



US Army Corps  
of Engineers  
Alaska District

# Public Notice of Application for Permit

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

<b>PUBLIC NOTICE DATE:</b>	<b>February 19, 2015</b>
<b>EXPIRATION DATE:</b>	<b>March 23, 2015</b>
<b>REFERENCE NUMBER:</b>	<b>POA-2014-502</b>
<b>WATERWAY:</b>	<b>Cook Inlet</b>

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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.

Comments on the described work, with the reference number, 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 Michael Setering at (907) 753-2689 or by email at Michael.t.setering@usace.army.mil if further information is desired concerning this notice.

**APPLICANT:** Rick Koch (City of Kenai)

**AGENT:** Robin Reich (Solstice Alaska Consulting, Inc.)

**LOCATION:** The project site is located within Section 7, Township 5 N., Range 11 W., Seward Meridian; USGS Quad Map AK-Kenai C-4; Latitude 60.53351° N., Longitude -151.26633° W.; in Kenai, Alaska.

**PURPOSE:** The applicant's stated purpose is to provide safe and efficient access to South Beach located at the mouth of the Kenai River.

**PROPOSED WORK:** The City of Kenai proposes to discharge 5,600 cubic yards of gravel fill into 1.35 acres of estuarine intertidal emergent wetlands to facilitate construction of an access road from Sea Catch Drive to South Beach (see enclosures). The proposed road would primarily serve as access to the mouth of the Kenai River for the "dipnetters" in support of a personal use salmon dipnet fishery that occurs annually; however, it may facilitate access to South Beach for other user groups as well.

Each July, thousands of dipnetters descend on South Beach to access fishing areas near the mouth of the Kenai River. Traditional access has been from the south, via Dunes Road, where vehicles would drive 2-3 miles north along the Cook Inlet beach, often traveling across privately owned tidelands (above the Mean High Water (MHW) mark) to reach the mouth of the river.

The applicant has indicated that current vehicle access occurs above and below the MHW depending on the tide cycle. This intertidal access is not safe or efficient, and is often accomplished illegally. Legal access along the beach is limited, which can be problematic during the congested dipnetting season, and creates unsafe

conditions, not only for the dipnetters, but also for emergency, sanitation and maintenance vehicles that service the South Beach area.

The proposed access road would be 1,500-ft in length, 26-ft wide driving surface, 38-ft bottom width, with 2:1 (H:V) side-slopes, providing two lanes for vehicular traffic. The road would be underlain with 4-in of leveling course, 8-in of type IIA classified fill, and 24-in of type II classified fill, and geotextile material. The proposed access road would include installation of 19 24-in diameter metal culverts, spaced 100-ft apart, with the exception of the culverts installed at the bend in the access road, shown on sheet 6, those culverts would be spaced 50-ft apart.

Electrical and data lines would be installed within the road prism to support operations of two proposed "fee stations" to be located at the end of the access road at the beach entrance. The fee stations would collect fees from users accessing the beach, and monies collected would help fund the beach maintenance activities, provided by the City of Kenai each year during the dipnetting season. The fee stations would be constructed in uplands, outside our regulation jurisdiction.

Additional work that is proposed in uplands, outside our jurisdiction, includes construction of a fence (galvanized chains, treated wood posts) to control access and protect the dunes and wetlands adjacent to South Beach (see enclosure for detail).

All work would be performed in accordance with the enclosed plan (sheets 1-11), dated December 16, 2014.

**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: Avoidance of impacts to waters of the United States is not practicable due to constraints with adjacent private land ownership.

b. Minimization: Minimization of impacts to waters of the United States is demonstrated by reducing the access road side-slopes from 3:1 to 2:1, minimizing impacts to wetlands by 0.22 acre.

c. Compensatory Mitigation: The applicant proposes to preserve (in perpetuity) 3.2 acres of land, via conservation easement, adjacent to Sea Catch Drive. This is a conceptual proposal as we do not have a detailed compensatory mitigation plan. The applicant anticipates submitting a plan in the near future. Also proposed as compensatory mitigation, the applicant is proposing to construct a fence (described above) for access control and protection of the dunes and adjacent wetlands.

**ALTERNATIVES:** Currently, the applicant has presented three alternatives in addition to the preferred alternative; two alignment alternatives, and a no action alternative. Please see Figure 1 (enclosed) illustrating Alternatives A, B, and C. Prior to reaching a permit decision, the Corps will be working with the applicant to further explore practicability of alternatives.

- a. No Action Alternative: Under the no action alternative, there would be no road constructed, thus no impacts to waters of the United States, including wetlands; access to South Beach would continue from Dunes Road along the beach, north to the mouth of the Kenai River.

The applicant claims this is not reasonable or practicable as access to South Beach often includes trespassing across private tidelands (above MHW), and due to tide cycles, the frequency which dipnetters could safely travel below MHW is extremely limited, which would result in disruption of access and traffic congestion. If emergency services are needed at South Beach, vehicular access may be cutoff, delaying the necessary (potentially life-saving) response.

The applicant has also noted that the no action alternative has environmental consequences. Without dependable, consistent, legal access, law enforcement, sanitation and maintenance services may not be routinely utilized due to irregular access; fish carcasses may be left on the beach to rot, portable toilets may not be serviced, law enforcement may have less oversight of the crowded areas.

- b. Alternative A: The access road would begin at the bend of Sea Catch Road (see enclosure), and would continue due west to the beach. The applicant stated that although Alternative A would be the most simple in design and inexpensive to construct, bisecting the wetland is the most environmentally-damaging alternative as it would fragment a large portion of the estuarine wetland, which provides valuable functions and habitat for many wildlife species. As such, the City of Kenai dismissed Alternative A from further consideration.
- c. Alternative B: The access road would start at Sea Catch Road and would run parallel along the wetland/upland boundary. This alternative would minimize wetland impacts to the greatest extent; however, this alternative would pass through privately owned land, and the City of Kenai has been unsuccessful in negotiating a land sale or obtaining a right-of-way easement with the property owner.
- d. Alternative C: Applicant-preferred alternative, as proposed in the project description above. Under this alternative, the access road would be constructed entirely on city-owned land, abutting the property boundary of the adjacent landowner, to further minimize impacts to aquatic resources. The applicant has stated that Alternative C is not least environmentally-damaging alternative; however, the City of Kenai believes it is the most practicable alternative given the constraints with the adjacent landowner, while minimizing impacts to terrestrial and aquatic resources to the greatest extent.

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 listed or eligible properties in the vicinity of the worksite. Consultation of the AHRs constitutes the extent of cultural resource investigations by the District Commander at this time, and he is otherwise unaware of the presence of such resources. 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.

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 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).

No EFH species are known to use the project area. Thus 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 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).

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

## **ANCHORAGE**

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-2014-502, Cook Inlet**, 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.