



US Army Corps
of Engineers
Alaska District

Public Notice of Application for Permit

KENAI FIELD OFFICE
Regulatory Division (1145)
CEPOA-RD
805 Frontage Road, Suite 200C
Kenai, Alaska 99611-7755

PUBLIC NOTICE DATE: May 31, 2013
EXPIRATION DATE: July 1, 2013
REFERENCE NUMBER: POA-1981-27-M2
WATERWAY: KACHEMAK BAY

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) 753-5556, toll free from within Alaska at (800) 478-2712, 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: Ms. Carol Grace, Northern Enterprises Boat Yard, Inc., 5140 Kachemak Drive, Homer, Alaska 99603, (907) 235-8234

LOCATION: The project site is located within NE $\frac{1}{4}$, NW $\frac{1}{4}$, Section 14, T. 6 S., R. 13 W., Seward Meridian; USGS Quad Map Seldovia C-4; Latitude 59.66407° N., Longitude 151.43973° W.; Kachemak City, Alaska.

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

PURPOSE: The applicant's stated purpose is to conduct maintenance dredging at their existing dock.

PROPOSED WORK: The applicant proposes to dredge 30 to 80 cubic yards of sand and gravel from 1,100 square feet below the mean high water mark (MHW, 17.3 feet elevation of Kachemak Bay to a depth of 5 feet mean low low water (MLLW, 0 feet elevation) and discharge the dredged material into 850 square feet below the MHW of Kachemak Bay. This activity would occur 8 to 10 times per year.

All work would be performed in accordance with the enclosed plan (sheet 1), dated March 10, 2013, and (sheet 2), dated May 23, 2013.

ADDITIONAL INFORMATION: The dredging would be conducted using a small crawler. All dredging and disposal would occur while the area is dewatered in order to spread out material that accumulates under the dock. The material would be fanned along the beach, on the south side of the facility, to continue its natural migration towards the spit.

Two previous authorizations have been issued at the project site. Permit POA-1981-27 was issued on May 29, 1981 to construct a 32 foot by 95 foot commercial docking structure which includes a 20 foot by 55 foot boat slip for the operation of a 60 ton boat lift and place 400 cubic yards of riprap for slope protections. The authorization also included 110 cubic yards of material of maintenance dredging each year. The permit was modified on June 11, 2003 to conduct maintenance dredging at the dock facility. POA-1981-27-M1 authorized the dredging of 30 to 80 cubic yards of sand and gravel to a -7 foot elevation, 8 to 10 times each year.

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 has requested the minimum amount of dredging necessary to keep the dock operational.

b. Minimization: The wind off the glacier across the bay drives swells towards the Homer Spit. The dredged material would be placed immediately south of the area from which it would be removed and in the area where the movement of the currents naturally carries the material.

c. Compensatory Mitigation: The applicant has not proposed any compensatory mitigation for the proposed project.

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: The project area is within the known or historic range of the Cook Inlet Beluga Whales (*Delphinapterus leucas*), Steller's eider (*Polysticta stelleri*), Steller Sea lion (*Eumetopias jubatus*), Leatherback sea turtle (*Dermochelys coriacea*), Bowhead whale (*Balaena mysticetus*), Finback whale (*Balaenoptera physalus*), Humpback whale (*Megaptera novaeangliae*), North Pacific right Whale (*Eubalaena japonica*), Sperm whale (*Physeter macrocephalus*), Sei Whale (*Balaenoptera borealis*), Loggerhead sea turtle, (*Caretta caretta*), and green sea turtle (*Chelonia mydas*).

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 pacific cod (*Gadus macrocephalus*), flathead sole (*Hippoglossoides elassodon*), sculpins (*Cottidae*), skates (*Rajidae*), pink salmon (*Oncorhynchus gorbusha*), chum salmon (*Oncorhynchus keta*), sockeye salmon (*Oncorhynchus nerka*), Chinook salmon (*Oncorhynchus tshawytscha*), and coho salmon (*Oncorhynchus kisutch*).

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-1981-27-M2, Kachemak Bay, 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.