tidal action and because no sites were identified in AHRs.

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: The project area is within the known or historic range of the endangered Short-tailed albatross (*Phoebastria albatrus*), the endangered Steller sea lion (*Eumetopias jubatus*), the endangered Cook Inlet beluga whale (*Delphinapterus leucas*), and the endangered Western North Pacific DPS of the Humpback whale (*Megaptera novaeangliae*), the threatened Mexico DPS of the Humpback whale, and the endangered fin whale (*Balaenoptera physalus*). The project is also located in designated critical habitat for the Steller sea lion.

We have determined the described activity would have no effect on any listed 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 pink salmon (*Oncorhynchus gorbuscha*), chum salmon (*Oncorhynchus keta*), sockeye salmon (*Oncorhynchus nerka*), Chinook salmon (*Oncorhynchus tshawytscha*), and coho salmon (*Oncorhynchus kisutch*).

The applicant provided a technical memorandum, "Site Evaluation POA-2015-564, Seldovia Slough," dated September 15, 2016, which describes habitat and organisms that were observed during a site visit. The memorandum describes the site as consisting of protected partially mobile sediment, and sediment and rock habitat class, with tidal biobands that included a narrow black lichen splash zone, mixed barnacles and periwinkles, filamentous

green algae, mixed rockweed and green algae, and organic benthos. The memorandum concludes that the site did not appear to be particularly pristine or productive habitat but supports common intertidal organisms. The memorandum states that the existing rip rap road base has been colonized by periwinkles and barnacles. This document is available upon request. The size of the area to be impacted is relatively small compared to the size of the habitat occupied by salmonids, the proposed project would not block movement of salmonids along the shoreline, and the proposed habitat loss would not have a substantial effect on the salmonid populations.

We have determined the described activity would not adversely affect EFH in the project area.

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 of Engineers 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 of Engineers 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).

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-2015-564, Seldovia Slough**, 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.