



US Army Corps
of Engineers
Alaska District

Public Notice of Application for Permit

Regulatory Division (1145)
CEPOA-RD
Post Office Box 6898
JBER, Alaska 99506-0898

PUBLIC NOTICE DATE:	October 25, 2013
EXPIRATION DATE:	November 25, 2013
REFERENCE NUMBER:	POA-2012-769
WATERWAY:	Near Island Channel

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 Roberta K. Budnik at (907) 753-2785, toll free from within Alaska at (800) 478-2712, by fax at (907) 753-5567, or by email at roberta.k.budnik@usace.army.mil if further information is desired concerning this notice.

APPLICANT: Alaska Department of Transportation and Public Facilities, P.O. Box 112506, Juneau, AK 99811.

LOCATION: The project site is located within Section 32, T. 27 S., R. 19 W., Seward Meridian; USGS Quad Map Kodiak D-2; Latitude 57.7869° N., Longitude 152.4025° W.; Pier 1, 100 East Marine Way, in Kodiak, Alaska.

PURPOSE: The applicant's stated purpose is to increase the longevity of the facility and to improve the efficiency and safety for the transfer of passengers and vehicles by the Alaska Marine Highway System M/V Tustumena. The existing timber dock is approximately 50 years old and is nearing the end of its intended service life.

PROPOSED WORK: The existing 12,150 square foot timber dock would be replaced completely, and expanded to 19,000 square feet. The new dock would consist of 88, 24-inch diameter steel piles, a concrete deck, 10 new 18-inch diameter fender pin piles, and the fuel and water systems would be upgraded. Existing creosote treated timber piles would be removed. An impact or vibratory hammer would be used to install piles into pre-drilled holes in bedrock. In addition, up to 250 cubic yards of fill material would be placed within up to 0.1-acre below the High Tide Line of Near Island Channel in order to protect the shoreline from further erosion. All work would be performed in accordance with the enclosed plan (sheets 1-4), dated August 2013.

APPLICANT STATED 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 project is water dependent, and therefore, impacts to waters of the U.S. cannot be completely avoided. The improved structure would be situated in the same location as the existing ferry dock.

b. Minimization: Only a minimal amount of fill for erosion protection is proposed.

c. Compensatory Mitigation: The proposed action would avoid and minimize impacts to less than 0.1-acre, and therefore no compensatory mitigation is proposed.

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 Federal Highways Administration (FHA) previously coordinated with the Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation – Office of History and Archaeology (OHA) regarding potential historic properties in the vicinity of the proposed project. The OHA concurred with the FHA's finding that three of the sites were not eligible for the National Register and that there would be no historic properties affected by the proposed project. This concurrence was given in a written letter dated July 18, 2013, file number 3130-1R FHWA.

ENDANGERED SPECIES: The project area is within the known or historic range of the Steller's eider (*Polysticta stelleri*), northern sea otter (*Enhydra lutris kenyoni*), humpback whale (*Megaptera novaengliae*), and Steller sea lion (*Eumetopias jubatus*). The Alaska Department of Transportation and Public Facilities has completed informal consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Both agencies concurred with the ADOT&PF's determination that the proposed project may affect, but is not likely to adversely affect any listed species. The agencies' concurrence letters are attached to the public notice for reference. Please note that the proposed project description described in these letters differs slightly from the project description in this public notice. Since the time of Endangered Species Act consultation, the proposed project design has changed slightly, and the project description described in this public notice is the currently proposed project design.

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 flathead sole (*Hippoglossoides elassodon*), rock sole (*Lepidopsetta bilineata*), walleye pollock (*Theragra chalcogramma*), squid (*Teuthida sp.*), yellowfin sole (*Limanda aspera*), arrowtooth flounder (*Atheresthes stomias*), sculpin (*Cottoidea sp.*), Pacific cod (*Gadus macrocephalus*), and skate (*Rajidae sp.*). The Alaska Department of Transportation and Public Facilities has already coordinated with the NMFS on EFH and the NMFS concurred with the finding that the proposed project will not adversely affect EFH. See the attached email from the NMFS stating concurrence dated May 14, 2013, and May 22, 2013.

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-2012-769, Near Island Channel**, 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.