



US Army Corps
of Engineers
Alaska District

Special Public Notice

ANCHORAGE
Regulatory Division (1145)
CEPOA-RD
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Issuance Date: June 25, 2012
Identification No.: GP-2007-541-M1
(In reply, refer to above number)
Expiration date: July 25, 2012

PROPOSAL TO REISSUE GENERAL PERMIT (GP) 2007-541
PREVIOUSLY IDENTIFIED AS GP 89-03N

Residential and Community Projects within the State of Alaska
And the development of a new Part II:
The Private/Commercial Development and Subdivisions throughout the State of
Alaska

The public is hereby notified that the Alaska District, U.S. Army Corps of Engineers (Corps) is proposing to re-issue and expand General Permit (GP) 2007-541 (POA-2007-541-M1), Part I, previously issued under authority of Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C. 1344 et. Seq). This GP currently authorizes the placement of dredged and/or fill material into waters of the U.S. for non-commercial residential and community construction projects in rural Alaska. Residential/community construction is defined as housing and community buildings, such as schools, day care centers, utility buildings, health clinics, multi-use centers and the driveways, utilities, yards, and access roads associated with these projects. Only a Federal (e.g., Department of Housing and Urban Development, Bureau of Indian Affairs), state, or city agency; Native Village/tribal organization; or local housing authority may apply for authorization under this GP. Only non-commercial residential and community development is authorized under this GP. Excluded areas are within the city and municipal boundary limits of Anchorage, Eagle River, Palmer, Wasilla, Fairbanks, Juneau/Douglas, Homer, Seward, Kenai, Soldotna and the coastal boundary of the Aleutians West Coastal Resource Service Area. The Aleutians West Coastal Resource Service area extends from Unalga Pass on the east to Attu Island in the west, encompassing all land and water areas to the three mile offshore territorial limit. This includes the communities of Unalaska, Atka, and Nikolski, but does not include Adak Island.

The GP would be expanded to include Part II, The Private/Commercial Developments and Subdivisions throughout the State of Alaska with exclusions in the Municipality of Anchorage and the City and Borough of Juneau.

This GP does not supersede local wetland management plans or other general permits such as those that occur in Anchorage, Bethel, and Nome. This general permit may be applied only where it does not conflict with an existing policy.

We are soliciting and accepting comments for the next 30 days on our intent to re-issue and expand this GP. 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 Ms. **Mary Romero** at (907) 753-2773, toll free from

within Alaska at (800) 478-2712, by fax at (907) 753-5567, or by email at mary.r.romero@usace.army.mil if further information is desired concerning this notice.

GPs are considered appropriate for activities which are substantially similar in nature, cause only minimal adverse environmental impacts when performed separately, would have only minor cumulative effect 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 GP will be in effect for five more years and will be re-named GP 2007-541-M1. The activities intended for re-authorization under this GP are essentially the same, but would include the addition of the development of Subdivisions. A copy of the Draft Proposed GP is available on line at www.poa.usace.army.mil/reg/PNNNew.htm under POA-2007-541-M1.

The Corps has completed a Preliminary Determination that the proposed activities are in compliance with the requirements for issuance of a general permit. A copy of this Preliminary Determination is available upon request from the letterhead contact information, or by contacting Ms. Mary Romero at (907) 753-2773, by fax at (907) 753-5567, or by email at mary.r.romero@usace.army.mil.

BACKGROUND: On December 6, 2001, the Corps reauthorized GP 89-03N, which expired on December 6, 2006; during that timeframe the GP was used 130 times, resulting in 42.07 acres of wetlands fill. Since the GP was re-issued under DA permit POA-2007-541 in November of 2007 the GP has been used a total of 42 times for impacts to 23.051 acres of wetlands. Table 1 summarizes the type of projects and associated acreage authorized by this GP during the last two historical periods for the GP. The housing category includes associated driveways and roads, housing additions, and larger projects such as assisted living facilities and teacher housing. Community projects include schools, community centers, playgrounds, Head Start buildings, teen centers, and multi-use facilities.

Table 1. Summary of Actions

Project Type	Acreage 2001-2006	Number of GP's Issued 2001-06	Acreage 2007-2012	Number of GP's Issued 2007-12
Housing	15.16	93	17.743	32
Utilities	8.75	4	2.57	3
Health Clinics	6.57	15	0.558	5
Community projects	6.18	12	1.735	4
Roads/Trails/Boardwalks	5.41	6	2.93	4
Total	42.07	130	25.536	48

PROPOSED ACTIVITY: The Corps of Engineers proposes to reauthorize and expand the existing Residential and Community Projects within the State of Alaska GP POA-2007-541. See the attached Draft Proposed General Permit POA-2007-541-M1 for additional information. This GP would authorize proposed subdivision development provided the District Commander (DC), or his designee, determines that the proposed class of activities would be minor, and would not have more than minimal, individual, or cumulative adverse impacts on the human environment, and the DC has conducted consultation with appropriate Federal and State regulatory agencies.

The following specific changes are proposed to the GP:

- Coverage would be extended to the development of subdivisions as Part II, Private/Commercial Residential Developments and Subdivisions.
- No work shall be done under this GP without first obtaining a GP verification from the Alaska District Corps.
- Any activity authorized by this GP must be completed by the date specified in the Corps authorization letter.
- The activity must be a single and complete project. The same GP cannot be used more than once for the same single and complete project.
- The permittee shall implement the construction or operation of the work authorized herein in a manner so as to minimize adverse impacts on wildlife and natural environment.
- During excavation and fill placement, heavy equipment must not be operated in wetlands outside the authorized excavation and fill area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
- No fill or construction materials shall be stockpiled in waters of the U.S. including wetlands, outside of the project boundary which shall be staked, or otherwise delineated, prior to any mechanized land clearing or fill placement.
- 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 odor problems or degradation of water quality. Unusable or excess material must be disposed of at an approved disposal site.
- 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.
- ~~Fills Within 100-Year Floodplains.~~ The activity must comply with applicable FEMA approved state or local floodplain management requirements. Fuel storage tanks shall be located 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 based on anecdotal evidence, physical evidence, climate data, and good engineering judgment.
- 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.
- No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

- No subsistence resources shall be adversely impacted by activities.
- The proposed operation activity shall be in compliance with applicable State of Alaska, Department of Environmental Conservation, Alaska Pollution Discharge Elimination System Permit.
- A General 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. The permittee shall adhere to the alternative measures specified in the Alaska Department of Environmental Conservation's Certificate of Reasonable Assurance. A copy of the Draft Proposed GP is available on line at www.poa.usace.army.mil/reg/PNNew.htm under POA-2007-541-M1. These measures will remain conditions of this GP unless expressly modified or deleted, in writing, by the DC or his authorized representative. Additionally, dredge or fill activities are prohibited within 200 feet of any public water supply intake.
- The permittee shall contact the Alaska Department of Transportation and Public Facilities if proposed access roads are connected to the State road system. This will ensure that the access roads and driveway widths are sufficient to meet State standards.
- 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 GP in good condition and in conformance with the terms and conditions of this GP. The permittee is not relieved of this requirement even if the activity is abandoned. The permittee may transfer the permit to a third party in compliance with condition number 29 below. Should the permittee cease to maintain the authorized activity or should they desire to abandon the project without a transferee, then the permittee must obtain approval from this office, which may require restoration of the area.
- If the permittee sells the property associated with a GP verification, the permittee may transfer this GP verification to the new owner by submitting a letter to the Corps to validate the transfer. A copy of this GP verification must be attached to the letter, and the letter must contain the following statement and signature:

- "When the structures or work authorized by this GP are still in existence at the time the property is transferred, the terms and conditions of this GP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this GP 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)

- Any activity being performed under this permit may be summarily suspended, in whole or in part, upon a finding by the DC that there is noncompliance with any of the terms or conditions of this GP, or that there is noncompliance with a related nationwide or individual permit, or that there is a violation of Federal law associated with the activity, or that the immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate: (1) the extent of the suspension; (2) the reasons for such action; and (3) any corrective or preventive measures to be taken by the permittee which are deemed necessary by the DC to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of such notice. Within 10 days following receipt of a notice of suspension, the permittee may request a public hearing in order to present information relevant to a decision as to whether the authorization should be reinstated, modified, or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee, if no hearing is requested, the authorization will either be reinstated, modified, or revoked.

GENERAL PERMIT BOUNDARY: The GP Part I boundaries would include rural communities and exclude those areas within the city and municipal boundary limits of Anchorage, Eagle River, Palmer, Wasilla, Fairbanks, Juneau/Douglas, Homer, Seward, Kenai, Soldotna and the coastal boundary of the Aleutians West Coastal Resource Service Area. The Aleutians West Coastal Resource Service area extends from Unalga Pass on the east to Attu Island in the west, encompassing all land and water areas to the three mile offshore territorial limit. This includes the communities of Unalaska, Atka, and Nikolski, but does not include Adak Island.

The GP Part II boundaries would include all communities except those within the Anchorage Municipality and the Borough of Juneau (Anchorage, Auke Bay, Eagle River, Douglas and Juneau).

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. The previous certification (State AK ID Number AK0707-01J) was issued on October 8, 2007.

MITIGATION: The GP would be conditioned to prohibit discharges of any fill material within 50 feet of any streams, sloughs, rivers, ponds, lakes, permanently flooded wetlands or tidal waters. The GP includes other conditions requiring best management practices to minimize impacts to waters of the U.S.

Additionally a mitigation statement is required with the application showing the avoidance, minimization and compensatory mitigation proposal for unavoidable impacts. Compensatory mitigation will be decided on a case by case basis considering all factors.

ENDANGERED SPECIES: The Corps has conditioned the GP to protect threatened and endangered species. Preliminarily, the described activity will not affect endangered or threatened species, or their critical habitat designated as endangered or threatened, under the Endangered Species Act of 1973 (87 Stat. 844). This application is being coordinated with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. 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).

Areas with EFH species would be excluded from using this GP.

Preliminarily, we have determined the described activity would not adversely affect EFH in the project area.

CULTURAL RESOURCES: This GP does not authorize construction activities that would adversely affect historic properties that have been determined eligible, or that have been listed on the National Register of Historic Places. If a determination of eligibility has not been previously completed, a determination must be completed prior to project commencement. If the historic property cannot be avoided, ways to minimize or mitigate adverse affects will be agreed upon through consultation with the U.S. Army COE, AK SHPO, the appropriate Indian tribes, other interested parties, and if necessary, the Advisory Council on Historic Preservation.

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 areas 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 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).

A copy of the Draft Proposed GP is available on line at www.poa.usace.army.mil/reg/PNNNew.htm under POA-2007-541-M1.

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

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WQM/401 CERTIFICATION
410 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1795
PHONE: (907) 465-5321/FAX: (907) 465-5274

**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-2007-541-M1, Multiple Waterways, 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.