



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:	June 7, 2024
EXPIRATION DATE:	July 8, 2024
REFERENCE NUMBER:	POA-2023-00479
WATERWAY:	Upper Trail Lake

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 Nicholas Baggett at (907) 753-2670, or by email at nicholas.s.baggett@usace.army.mil if further information is desired concerning this public notice.

APPLICANT: Tracy Maxwell, 3218 30th Avenue West, Seattle, Washington, 98199

AGENT: Owen Means, HDL Engineering Consultants, LLC, 3335 Arctic Blvd, Anchorage, Alaska, 99517

LOCATION: The project site is located near Upper Trail Lake within Section 1, T. 4 N., R. 1 W., Seward Meridian; USGS Cape Flattery Quad Map; U S SURVEY 2528 LOT 1, Latitude 60.471632° N., Longitude -149.368505° W.; Parcel ID 12519018, at 1190 Seward Avenue, in Moose Pass, Alaska. Directions: From Soldotna, east on Sterling Highway 56 miles, then south

on Seward Highway 9.1 miles. Site is on the east side of the Seward Highway at the lat/long provided above. There is currently no driveway access to the property.

PURPOSE: The applicant's stated purpose is to construct a sustainable organic farm small business and have supplemental income from cabin rental properties from the adjacent upland hillside property. The proposed activity would construct an agricultural facility, including fields for summer crops, pond for water storage, and gravel pads for greenhouses (multi-season crops), equipment storage, and a barn. Agricultural facilities would be constructed within wetlands in the central portion of the property. Associated project activities include construction of cabin rental dwellings within the hilly uplands on the eastern and western portions of the property. A site access driveway would be constructed in uplands in the western-most portion of the property.

PROPOSED WORK: The project would construct agricultural facilities, fields, ponds, gravel pads for greenhouses, storage equipment areas, and a barn with permanent impacts to 1.23 acres of wetlands (19,474 cubic yards of fill using unclassified sub-base & topsoil). All work would be performed in accordance with the enclosed application/plan.

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 applicant wishes to develop the proposed project in the community of Moose Pass, on a parcel that contains wetlands. There are no other properties in the vicinity of Moose Pass that are currently listed for sale (source: alaskarealestate.com) that would allow the activity to take place entirely in uplands. Moose Pass is constrained by steep mountain slopes to the west and Upper Trail Lake to the east, with a small and relatively flat but hilly area in between that is suitable for development. The available uplands in the area, and on the applicant's property, feature very shallow soils over gravel or bedrock, making unsuitable for agriculture. Levelling the available upland areas would require blasting of the rocky terrain, making the costs unreasonable. The applicant has identified the wetland areas as the only suitable location for conversion to cropland. For these reasons, the applicant believes that complete avoidance of wetland impacts is not practicable.

b. Minimization: Emphasis has been placed on minimizing unavoidable impacts to waters of the U.S. by limiting fill discharges to the minimum amount and size necessary to achieve the project purpose. The proposed project utilizes the available upland areas to the maximum extent practicable for construction of the access driveway and cabin rental dwelling units. Dwelling units are planned for the hilly upland terrain immediately west of the wetlands and on the east side of the property. The site access drive will be constructed within uplands on the far west side of the property. The remainder of the property is wetland which is located in the central portion of the property. The applicant intends to maximize the crop yield on the property while maintaining a narrow area of wetland for north-south hydrological connection. Overall, the footprint of the wetland impact has been reduced by 30% from the original presented design as part of minimization efforts. The site is designed to retain storm water on-

site for irrigation, and therefore is not anticipated to have adverse flooding impacts in downstream locations.

c. Compensatory Mitigation: Approximately 1.23 acres of Section 404 wetlands and waters of the U.S. would be impacted by the proposed fill and excavation activities. The applicant believes the project would have minimal adverse impacts to wetlands and waters in the Trail Lake and Kenai Lake watersheds. The area of impacted wetland compared to remaining wetlands in the watershed that are under limited threat of development is negligible. In addition, land available for providing compensatory mitigation is extremely limited and there are currently no mitigation banks or in-lieu fee sponsors servicing the area. The applicant is not proposing compensatory mitigation.

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 or within the vicinity of the permit area. The permit area has been determined to be those areas of the project that require the filling of 1.23 acres (19,474 cubic yards of fill) of wetlands for the construction of agricultural facilities, fields, ponds, gravel pads for greenhouses, storage equipment areas, and a barn. 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. Consultation with the State Historic Preservation Office (SHPO), Federally recognized Tribes, and other consulting parties is not required. However, 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.

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 (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 not within mapped EFH. 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. If applicable this application will be coordinated with federally recognized tribes and other consulting parties. Any comments federal recognized tribes and other consulting parties may have concerning presently unknown archeological or historic data that may be lost or destroyed by the work under the requested permit will be considered in the Corps final assessment of the described work.

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 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) 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 are enclosed with this public notice.

District Commander
U.S. Army, Corps

Enclosures