



US Army Corps
of Engineers
Alaska District

Public Notice of Application for Permit

ANCHORAGE
Regulatory Division (1145)
CEPOA-RD
P.O. BOX 6898
JBER, AK 99506-0898

PUBLIC NOTICE DATE:	July 27, 2023
EXPIRATION DATE:	August 26, 2023
REFERENCE NUMBER:	POA-2023-00260
WATERWAY:	Tongass Narrows

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.

All comments regarding this public notice should be sent to the address noted above. If you desire to submit your comments by email, you should send it to the project manager's email as listed below or to regpagemaster@usace.army.mil. All comments should include the public notice reference number listed above.

All 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 Estrella Campellone at (907) 753-2518, toll free from within Alaska at (800) 478-2712, or by email at Estrella.F.Campellone@usace.army.mil if further information is desired concerning this public notice.

APPLICANT: John Webby, 13807 18th Avenue SW; Burien, WA 98166; email: john.webby@comcast.net; telephone: (206) 331-0715.

AGENT: Trevor Sande, R&M Engineering-Ketchikan, 7180 Revilla Road, Suite 300; Ketchikan, AK 99901; trevorsande@rmketchikan.com; telephone: (907) 225-7917.

LOCATION: The project site is located within Section 29, T. 74 S., R. 90 E., Copper River Meridian; USGS Quad Map Ketchikan B-6; Latitude 55.4242° N, Longitude 131.7809° W; Rocky Point Subdivision USS 2804, Lot 12; 10309 Rocky Point Drive, 3.5 miles northwest of Ward Cove, near Ketchikan, Alaska.

PURPOSE: The applicant's stated purpose is to build a new single-family residence. The seawall and placement of fill below the Tongass Narrows High Tide Line (HTL) is necessary because the buildable upland is very limited due to the geometry and topography of the lot.

PROPOSED WORK: To fill 0.046-acres below the HTL of Tongass Narrows to construct a building pad (370 cubic yards of fill) and a concrete seawall (115 cubic yards) for the new single-family residence on Lot 12, USS 2804. The proposed concrete wall would be 200 feet along the waterfront and terminate into the upland area. The seawall bottom would be at Mean High Water (MHW) line and the top at 23 feet elevation. Approximately 3,000 cubic yards of unsuitable soil and 9,400 cubic yards of rock would be excavated from the lot's uplands. The total fill would be approximately 600 cubic yards and would come from blasting the existing rock on site. A small ramp would be constructed to allow access to the sandy beach below for recreational use.

All work would be performed in accordance with the enclosed plan (sheets 1-6), dated May 12, 2023.

ADDITIONAL INFORMATION: The only suitable building area of the property is located below tidelands. Even though the building is sited on uplands to the extent possible, a small portion of beach needs to be filled to be able to construct the single-family home.

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: The proposed location of the seawall and the building pad was selected based on the geometry of the lot, which is primarily cliffs, limiting the buildable upland area. The owner's desire was to preserve as much of the sandy beach as possible, therefore, the building pad is the minimum required to fit the proposed single-family residence. Because of the way the lot was subdivided, most of the land lies between the HTL and the MHW with the remaining land a steep 40-foot cliff.
- b. Minimization: The building pad and driveway were chosen to be the smallest dimensions to accommodate the proposed residence and to preserve as much of the sandy beach as possible. The construction of the seawall would be done in dry conditions (low-tides) to minimize in-water sound transmission.
- c. Compensatory Mitigation: For the unavoidable losses, the applicant has proposed compensatory mitigation by purchasing credits from Natuhuni Bay (Sealaska) Mitigation Bank.

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

CULTURAL RESOURCES: The latest published version of the Alaska Heritage Resources Survey (AHRs) has been consulted for the presence or absence of historic properties, including those listed in, or eligible for inclusion in, the National Register of Historic Places. There are no cultural resources in the permit area; site KET-00348 (Nicholas Midden) is at approximately 500 feet from the permit area. The permit area has been determined to be Rocky Point Subdivision USS 2804, Lot 12. Consultation of the AHRs constitutes the extent of cultural resource investigations by the U.S. Army 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. This application is being coordinated with the State Historic Preservation Office (SHPO), Federally recognized Tribes, and other consulting parties. Any comments SHPO, Federally recognized Tribes, and other consulting parties 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 threatened Mexico Distinct Population Segment (DPS) of humpback whale (*Megaptera novaeangliae*).

We have determined the described activity would have no effect on the Mexico DPS of humpback whale or any listed or proposed threatened or endangered species and would have no effect on any designated or proposed critical habitat, under the Endangered Species Act of 1973 (87 Stat. 844). Therefore, no consultation with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (NMFS) is required. However, any comments they may have concerning endangered or threatened wildlife or plants or their critical habitat will be considered in our final assessment of the described work.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens 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 mapped EFH for Tongass Narrows Cove and designated as EFH under the Magnuson Stevens Fisheries and Conservation Management Act for all 5 species of Pacific salmon, Coho Salmon (*Oncorhynchus kisutch*), Chum Salmon (*O. keta*), Pink Salmon (*O. gorbuscha*), Chinook Salmon (*O. tshawytscha*), and Sockeye Salmon (*O. nerka*); Also 15 species of groundfish are known or likely to occur in Ward Cove (NMFS 2019, NOAA 2019), including Pacific Ocean Perch (*Sebastes alutus*), Yelloweye Rockfish (*S. ruberrimus*), Shortraker (*S. borealis*), Rougheye Rockfish (*S. aleutianus*), Southern Rock Sole (*Lepidopsetta bilineata*), Dover Sole (*Microstomus pacificus*), Flathead Sole (*Hippoglossoides elassodon*), Dusky Rockfish (*S. variabilis*), Walleye Pollock (*Theragra calcogramma*), Alaska Plaice (*Pleuronectes quadrituberculatus*), Sablefish (*Anoplopoma fimbria*), Pacific Cod (*Gadus macrocephalus*), Arrowtooth Flounder (*Atheresthes stomias*), Sculpin spp. (*Cottidae*), and Skates spp. (*Rajidae*).

The Alaska Department of Fish and Game and NMFS have also identified Pacific herring and Pacific halibut as important in the project area.

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

TRIBAL CONSULTATION: The Corps 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 Corps, 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 rights or resources. 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 impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which 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 decision whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur, are therefore determined by the outcome of this general balancing process. That 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, historic properties, 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 and 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 is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to

determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

AUTHORITY: This permit will be issued or denied under the following 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).

Project drawings are enclosed with this public notice.

District Commander
U.S. Army, Corps of Engineers

Enclosure