



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

PUBLIC NOTICE DATE:	May 21, 2015
EXPIRATION DATE:	June 19, 2015
REFERENCE NUMBER:	POA-1998-771-M2
WATERWAY:	SALMON CREEK

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 Katherine A. McCafferty at (907) 753-2692, by fax at (907) 753-5567, or by email at Katherine.a.mccafferty2@usace.army.mil if further information is desired concerning this notice.

APPLICANT: Mr. Blaine Bardarson, P.O. Box 689, Seward, AK 99664, (907) 362-3812

AGENT: Shannon & Wilson, 5430 Fairbanks Street, Suite 3, Anchorage, AK 99518, ATTN: Mr. Matt Hemry, (907) 561-2120

LOCATION: The project site is located within SW 1/4-1/4, SW 1/4, Section 26, T. 1 N., R. 1 W., Seward Meridian; USGS Quad Map Seward A-7; Latitude 60.142973° N., Longitude 149.414528° W.; Balmat Subdivision, Lots 9-11, 19-21, 33 and Bardarson Lane; near Seward, Alaska.

PURPOSE: The applicant's stated purpose is "to construct a commercial structure, parking area, and Bardarson Lane, pending permit receipt. The commercial structure will help relieve the shortage of retail and office space in the Seward area. The parking area will be used to supplement the existing truck terminal, overflow boat storage, and temporary storage of railroad and dock freight which is currently beyond capacity on the adjacent property."

PROPOSED WORK: The applicant proposes to permanently discharge 20,000 cubic yards of pit run fill into 2.4 acres of waters of the U.S., including wetlands in order to construct a fill pad, a 30,000 square foot retail structure, parking, a truck terminal, an overflow boat storage area, areas for temporary storage of railroad and dock freight, and Bardarson Lane.

In addition, the applicant has requested after-the-fact authorization for the discharge of 1,300 cubic yards of pit run gravel into 0.2 acres of jurisdictional wetlands on Lot 33. This work was done in conjunction with the work authorized which was under an individual permit, file number POA-1998-771, and was issued to the applicant on May 15, 2003.

Of the 2.6 acres of total proposed fill area, the fill for the retail structure would impact 1.74 acres, the fill for the storage pad would impact 0.42 acres, and the fill for Bardarson Lane would impact 0.44 acres.

The fill source would be determined based on availability at the time of the permit receipt and may include dredged material from the Resurrection River Flood Mitigation Project, area Alaska Department of Transportation and Public Facilities (ADOT &PF) road improvement projects, or the local gravel pit. The property owner would visually inspect the fill for potential contaminants prior to deposit into the wetlands. Fill with a visual sheen and/or odor would not be used. The fill would be placed directly onto the wetlands; no mechanical clearing is planned. The proposed fill areas include 1.74 acres for the building pad, 0.44 acre for the proposed Bardarson Lane, and 0.42 acre for the storage pad.

The southern portion of the project area would be primarily used as a truck terminal and an overflow boat storage area on an as-needed basis. The proposed gravel pad would be used for temporary storage of freight from the nearby railroad and dock prior to placing the cargo onto delivery trucks.

Site preparation activities associated with the proposed development would commence following permit authorization. Site work would coincide with publicly-funded projects in the Seward area, the applicant intends to use clean imported fill from the public projects for the construction of the gravel pads.

All work would be performed in accordance with the enclosed plan (sheets 1-2 and 4-5), dated November 2014 and (sheet 3) dated March 2015.

ADDITIONAL INFORMATION:

Activities that do not require Department of the Army Authorization:

The commercial structure would consist of 30,000 square feet of retail/office space. The retail space, located at the site's northwest corner, would be 2 stories with a ground level retail footprint of 15,000 square feet. The top floor of the building would be used as office space. Utilities would be installed within the proposed fill. Private water well(s) may be drilled to accommodate the project's need.

Other approvals which are required from other Federal, State, or Local Agencies for work described in this Notice: Floodplain Development Permit from the Kenai Peninsula Borough, a Fish Habitat Permit from the Alaska Department of Fish and Game, and a Construction General Permit (2011 ACGP) from the Alaska Department of Environmental Conservation.

Alternatives:

The applicant has provided the following alternatives information:

The applicant's criteria for site selection are:

- Site with frontage visible along the Seward Highway;
- Located within minutes to the downtown central business district, boat harbor, and Seward Marine Industrial Center and allows direct access to the Seward Highway;
- Minimum site size of 11.5 acres (total area including the parcels filled under the previous permits and the proposed area to be filled under this permit application);
- Full service utilities readily available to the project site;
- Property already owned, or is both available at a fair market price and has sufficient percentage of land for cost-appropriate development.

According to the applicant, there are only three other sites (sites 2-4 on Table 1) remaining in the Seward area that have the acreage to accommodate the proposed retail development project.

The applicant has stated: "two of the alternate sites (Sites 2 and 3) are located across Resurrection Bay and therefore incur drawbacks regarding accessibility, visibility, and location. Also note that according to the Kenai Peninsula Borough, tidal and lakebed wetlands are present on Site 2 thus requiring additional regulatory overview and permitting. Site 3 is located along the Seward Highway, but riparian wetlands are mapped on a portion of the parcel. Also note that each of the three alternate sites are priced at a minimum of \$1.3 million and would render the proposed retail development project unattainable based on land acquisition costs. Also note that the road and

railway embankments north and east of the Property, respectively, offer flood protection to the proposed project area. The alternate sites do not have flood protection and are therefore more susceptible to flood damage.”

The applicant has concluded that there are no other alternative and practicable sites that are suitable locations for the proposed retail development project.

**TABLE 1
ALTERNATE SITES EVALUATED**

Alternate Site Number	Location (See Figure 2)	Size (Acres)	Wetlands Present	Owner	Cost	Suitability for Proposed Project
1	Subject Property - Seward Business Park Lots 9 through 11, 19 through 21, 33, and 34, Balmat Subdivision	2.6	Riparian	Private	Owned by applicant	Excellent location, accessibility, and visibility. Utilities available. Viability of project depends on percentage of on-site areas that can be developed.
2	511 Nash Road	130.2	Tidal/Lakebed	Private	\$1,495,000	Poor visibility and location. Wetland mitigation likely required prior to site development. Property acquisition is cost prohibitive.
3	1121 Nash Road	16.01	None*	Private	\$1,625,000	Poor visibility and location. Wetland mitigation likely required prior to site development. Property acquisition is cost prohibitive.
4	2405 Seward Highway	5.7	Riparian	Private/Municipal	\$1,300,000	Size limitations. Wetland mitigation likely required prior to development. Property acquisition is cost prohibitive.

* Although wetlands are not identified by the KPP, wetlands may be encountered during site reconnaissance.

Previous Actions:

A Nationwide Permit (NWP) 18, Minor Discharges, was verified in a letter dated, June 22, 1999. The NWP authorized the discharge of fill into 0.1 acres of wetlands for the purpose of creating an area for parking and a tack shed.

An individual permit, file number POA-1998-771, was issued to Mr. Bardarson on May 15, 2003. The permit authorized the discharge of 75,000 cubic yards of pit run gravel into 4.5 acres of wetlands in order to create a boat storage facility.

The individual permit has been modified one time. Modification 1, issued May 2, 2008, extended the time to complete construction to May 31, 2009; amended Special Condition 5 to require the installation of temporary sediment and erosion control measures until such time as a permanent drainage is constructed; and amended Special Condition 7 to extend the time to complete the construction of the additional open water habitat to December 31, 2008. In a letter dated, January 8, 2010, Mr. Bardarson was released from the conditions of Special Condition 7.

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: Modifications to the planned site design, including size reduction and site configuration, were incorporated to reduce adverse impacts to the wetlands. Size reduction includes potentially decreasing the building footprint area, and/or storage areas as a means of retaining additional wetland. In an effort to save wetlands, the applicant has already reduced the number of proposed structures from four to one. Removing the lone structure will reduce the capability if the proposed development to operated as a viable retail center for the community. The building footprint was specified based on actual demand from potential tenants. The building's footprint cannot be reduced further and still accommodate tenants needs.

b. Minimization: Mitigation measures to minimize the impact of the loss of 2.6 acres of wetlands include implementing the following general best management practices:

1. The project limits would be identified in the field by using staking and/or flagging to prevent the filling of un-permitted wetlands.
2. Prior to filling the creek, the creek to be would be inspected by sweeping a fishing net in the standing water of the creek three times to confirm the absence of fish. If fish are observed, they would be relocated using proper release methods.
3. The stream would be filled between May 15th and July 15, at which time salmonid eggs and fry are not likely to be present.
4. The equipment used to fill the wetlands would operate, to the extent possible, from upland areas to minimize the disturbance to the stream channel and wetlands.

5. Silt fences would be installed parallel to and within 10 feet of the toe of the fill and any soil placed within 25 feet of the creek, to minimize sediment and turbidity. The silt fences would be installed properly and maintained during the construction period.
6. Construction activities within wetlands and waterways would not be accomplished during the bird window of April 15th to July 15th, at which time bird eggs and hatchlings are likely to be present.
7. Equipment would not be stored, maintained, repaired, and fueled in the waters of the U.S. and would remain inside the project area.

c. Compensatory Mitigation: The applicant provided the following statement: "A wetland function assessment for wetlands was conducted and the wetlands are considered a low to moderate function (Category III).

SUMMARY OF WETLAND FUNCTIONS

SPECIFIC FUNCTIONS:	Current Wetlands
Flood Flow Alteration	Moderate
Sediment Removal	Moderate
Nutrient and Toxicant Removal	High
Erosion Control and Shoreline Stabilization	Low
Production of Organic Matter and its Export	Moderate
General Habitat Suitability	Moderate
General Fish Habitat	Moderate
Native Plant Richness	Moderate
Education or Scientific Value	Low
Uniqueness and Heritage	Low
OVERALL SCORE	MODERATE

Mitigation for the fill of 2.6 acres proposed to be filled under this permit application would be required. Using the restoration and/or enhancement ratio for moderate (Category III) wetlands (1:1), there is not enough area for an on-site restoration/enhancement project, noting that Lots 29 through 32 and 40 through 45 (adjacent east) were previously placed in mitigation under Special Condition No.2 of the 2003 permit. Instead, the preservation ratio of 2:1 would be used for mitigation of the wetland fill and would include payment to an in-lieu fee sponsor."

The applicant proposes to purchase in-lieu fee credits from The Conservation Fund (TCF), once TCF makes credits available.

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 is an unevaluated property in the vicinity of the worksite. It has been designated SEW-00007. There are potentially eligible properties in the vicinity of the worksite. They have been designated SEW-00029, SEW-00148, and SEW-01557. Sites SEW-00007, SEW-00029, SEW-00148, and SEW-01557 are not within the permit area.

We have defined our scope of analysis under Appendix C of 33 CFR 325 (permit area) to be the 2.6 acres of proposed fill as the entire footprint of the fill lies within waters of the U.S.

We have determined that the proposed project would have no effect to historic properties. 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).

The project area is within the known range of the Coho Salmon (*Oncorhynchus kisutch*).

We have determined the described activity would adversely affect EFH in the project area for the Coho salmon. The proposed project would result in the permanent placement of fill in the upper reaches of three streams which are included in the Catalog of Waters Important for the Spawning, Rearing or Migration of Anadromous Fishes (catalog). The streams are identified in the catalog by stream codes 231-30-10080-2010-3011, 231-30-10080-2010-3011-4013, and 231-30-10080-2010-3011-4018. These three streams have been identified as providing rearing habitat for Coho salmon. A total of 170 linear feet of cataloged streams would be permanently lost as a result of the proposed project.

In a letter dated July 23, 2002, from National Marine Fisheries, Habitat Conservation, which provided comments on previous versions of the proposed project, NMFS stated that the project area contains essential fish habitat, in the form of rearing and/or overwintering habitat for Coho salmon. In addition, the letter stated that the adjacent wetlands have pockets of standing water and are an integral part of healthy productive fisheries habitat. NMFS also stated that hydrologic functions provided by these wetlands are short and long term water storage, which buffer peak flows and attenuate low flows in receiving waters. In addition, the wetland also serves to remove pollutants from water flowing off fill pads, paving, and buildings in the vicinity, which can severely impact incubating and young salmon.

This Public Notice initiates EFH consultation with the NMFS. Any comments or recommendations they may have concerning EFH 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 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) 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

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-1998-771-M2 Salmon Creek**, serves as application for State Water Quality Certification from the Department of Environmental Conservation.

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

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