



US Army Corps
of Engineers
Alaska District

Special Public Notice

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

PUBLIC NOTICE DATE:	August 4, 2023
REFERENCE NUMBER:	POA-2007-00541-M3
ISSUANCE DATE:	August 4, 2023
EXPIRATION DATE:	September 5, 2023

REISSUANCE OF REGIONAL GENERAL PERMIT (RGP)
POA-2007-00541-M3 (RGP-07)
STATEWIDE RURAL DEVELOPMENT

The United States (U.S.) Army Corps of Engineers (Corps), Alaska District, in accordance with regulations pursuant to Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C. 1344 et. Seq.) is proposing to re-issue and modify Regional General Permit (RGP) POA-2007-00541-M2 (RGP-07-02), Statewide Rural Development, for an additional five (5) years. RGP-07-02 expires on September 30, 2024.

The Corps is soliciting and accepting comments for the next 30 days on our intent to modify and re-issue this RGP. Comments on the described work, with the reference number, should reach this office no later than the expiration date of this Public Notice (PN) to become part of the record and be considered in the decision. Please contact Carolyn Farmer at 561-785-5634, or by email at carolyn.h.farmer@usace.army.mil if further information is desired concerning this notice.

Regional General Permits are considered appropriate for activities which are substantially similar in nature, cause only minimal adverse environmental impacts when performed both individually and cumulatively, would have only minor cumulative effects on water quality, and would provide more effective administration of the Clean Water Act without creating an undue burden on the public.

If re-issued, this RGP will be in effect for five more years and will be re-named RGP-07-03 (POA-2007-00541-M3). The activities intended for re-authorization under this RGP are essentially the same, with the following changes:

1. Updated to remove Nome as an area where the RGP would be excluded.
2. General Conditions were updated.
3. Include solid waste facilities and fire stations in the definition of residential and community developments.
4. Revised the minimum distance that dredged and/or fill material may not be discharged to within 100 feet of open waterbodies (i.e., streams, rivers, ponds, lakes) or within 300 feet of anadromous waters for non-linear projects (utilities, roads, etc.).

PURPOSE: The RGP was developed to streamline the permitting process for rural development within the state of Alaska.

AUTHORIZED ACTIVITIES: The discharge of dredged and/or fill material into waters of the United States, including wetlands, for the purpose of constructing residential housing, and community infrastructure such as schools, daycare and eldercare centers, utility buildings, health clinics, multi-use centers, water and wastewater treatment facilities, fire stations, solid waste facilities and the ancillary driveways, utilities, yards, and access roads associated with these developments.

WATER QUALITY CERTIFICATION: The RGP 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 (ADEC).

BACKGROUND: RGP-07 was originally issued on November 21, 2007, in order to expedite rural development. RGP-07 authorized the discharge of dredged and/or fill material into waters of the United States for the purpose of constructing and/or expanding building foundation pads, utilities, roads, driveways, and parking areas for residential and community developments. The RGP also authorizes mechanized land clearing and other activities that will result in a re-deposition of dredged material into waters of the United States. On December 10, 2012, the RGP was re-issued for an additional five years, which expired December 10, 2017. The Corps re-issued again on September 6, 2019, for another five years, which is due to expire on September 30, 2024. Since the initial issuance of RGP-07, the permit has been utilized 198 times and authorized the discharge of dredged and/or fill material into 100.93-acres of wetlands across the state.

ENDANGERED SPECIES: The Corps has conditioned the RGP to protect threatened and endangered species. Consultation under Section 7 of the Endangered Species Act would occur on an individual basis as needed prior to verifying a project under the RGP.

Preliminarily, reissuance of the RGP would not effect endangered or threatened species under the Endangered Species Act of 1973 (87 Stat. 844). This RGP is being coordinated with U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS). Any comments they may have concerning endangered or threatened species 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).

Preliminarily, the reissuance of the RGP would not effect EFH. EFH consultation would occur on an individual project basis as needed prior to verifying a project under the RGP. This RGP is being coordinated with the National Marine Fisheries Service. Any comments or recommendations they may have concerning EFH will be considered in our final assessment of the described work.

CULTURAL RESOURCES: The Corps has conditioned the RGP to protect cultural resources. Consultation under Section 106 of the National Historic Preservation Act would occur on an individual basis as needed prior to verifying a project under the RGP. This RGP is being coordinated with the State Historic Preservation Office. Any comments or recommendations they may have will be considered in our final assessment of the described work.

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. Tribal consultation would occur on an individual project basis as appropriate prior to verifying a project under the RGP. Tribes within the area potentially affected by an individual project will be invited to participate 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.

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 RGP reissuance. 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.

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

(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).

Notice of Application for State Water Quality Certification are enclosed with this Special Public Notice.

All authorized activities that may be verified under the RGP must be in accordance with the terms and conditions of the RGP.

Any questions or requests for additional information should be directed to regpagemaster@usace.army.mil, (907) 753-2712, toll-free from within Alaska at (800) 478-2712

District Commander
U.S. Army, Corps of Engineers

Enclosures

DEPARTMENT OF THE ARMY GENERAL PERMIT

Permittee: The General Public

Permit No. RGP-07, Rural Development (POA-2007-00541-M3)

Issuing Office: U.S. Army Engineer District, Alaska

Issuance Date: TBD

Expiration Date: TBD + 5 years

NOTE: The term "wetlands", as used in this permit, refers to jurisdictional wetlands, a category of waters of the United States (U.S.). The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the Regulatory Division of the Alaska District, Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the District Engineer.

GENERAL PERMIT AUTHORIZATIONS

The general public is authorized to perform work in accordance with the terms and conditions of the Regional General Permit (RGP) specified below, after satisfying all applicable permit terms and conditions.

Under the authority of Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C.), the Secretary of the Army authorizes the discharge of dredged and/or fill material into wetlands within specific areas of Alaska, for the purpose of rural development.

AUTHORIZED ACTIVITIES

The RGP-07, Rural Development, authorizes the discharge of dredged and/or fill material into waters of the U.S. for the purpose of constructing and/or expanding building foundation pads, utilities, roads, driveways, and parking areas for residential and community developments. The RGP also authorizes mechanized land clearing and other activities that will result in a re-deposition of dredged material into waters of the U.S.

Residential and community developments are defined as residential housing, and community infrastructure such as schools, daycare and eldercare centers, utility buildings, health clinics, multi-use centers, water & wastewater treatment facilities, fire stations, solid waste facilities and the ancillary driveways, utilities, yards, and access roads associated with these developments.

Maximum Acreage Limitations

The RGP-07, Rural Development, does not authorize any single and complete project¹ that would exceed 5 (five) acres of permanent loss of waters of the U.S. Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a general permit authorization. When RGP limits would be exceeded, the proposed projects may be eligible for review and authorization by an individual permit.

Excluded areas and activities

- 1) Excluded include those areas within the city and municipal boundary limits of Anchorage, Palmer, Wasilla, Fairbanks, Juneau/Douglas, Homer, Seward, Kenai, Soldotna, Bethel, Annette Island, Denali National Park, and the coastal boundary of the Aleutians West Coastal Resource Service Area. This includes the communities of Unalaska, Atka, and Nikolski, but does not include Adak Island.
- 2) Unless this office makes a written determination concluding that the discharge would result in no more than minimal adverse environmental impacts and expressly waives this exclusion, under this RGP, dredged and/or fill material may not be discharged into:
 - a. any non-tidal open waterbody (i.e. streams, rivers, ponds, lakes) (except for the construction of linear projects (utilities, roads, etc.);
 - b. permanently flooded (inundated) wetlands (except for the construction of linear projects (utilities, roads, etc.);
 - c. any tidal waters; or
 - d. any wetlands within 100 feet of any waters of the U.S. listed in a thru c above or within 300 feet of anadromous waters.
- 3) Activities denied any required local, State or Federal authorization is not authorized by the RGP.
- 4) Activities that the Corps determines may result in more than minimal adverse impacts on aquatic resources or other public interest factors. The District will notify the applicant that the project does not qualify for the RGP and instruct the applicant on the procedures to seek authorization under a standard Department of the Army (DA) permit. The District may also, on a case-by-case basis, require a standard DA permit for unauthorized activities that may otherwise meet the terms and conditions of the RGP.
- 5) Activities specifically excluded from this RGP are discharges of dredged and/or fill material into waters of the U.S. for the construction of power generation plants, fuel storage areas, material barrow sites, work associated with the oil

¹ As defined at 33 CFR 330.2(i)

and gas industry, or any project involving the use or storage of hazardous wastes or hazardous substances as part of its principal purpose.

- 6) This RGP does not apply to state-designated Critical Habitat Areas, Game Refuges and Sanctuaries, and habitat areas identified as important by the Alaska Department of Fish and Game unless the activity is specifically authorized by the agency with jurisdiction over these lands.

APPLICATION PROCEDURES

Individuals wishing to perform work under this RGP must submit to this office a complete General Permit Application (GPA) Form (Enclosure 1) or ENG Form 4345. The GPA must contain the following information at a minimum:

- 1) Name, address, and phone number of the applicant.
- 2) Location of the proposed work to include Section, Township, Range; and/or latitude/longitude; city/town, and a locality map.
- 3) A detailed description of the project, its purpose, the waters of the U.S., including wetlands clearing identified on the plans, and the project dimensions including the size of the fill area, fill quantity and type of fill to be used.
- 4) Plan drawings, including a plan view and a cross-section view with dimensions of the project, showing the layout of the driveway, pads, and structures in relation to other features. Drawings do not have to be prepared by a professional but, should be clear and easily understood.
- 5) A mitigation statement consisting of Part B of the GPA (enclosure 1).

The application and drawings should be sent to: U.S. Army Corps of Engineers, Regulatory Division, Post Office Box 6898, JBER, Alaska 99506-0898, or by email to regpagemaster@usace.army.mil.

Corps Verification Process

The information provided will be reviewed by the Corps for compliance with the terms and conditions of the RGP. Normally, within 30 days of receiving the required information, a letter will be sent from this office to the applicant verifying whether or not the proposed project may proceed under the terms and conditions of the RGP or if additional information is required.

RESTRICTIONS

The work authorized by this RGP is also subject to the following general conditions and any special conditions determined to be necessary to ensure impacts remain no more than minimal on a case-by-case basis.

General Conditions:

Verifications under this RGP include general conditions that this office determines are necessary to ensure compliance with the terms and conditions of the RGP and to ensure that the activity will not result in more than minimal individual or cumulative adverse effects to the aquatic environment or other public interest factors.

- 1) The dredged and/or fill area shall be minimized by consolidating activities and uses. For example, utility lines (water, electrical, telephone, sewer, etc.) shall be located within the road or driveway fill when practicable.
- 2) The boundaries of the permitted dredged/fill area in wetlands shall be staked and/or flagged prior to construction, to prevent inadvertent encroachment into adjacent wetlands or placement of material beyond those limits identified in the plans submitted by the permittee.
- 3) Natural drainage patterns shall be maintained in the project area using appropriate ditching, culverts, storm drain systems, and/or other measures, without introducing ponding or drying. Excessive ponding and/or dewatering of areas adjacent to fills indicate non-compliance with this condition.
- 4) During construction activities including excavation and the discharge of dredged or fill material, heavy equipment must not be operated in wetlands outside the authorized disturbance areas that have been staked and/or flagged as required in General Condition 2 above. Heavy equipment working in wetlands or mudflats outside of the authorized fill/dredge footprint must be placed on mats, or other measures must be taken to minimize/prevent soil disturbance.
- 5) No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). The material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
- 6) Temporary storage of excavated and/or excess material on-site must be managed to prevent sediment from being carried into adjacent wetlands and waters, and to prevent leachate from causing degradation of water quality. Unusable or excess material must be disposed of in uplands or at a location approved by this office.
- 7) Prior to construction, erosion control measures, such as silt fencing, sediment traps, or water diversion structures, must be properly deployed and installed. During construction, silt and sediment from the site work must be prevented from entering wetlands or water bodies outside the authorized project limits. Methods shall be implemented to filter or settle out suspended sediments from all construction-related wastewater prior to its direct or indirect discharge into any natural body of water. The structures may be used to delineate project boundaries if installed prior to regulated activities.

- 8) All exposed fills (including side slopes) and disturbed areas shall be stabilized immediately after construction to prevent erosion. Re-vegetation of the disturbed areas shall begin as soon as site conditions allow. Species to be used for seeding and planting shall follow this order of preference:
 - a. Species native to the site.
 - b. Species native to the area.
 - c. Species native to the state.

Active sloughing, increased water turbidity and sediment in drainage ditches, streams, sloughs, and/or adjacent wetlands will be considered evidence of insufficient stabilization.

- 9) Dredged/fill material within 100-Year Floodplains. The activity must comply with applicable FEMA approved state or local floodplain management requirements where present. Fuel storage tanks shall be located outside wetlands and above the 100-year flood level and must be designed to withstand a 100-year flood event when a 100-year flood level has been established for a site. If the 100-year flood level has not been established for a site, the tank flood design shall be developed by an engineer to withstand flood levels.
- 10) Material must be available at the site to contain and clean up incidental spills and leaks and must be used to contain and clean up any petroleum product spilled as a result of construction activity.
- 11) If human remains, historic resources, or archaeological resources are encountered during construction, all ground disturbing activities shall cease in the immediate area and you shall immediately (within one business day of discovery) notify the U.S. Army Corps of Engineers (Corps), Alaska District, Regulatory Office at (907) 753-2712 or emailing regpagemaster@usace.army.mil. Upon notification the Corps shall notify the appropriate Tribal Historic Preservation Office (THPO) and State Historic Preservation Office (SHPO). Based on the circumstances of the discovery, equity to all parties, and consideration of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. After such notification, project activities on federal lands shall not resume without written authorization from the Corps. After such notification, project activities on tribal lands shall not resume without written authorization from the SHPO and the Corps.
- 12) No activity or its operation may impact reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

- 13) The Migratory Bird Treaty Act prohibits the willful killing or harassment of migratory birds. No clearing, excavation, and fill activities shall be completed during the nesting season to avoid impacts to breeding migratory birds unless the site has been sufficiently disturbed or altered during non-breeding periods to eliminate suitable nesting habitat (for example, the work area could be cleared of vegetation before the breeding season. This would render the area unsuitable for breeding birds before their arrival and facilitate work during the breeding season without impacts to birds. Nesting seasons vary throughout the state, and U.S. Fish and Wildlife or the Corps should be contacted to determine when these disturbance activities should be avoided. For further information, you may look at the USFWS site, http://alaska.fws.gov/fisheries/fieldoffice/anchorage/pdf/vegetation_clearing.pdf
- 14) Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance. The permittee must maintain the lands and facilities subject to this RGP in good condition and in conformance with the terms and conditions of this RGP..
- 15) If the permittee sells the property associated with an RGP verification, the permittee may transfer this RGP verification to the new owner by submitting a letter to the Corps to validate the transfer. A copy of this RGP verification must be attached to the letter, and the letter must contain the applicants full name, address, phone number, and the following statement and signature: "When the structures or work authorized by this RGP are still in existence at the time the property is transferred, the terms and conditions of this RGP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this RGP and the associated liabilities associated with compliance with its terms and conditions, the signature of the transferee and date appear below."

(Transferee signature)

(Date)

(Printed name)

- 16) The permittee shall allow the DE or their authorized representative(s) to inspect authorized work at any time deemed necessary to assure that on-going and completed work is in compliance with the terms and conditions of this RGP.
- 17) All activities identified and authorized herein shall be undertaken in a manner that is consistent with the terms and conditions of this RGP, and any activities undertaken by the permittee that are not specifically identified and authorized herein shall constitute noncompliance with the terms and conditions of this RGP, and consequently, a violation of the Clean Water Act. Appropriate enforcement procedures will be determined on a case-by-case basis commensurate with the degree of severity and flagrance.

- 18) Measures shall be implemented to prevent the introduction and spread of invasive plant and animal species, such as washing equipment to remove dirt and debris that might harbor invasive seeds before entering the job site, using weed-free fill, disposing of spoil and vegetation contaminated with invasive species appropriately, and revegetating with local native plant species.
- 19) **Permit Expiration. The RGP-07 expires on Reserved.** Unless activities authorized under the RGP-07 have commenced, the time limit for completing work ends upon the expiration date of RGP-07. Activities authorized under RGP-07 which have commenced construction or are under contract to commence construction by **Reserved**, will have until 12 months, to be completed under the terms and conditions of RGP- 07, unless the District Engineer's discretionary authority is exercised on a case- by-case basis to modify, suspend, or revoke the authorization.
- 20) **Verification.** Written verification that the project fits the terms and conditions under RGP-07 must be received from this office prior to commencing regulated activities.
- 21) **Avoidance and Minimization.** The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on-site).
- 22) **Contractor Notification.** All contractors involved in this RGP authorized activity must be provided copies of this permit in its entirety. A copy shall remain on site at all times during construction. A complete copy of these documents shall remain on site at all times during implementation of the authorized activity.
- 23) **Permafrost.** If permafrost is present, sufficient fill (or other methods of insulation) must be placed on the ground to provide thermal stability. Signs of thermokarsting or standing water indicate non-compliance with this condition.
- 24) **Water Quality Certification.** You must comply with all conditions specified as part of the Alaska Department of Environmental Conservation Water Quality Certification, which is part of this RGP.
- 25) **Endangered Species.** The activity must not jeopardize the continued existence of any threatened or endangered species, as identified under the Endangered Species Act, nor endanger the critical habitat of such species.
- 26) **Essential Fish Habitat.** The activity must not adversely affect Essential Fish Habitat (EFH).
- 27) **Self-Certification:** Within 60 days of completion of the work authorized by this permit, the Permittee shall complete the attached "Self-Certification Statement of Compliance" form and submit it to this office. In the event that the completed work deviates in any manner from the authorized work, the Permittee shall describe the deviations between the work authorized by this permit and the

work as constructed on the "Self-Certification Statement of Compliance" form. The description of any deviations on the "Self-Certification Statement of Compliance" form does not constitute approval of any deviations by this office.

- 28) **Modification by Other Authorizations.** If the work proposed under this RGP is subsequently modified by any other Federal, State, or local governmental authorization, the permittee shall inquire with this office as to whether a re-verification under this RGP is required to be obtained. This office will review the changes and provide the permittee a written response (email or letter) as to if the activities would need re-verification, a nationwide permit and/or authorization under Standard Permitting procedures.
- 29) **Use of multiple General Permits.** The use of more than one GP for a single and complete project is prohibited.

FURTHER INFORMATION:

- 1) **Congressional Authorities.** Authorization to undertake the activities described above is pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Work that also requires authorization under Section 10 of the Rivers and Harbors Act of 1899 must be authorized separately through nationwide or individual permits.
- 2) **Limits of this authorization.**
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
- 3) **Limits of Federal Liability.** In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.

- e. Damage claims associated with any future modification, suspension, or revocation of this permit.
- 4) **Reliance on Applicant's Data.** The determination of this office that verifications of this RGP are not contrary to the public interest will be made on a case-by-case basis and in reliance on the information provided by the applicants.
- 5) **Reevaluation of Decision.** This office may reevaluate its decision on individual verifications of this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. The permittee fails to comply with the terms and conditions of this permit.
 - b. The information provided by the applicant in support of the permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate.

- 6) **Reevaluation this RGP.** This office may also reevaluate its decision to issue the RGP-07 at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following: significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7.

This General Permit becomes effective when the federal official, designated to act for the Secretary of the Army, has signed below.

FOR THE DISTRICT COMMANDER:

Carolyn Farmer

Date

Acting Chief, North Branch
Alaska District Corps of Engineers

DRAFT

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF WATER

Wastewater Discharge Authorization Program (WDAP) / 401 Certification

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WDAP/401 CERTIFICATION
555 CORDOVA STREET
ANCHORAGE, ALASKA 99501-2617
PHONE: (907) 269-6285 | EMAIL: DEC-401Cert@alaska.gov

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 point source discharge will comply with the Clean Water Act (CWA), 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 (PN), Reference Number **POA-2007-00541 M3 Statewide Waters**, serves as application for State Water Quality Certification from the Department of Environmental Conservation. The permit application and associated documents are available for review. For inquiries or to request copies of the documents, contact DEC-401Cert@alaska.gov, or call 907-269-6285.

After reviewing the application, the Department may certify there is reasonable assurance the activity and any point source discharge that might result will comply with the applicable provisions of §§301, 302, 303, 306, and 307 of the CWA, and state requirements for into waters of the United States, 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 or via email to DEC-401Cert@alaska.gov by the expiration date of the Corps of Engineer's Public Notice. All comments should include the PN reference number listed above. Mailed comments must be postmarked on or before the expiration date of the public notice.

Disability Reasonable Accommodation Notice

The State of Alaska, Department of Environmental Conservation complies with Title II of the Americans with Disabilities Act of 1990. If you are a person with a disability who may need special accommodation in order to participate in this public process, please contact Megan Kohler at 907-269-4198 or TDD Relay Service 1-800-770-8973/TTY or dial 711 prior to the expiration date of this public notice to ensure that any necessary accommodations can be provided.

U.S. Army Corps of Engineers, Alaska District
GENERAL PERMIT APPLICATION FORM

May be used instead of Form ENG 4345 to request verification under a Regional General Permit (RGP)

Applicant:	Phone:
Address:	Fax:
City, State, Zip:	Cell/Direct Line:
Point of Contact:	e-mail:

Agent:	Phone:
Address:	Fax:
City, State, Zip:	Cell/Direct Line:
Point of Contact:	e-mail:

Location of the Proposed Project Site:

Nearest Waterway:	
Section, Township, Range, and Meridian (if known):	
Latitude and Longitude (Decimal Degrees, NAD-83):	
Nearest City:	Subdivision:
Borough:	USGS Quad(s) (if known):
Driving Directions to Site:	

Project purpose:
Have any permits been issued for this site or project in the past (if known)?

The GPA must include:

- Drawings of the site and project plans (For more information on acceptable drawings and plans, please visit our website at <http://www.poa.usace.army.mil/Missions/Regulatory/Permits/> and click on “Guide to Drawings”)
- Delineation of wetlands, other special aquatic sites (riffle and pool complexes, sanctuaries and refuges, mudflats, vegetated shallows, and/or coral reefs), and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. If you need guidance please contact the Corps for further information.

Description of the proposed project:

Provide surface area of impacts in wetlands or other waters of the U.S. or linear feet for streams and rivers.

Provide information on type(s) (i.e. sand, gravel, cobble, topsoil etc...) of Material Being Discharged and the Amount of Each Type in Cubic Yards:

Type

Type

Type

Amount in Cubic Yards

Amount in Cubic Yards

Amount in Cubic Yards

Describe methods for rehabilitation of disturbed areas. If you intend to use other locally-obtained native materials, identify the source.

You must satisfy the requirements in Regional General Condition (Attached).

Describe how you will satisfy the requirement that you avoid and minimize adverse impacts to wetlands and other waters to the maximum extent practicable. Examples of avoidance measures include site selection, routes, design configurations, etc... Minimization measures include limiting fill discharges to the minimum amount/size necessary to achieve the project purpose.

Would your proposed project result in the loss of greater than 1/10 of an acre of wetlands?

YES or NO

If YES, describe your proposed compensatory mitigation to offset unavoidable impacts to waters of the U.S., or, alternatively, why compensatory mitigation is not appropriate or practicable for your project. Compensatory mitigation may involve the restoration, enhancement, establishment (creation), and/or the preservation of aquatic sites.

Information for the following section can be found at locations listed below:

U.S. Fish and Wildlife Service and the National Marine Fisheries Service or their world wide Web pages at <http://www.fws.gov> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/>

Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer

Information on the location of the USACE projects in Alaska are listed on the world wide web pages at <http://www.poa.usace.army.mil/About/Offices/Construction-Operations/Rivers-and-Harbors/> and at <http://www.poa.usace.army.mil/About/Offices/Construction-Operations/Erosion-and-Flood-Mitigation/>.

For a full list of Nationwide Permit General Conditions please visit our web page at <http://www.poa.usace.army.mil/Missions/Regulatory/Permits/Nationwide-Permits/>

Verification from the Corps must be received if your project is located in any of the areas listed below

Are there any listed species or designated critical habitat that might be affected or is in the vicinity of the project, or is the project located in designated critical habitat? Federal agencies must provide the appropriate documentation to demonstrate compliance with the agency's procedures for compliance with the ESA. Information on the location of threatened or endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. (see General Condition 18 and 22)

YES or NO

If YES, list all species:

Are there historic properties (listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties) that the proposed activity may have the potential to effect? Federal agencies must provide documentation demonstrating compliance with the Section 106 of the National Historic Preservation Act. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer. (see General Condition 20)

YES or NO

If YES, state which property or properties may be affected and/or attach a vicinity map indicating the location of the historic property or properties.

Are there any U.S. Army Corps of Engineers (USACE) federally authorized Civil Works projects (i.e. 'Harbor, Navigation Channel, flood control, etc.') in the vicinity of your project?

YES or NO

If YES, state which USACE project is in the vicinity of your project.

Jurisdictional Determination

The Corps has received new guidance (Regulatory Guidance Letter 16-01) which states that the Corps will only complete a jurisdictional determination (JD) form if the applicant requests it. In other words, if the applicant does not request a JD, we can proceed straight into our permit evaluation, without completing a JD form.

If you wish to obtain a JD there are two types you may request:

An Approved Jurisdictional Determination (AJD) is completed when we can state definitively that we do or do not have authority over the aquatic resource in question. Approved JDs often require a site visit during the growing season. An AJD is appealable and expires after five years.

A preliminary jurisdictional determination (PJD) is when the Corps determines that we may have authority over the aquatic resources in the project area. A PJD often doesn't require a site visit and is expedited. It is not appealable and does not expire. Applicants who want a JD may request a PJD because it is often more expedient than an AJD.

Please indicate which you prefer:

NO JD REQUESTED or AJD or PJD

Application is hereby made for a permit or permits to authorize the work described in this preconstruction notification form. I certify the information in this preconstruction notification form is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT DATE

SIGNATURE OF AGENT DATE

Regional General Condition: MITIGATION

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2)–(14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to

ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

Applicant Proposed Mitigation Statements

Definitions:

Enhancement: the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

In-lieu fee program: a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument. <https://ribits.usace.army.mil/>

Mitigation bank: a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument. <https://ribits.usace.army.mil/>

Permittee-responsible mitigation: an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

Practicable: available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Preservation: the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Restoration: the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.