



# Public Notice

US Army Corps  
of Engineers  
Alaska District  
Regulatory Division (1145)  
Post Office Box 6898  
Anchorage, Alaska 99506-0898  
(907) 753-2712  
(800) 478-2712 (AK Toll Free)

Date:  
November 21, 2007  
Identification No:  
POA-2007-541  
In reply refer to above Identification Number  
Expiration Date: November 21, 2012

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**GENERAL PERMIT (GP) 2007-541  
PREVIOUSLY IDENTIFIED AS GP 89-03N**

**Residential and Community Projects within the State of Alaska**

General permit (GP) 2007-541, has been issued pursuant to Section 404 of the Clean Water Act (Public Act 95-217, 33 U.S.C. 1344 et seq.). The GP authorizes the placement of fill material into waters of the United States, including wetlands, for the purpose of constructing residential and community projects on rural lands within the State of Alaska. The placement of fill material associated with residential and community projects which does not fall within the scope of this GP, or which fails to meet the GP terms and conditions, is not authorized by this GP.

Based upon our evaluation, we have determined that activities authorized under this GP are similar in nature and in their impact upon water quality and the aquatic environment; would cause only minimal adverse effects when performed separately; and would have only minimal cumulative adverse effects on water quality and the aquatic environment [40 CFR 230.7(a)].

In response to Public Notice reference number GP 2007-541, issued July 3, 2007, the proposed GP was revised to reflect comments and address concerns submitted by the interested public and resource agencies. Based on a review of all pertinent information including a prepared environmental assessment, I have concluded that issuance of this GP will not have more than minimal impacts on the environment and is not contrary to the public interest.

The attached GP 2007-541, describes the terms and conditions which must be met in order for work to be authorized by the GP. An individual wishing to perform work under this GP must review these conditions carefully and follow the application procedures. Sample plans are attached to the GP for reference when preparing applications. If the proposed work does not meet the requirements of the terms and conditions, the GP will not apply and an individual Department of the Army permit application must be submitted to us at the letterhead address. Failure to comply with the terms and conditions of the GP could result in suspension, modification, or revocation of the permit, and/or imposition of penalties as provided by law.

GP 2007-541 has been re-issued for a period of five (5) years, effective the date of the signature shown on the last page of the attached permit. At the end of this (5) five-year period, an evaluation of the GP will be made, and at that time it will be decided whether or not this GP should be renewed. The District Commander may at any time during this five-year period, alter, modify, suspend, or revoke this permit, if he deems such action to be in the public interest.

Any questions or requests for additional information should be directed to: Alaska District, Corps of Engineers, Regulatory Division, CEPOA-RD, Post Office Box 6898, Elmendorf AFB, Alaska 99506-0898, phone (907) 753-2712, toll free in Alaska at (800) 478-2712, or by email at: [Regpagemaster@poa02.usace.army.mil](mailto:Regpagemaster@poa02.usace.army.mil).

District Commander  
U.S. Army Corps of Engineers

**GENERAL PERMIT (GP) 2007-541  
PREVIOUSLY IDENTIFIED AS GP 89-03N**

**Residential and Community Projects within the State of Alaska**

**INTRODUCTION**

Pursuant to Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C. 1344 et seq.), the District Commander, Alaska District, U.S. Army Corps of Engineers (Corps), hereby reauthorizes and renames General Permit (GP) 89-03N. The new GP identification number is GP 2007-541.

This GP 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.

This GP does not supersede local wetland management plans, coastal 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.

**LIMITATIONS**

- 1) This GP applies **only to activities authorized under Section 404** of the Clean Water Act.
- 2) Project limitations are:
  - a) Individual house fill pads and associated development will not exceed a footprint size of 0.30 acres in waters of the U.S. (i.e., total fill for the house pad, parking area, utility lines, and driveway will not exceed 0.30 acres in wetlands).
  - b) Access roads will not cumulatively exceed 2,000 feet long by 30 feet wide footprint dimensions in waters of the U.S. including wetlands. Residential access roads shall be defined as any road constructed primarily to access two or more residential lots or a community project.
  - c) Individual community development projects such as schools and health clinics will not exceed a footprint size of one acre in waters of the U.S. (i.e., total fill for the building pad, parking area, utility lines, and driveway will not exceed one acre in wetlands).
  - d) Driveways will be limited to a maximum footprint dimension of 200 feet long by 30 feet wide and defined as a connecting link of fill between a road and an individual house or community development pad.
- 3) Geographical areas excluded from this GP 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.

- 4) Only non-commercial residential and community development is authorized under this GP.
- 5) 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.
- 6) Fill material shall not be placed into or within 100 feet horizontally, of the Ordinary High Water mark or High Tide Line of any open water body, including streams, sloughs, rivers, ponds, lakes, estuaries, marine waters, and permanently flooded emergent wetlands.
- 7) Specific activities excluded from this GP are power generation plants, fuel storage areas (i.e., fuel tank farms), sewage treatment facilities, and material sites.
- 8) Activities covered under this GP shall not adversely affect any species listed as threatened or endangered under the Endangered Species Act of 1973 (ACT), or their critical habitat designated as endangered or threatened, nor jeopardize the continued existence of any proposed species under the ACT.
- 9) This GP does not apply if Essential Fish Habitat is adversely affected.
- 10) This GP does not apply to state designated Critical Habitat Areas, Game Refuges and Sanctuaries, and habitat areas identified as important by the various Alaska Coastal Districts (<http://www.alaskacoast.state.ak.us/Explore/alldistEPS.html>) and Alaska Department of Natural Resources, unless the activity is specifically authorized by the agency with jurisdiction over these lands.
- 11) This GP does not apply to construction activities within any unit of the National Wildlife Refuge System, the National Park System, or component of the National Wild and Scenic River System (existing and nominated).
- 12) 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 effects will be agreed upon through consultation with the Corps, Alaska State Historic Preservation Officer (SHPO), the appropriate Indian tribes, other interested parties, and if necessary, the Advisory Council on Historic Preservation.
- 13) This GP does not apply to any activity involving the use or storage of hazardous wastes or hazardous substances as part of their principal purpose. These materials are defined in the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act (RCRA), 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Contact the Alaska Department of Environmental Conservation or the U.S. Environmental Protection Agency for information about hazardous substances.

#### **APPLICATION PROCEDURES**

A Federal, state, or city agency; Native Village or tribal organization; or local housing authority may apply for authorization by submitting an application or letter to the Corps with the following information:

- 1) A project description that includes purpose of fill; project location including section, township, range, and USGS quadrangle map number; number of structures; cubic yards of fill material required; and dimensions of fill in square feet for buildings, roads, and any other features of the project that require fill placement in wetlands.
- 2) Three types of drawings (see enclosed figures 1-4) that include:

- a) Vicinity map depicting location of the project on a map such as a 1:63,360 USGS quadrangle map and on a smaller scale map of Alaska (see enclosed example Figure 1). Maps should show lake and stream locations, drainage patterns, and topography.
  - b) Plan view of the project showing the layout of buildings, roads, and other project features in relation to adjacent features such as ponds and creeks (to scale if possible). The plan view shows the proposed activity as if you were looking down on it (see enclosed example Figures 2 and 3). Plans must include total footprint size of project fill pad and show location and size of proposed culverts or other water-crossing structures.
  - c) Cross section of excavation and/or fill including approximate side slopes. The cross section represents the project as it would appear if cut internally for display (see enclosed example Figure 4). Since drawings may be reproduced, use heavy dark lines. Drawings do not have to be prepared by a professional, but should be clear and easily understood.
- 3) A description of soil conditions and building foundation type proposed.
  - 4) The type of material and location of the material source to be used as fill for the project.
  - 5) Photographs (if available) or any other information that would verify that the proposed work is in wetlands and meets the conditions of the GP. The project footprint overlaid on an aerial photo is especially helpful.

#### **CORPS AUTHORIZATION PROCESS**

- 1) Applicant submits a request to the Corps for a permit by methods outlined in the application procedures above.
- 2) The Corps reviews the application and preliminarily determines whether the GP is applicable.
- 3) The Corps will send the project plans to appropriate agencies for review. The agencies have ten calendar days from the date the Corps sends the project plans to them, to contact the Corps in writing, by FAX, email, or telephone, with comments on the project. If the agencies need additional time to provide substantive, site-specific comments, the Corps will wait an additional 15 calendar days before making a permit decision. Specific condition recommendations by the agencies will be incorporated as appropriate. If the applicant can provide documentation of recent coordination regarding their specific project with these agencies, the agency coordination could potentially be waived.
- 4) The Corps issues the applicant a GP authorization letter, or based upon review, the Corps notifies the applicant that a GP is not appropriate for the proposed project.

#### **CONDITIONS OF THE GENERAL PERMIT**

All activities identified and authorized by this GP shall be consistent with the conditions listed below. The Corps can also add special conditions to a GP authorization.

- 1) Fill material shall not be placed into or within 100 feet horizontally, of the ordinary high water mark or high tide line of any open water body, including streams, sloughs, rivers, ponds, lakes, estuaries, marine waters, and permanently flooded emergent wetlands.
- 2) The fill area shall be minimized by consolidating activities and uses of the fill. For example utility lines (water, electrical, telephone, sewer, etc.) should be located within the road or driveway fill.

- 3) If permafrost is present, sufficient fill thickness and/or insulation shall be utilized in all fills to prevent detrimental thermal degradation.
- 4) 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.
- 5) No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
- 6) 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 shall be evidence of insufficient stabilization.

7) The boundaries of the permitted fill area in wetlands shall be staked and/or flagged prior to construction to prevent inadvertent encroachment of adjacent wetlands.

8) Activities covered under this GP shall not adversely affect any species listed as threatened or endangered under the Endangered Species Act (ACT) of 1973(87 Stat. 844), or their critical habitat designated as endangered or threatened, nor jeopardize the continued existence of any proposed species under the ACT. If a listed species is identified within the boundaries of a proposed project covered under this GP, work at the site shall cease and the U.S. Fish and Wildlife Service and Corps shall be consulted immediately.

9) The proposed activity shall not be located within one-quarter mile of an eagle nest site unless the U.S. Fish and Wildlife Service determines that the activity will not impact the eagles. The applicant has additional responsibilities to protect eagles under provisions of the Bald and Golden Eagle Protection Act (16 U.S.C. 668a-d).

10) No cultural resources shall be adversely affected by activities authorized by this GP. If the permittee discovers any previously unknown historic or archaeological remains while accomplishing the activity authorized by this GP, you must immediately notify this office. The Corps will notify the State Historic Preservation Office, and the coastal district (if within a coastal district), of what has been found. The Corps or the appropriate Federal land manager will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

11) Federal applicants must provide evidence that they have initiated consultation with the State Historic Preservation Officer (SHPO) and if necessary, the Advisory Council on Historic Preservation as per Section 106 of the National Historic Preservation Act.

12) The Migratory Bird Treaty Act prohibits the willful killing or harassment of migratory birds. Where practicable, clearing, excavation, and fill activities shall be completed before or after the nesting season to avoid impacts to breeding migratory birds unless the site has been sufficiently disturbed or altered during non-breeding periods (e.g., with fill, plastic, or other materials) to eliminate suitable nesting habitat. 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.

13) Prior to fill placement and installation of any on-site wastewater treatment system (including mounded systems or package plants) within the fill site or contiguous wetlands, on-site sewage system design plan approval shall be obtained from the Alaska Department of Environmental Conservation.

14) The permittee shall allow the District Commander 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 GP.

15) All activities identified and authorized herein shall be undertaken in a manner that is consistent with the terms and conditions of the GP, and any activities undertaken by the permittee that are not specifically identified and authorized herein shall constitute noncompliance with the terms and conditions of the GP, and consequently, a violation of the Clean Water Act, which may result in the modification, suspension, or revocation of any authorization by the Corps in whole or in part, and in the institution of such legal, administrative, or judicial proceedings as the United States Government may consider appropriate, whether or not these permits have been previously modified, suspended, or revoked in whole or in part.

#### **MONITORING**

The Corps will conduct an annual review of all projects authorized during the previous year. Pertinent information from these cases shall be compiled into a report and entered in the official GP file. Copies of this report shall be made available to the interested public, and to local, state and Federal agencies for their information upon request.

In addition, periodic field inspections shall be undertaken by this office of projects authorized under the GP. Reports shall be prepared for all field inspections and entered into the official GP file. The Regulatory Division shall maintain a file of GP-related documents and monitoring efforts. Information contained in the GP file shall provide the basis for the decision whether or not to revise or renew the GP. If it is determined that projects authorized by this GP result in greater than minimal adverse environmental impacts, then the GP shall be modified, suspended, or revoked to prevent further impacts.

#### **LIMITS OF THIS AUTHORIZATION**

1) This GP does not grant any property rights, either in real estate or material, or any exclusive privileges; and it does not authorize any injury to property, invasion of rights, or infringement of Federal, state, or local laws or regulations.

2) This GP does not authorize the interference with any existing or proposed Federal projects.

3) This authorization does not obviate the need for other Federal, state, and local permits, licenses, or approvals that may be required for the proposed work.

#### **LIMITS OF FEDERAL LIABILITY**

In issuing this GP, the Federal Government does not assume any liability for the following:

1) Damages to the permitted project or uses thereof as a result of other permitted or non-permitted activities or from natural causes.

2) 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 which are not contrary to the public interest.

- 3) Damages to persons, property, or to other permitted or non-permitted activities or structures caused by an activity authorized by this GP.
- 4) Design or construction deficiencies associated with the permitted work.
- 5) Damage claims associated with any future modification, suspension, or revocation of this permit.

#### REEVALUATION OF PERMIT DECISION

The Corps of Engineers may reevaluate its decision to issue a GP authorization to any person or agency at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- 1) The permittee fails to comply with the terms and conditions of this permit.
- 2) The information provided by the permittee in support of the application proves to have been false, incomplete, or inaccurate.
- 3) 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 CF 326.4 and 326.5. The referenced enforcement procedures provide for terms and condition of the permit and for the initiation of legal action where appropriate.


#### PENALTIES FOR NONCOMPLIANCE/VIOLATIONS

Failure to comply with the terms and conditions of this GP may result in suspension of the work, revocation of the permit, removal of fill material or other structure, restoration of areas subject to Corps jurisdiction, and/or impositions of penalties as provided by law. The discharge of fill material not in accordance with the terms and conditions of this GP constitutes a violation of Section 301 of the Clean Water Act (33 U.S.C. 1319), and upon conviction thereof is punishable, in accordance with Section 309 of the Clean Water Act, by a fine of not less than \$2,500, nor more than \$ 25,000, per day of violation, or imprisonment of not more than one year, or both. That individual is also subject to a civil penalty not to exceed \$25,000 per day of the violation.

#### TERM

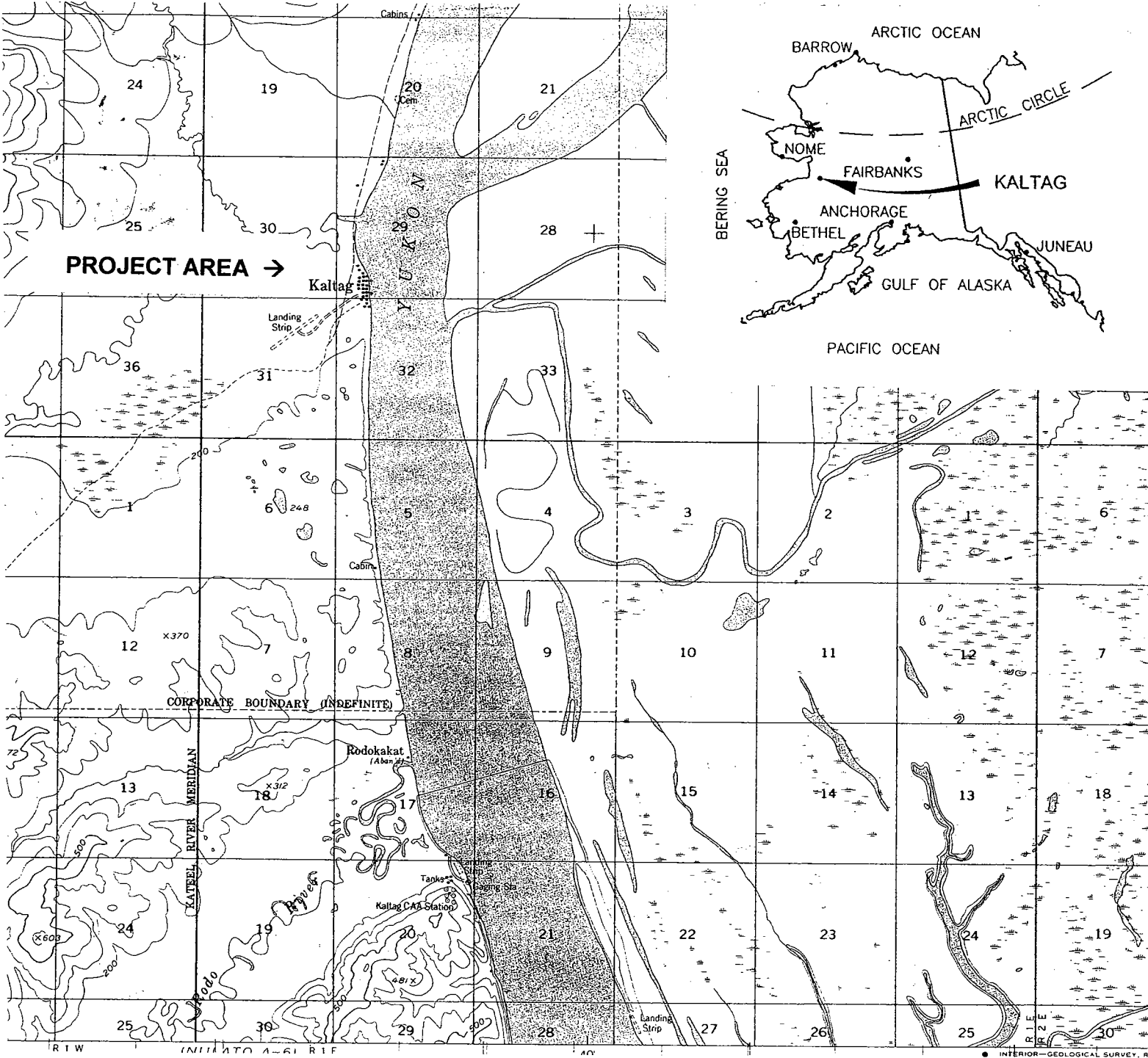
This GP is effective for 5 years from the date of issuance unless otherwise modified, suspended, or revoked. Authorized work must be completed within 12 months after the expiration date of this GP.

FOR THE DISTRICT COMMANDER:

  
\_\_\_\_\_  
Steve Meyers  
Chief, North Branch  
Regulatory Division  
Alaska District, Corps of Engineers

21 Nov 07  
Date

VICINITY MAP EXAMPLE



KALTAG COMMUNITY CENTER PROJECT

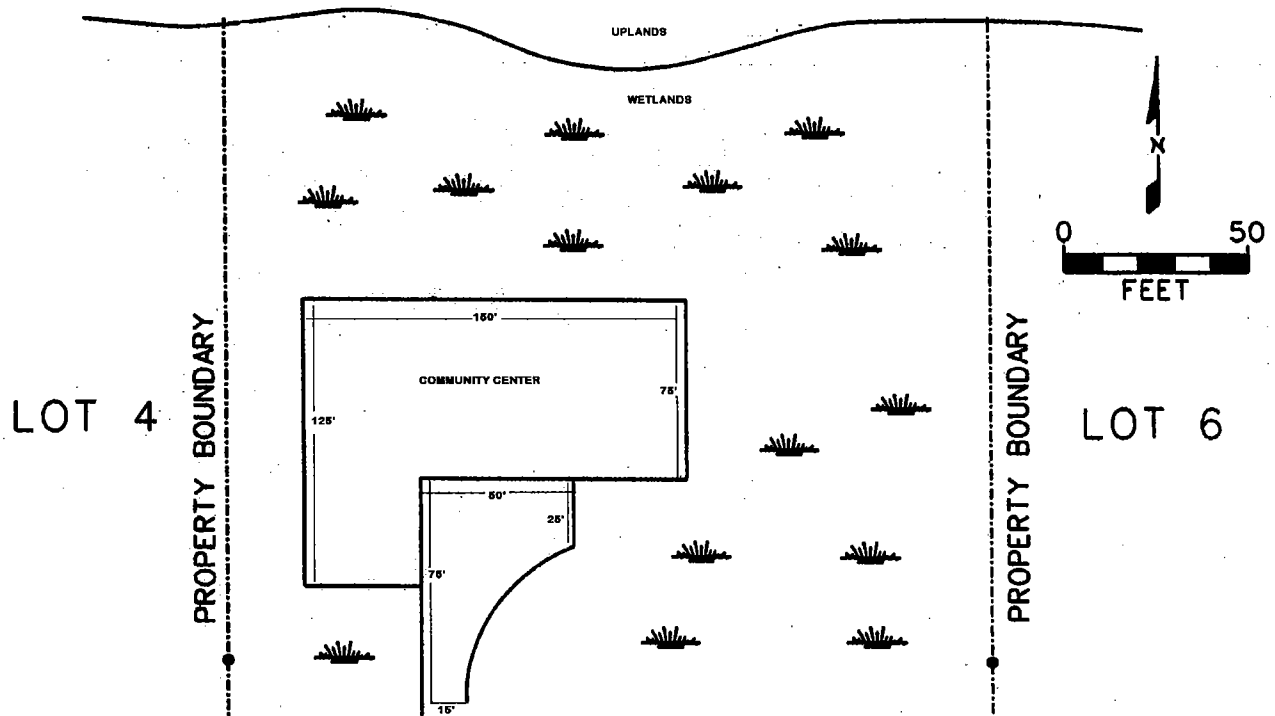
**PROJECT SITE**  
 Sec. 30, T 13 S, R 1 E  
 Kateel River Meridian  
 USGS QUAD NULATO B-6  
 NOT TO SCALE

↑  
 NORTH

FIGURE 1



## Plan View Example



- Plan view shows the proposed activity as if you were looking down on it.
- Show project size and layout of proposed work such as buildings, driveways, and roads in relation to other features such as wetlands and creeks.
- Include existing and proposed structures such as culverts and utilities.

Figure 2

# SUBDIVISION PLAN VIEW EXAMPLE

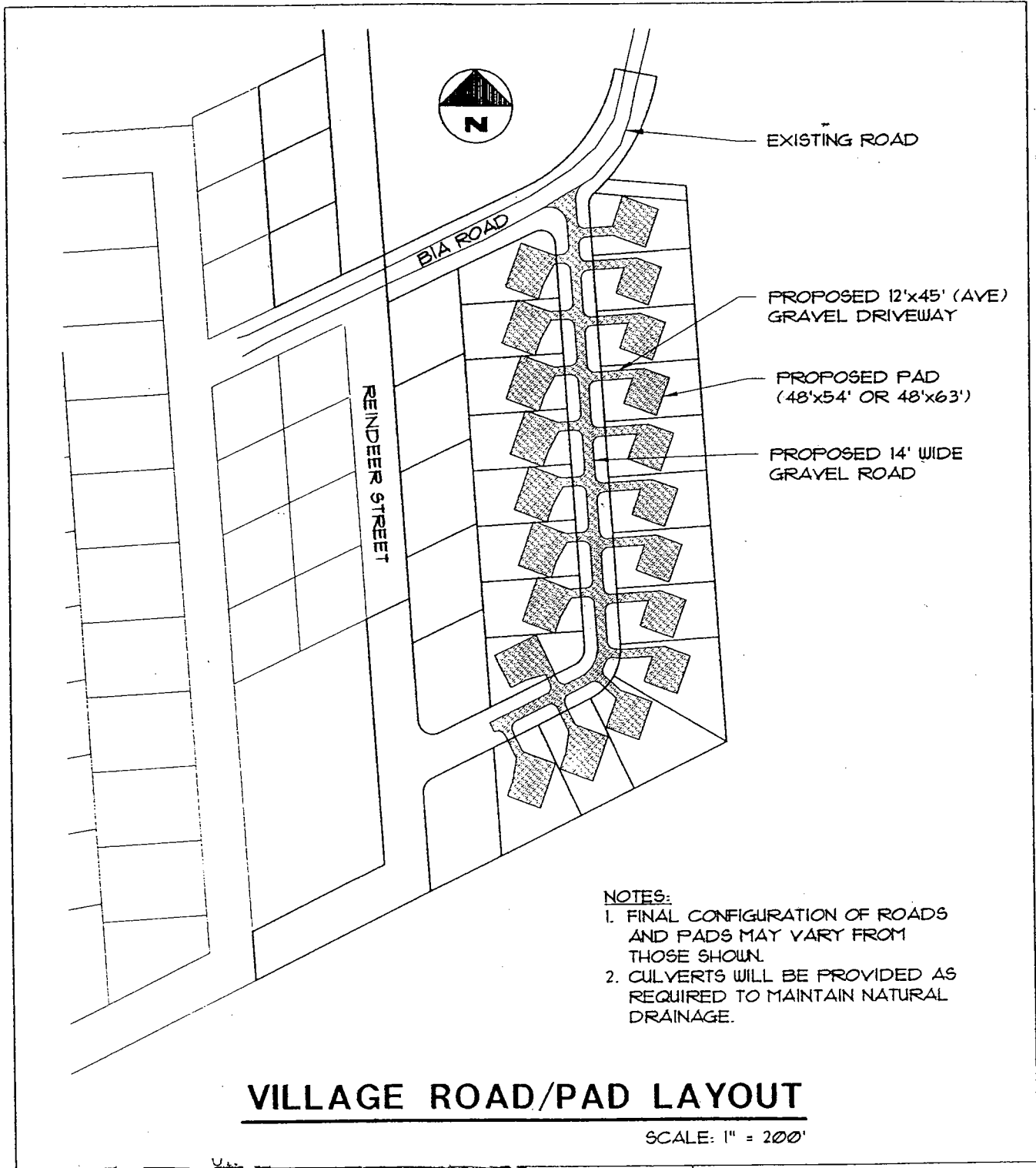
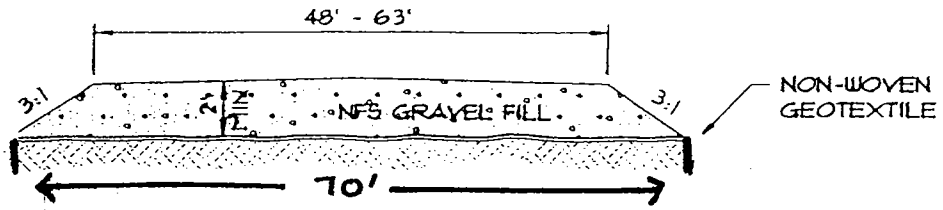


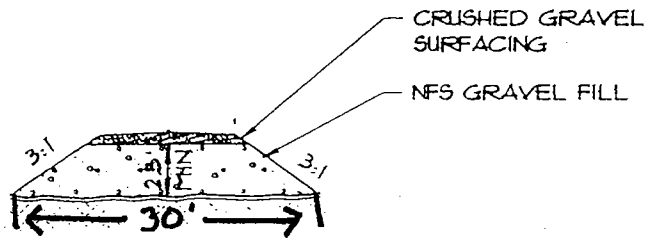
FIGURE 3

# CROSS SECTION EXAMPLE



**TYPICAL PAD SECTION**

HORIZONTAL SCALE: 1" = 20'  
VERTICAL SCALE: 1" = 10'



**TYPICAL ROADWAY/DRIVEWAY SECTION**

FIGURE 4

# STATE OF ALASKA

SARAH PALIN, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

### DIVISION OF WATER

#### Wastewater Discharge Authorization Program

555 Cordova Street  
Anchorage, AK 99501-2617  
Phone: (907) 269-7564  
Fax: (907) 334-2415  
TTY: (907) 269-7511  
<http://www.state.ak.us/dec/>

October 8, 2007

**Certified Mail 7003-02260-0004-1150-1196**

Steve Meyers, Chief North Branch  
Regulatory Division, Alaska District  
Corps of Engineers  
CEPOA-RD, PO Box 6898  
Elmendorf AFB, AK 99506-0898

Subject: GP POA-2007-541  
State ID No. AK0707-01J

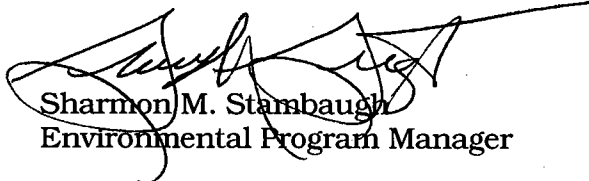
Dear Mr. Meyers:

In accordance with Section 401 of the Federal Clean Water Act of 1977 and provisions of the Alaska Water Quality Standards, the Department of Environmental Conservation is issuing the enclosed Certificate of Reasonable Assurance for issuance of a general permit for non-commercial residential and community construction projects in rural, Alaska.

Department of Environmental Conservation regulations provide that any person who disagrees with this decision may request an adjudicatory hearing in accordance with 18 AAC 15.195 – 18 AAC 15.340 or an informal review by the Division Director in accordance with 18 AAC 15.185. Informal review requests must be delivered to the Director, Division of Water, 555 Cordova St., Anchorage, AK 99501, within 15 days of the permit decision. Adjudicatory hearing requests must be delivered to the Commissioner of the Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, PO Box 111800, Juneau, AK 99811-1800, within 30 days of the permit decision. If a hearing is not requested within 30 days, the right to appeal is waived.

By copy of this letter we are advising the Corps of Engineers and the Office of Project Management and Permitting of our actions and enclosing a copy of the certification for their use.

Sincerely,

  
Sharmon M. Stambaugh  
Environmental Program Manager

Enclosure

cc: (with encl.)

Marcia Heer, ACOE, Anch  
Mac Mclean, DNR/OHMP  
USF&WS

Erin Allee, DNR/OPMP  
EPA, AK Operations  
William Ashton, ADEC Anchorage

**STATE OF ALASKA**  
**DEPARTMENT OF ENVIRONMENTAL CONSERVATION**  
**CERTIFICATE OF REASONABLE ASSURANCE**

A Certificate of Reasonable Assurance, in accordance with Section 401 of the Federal Clean Water Act and the Alaska Water Quality Standards, is issued to the Regulatory Division, Corps of Engineers, CEPOA-RD, PO Box 6898, Elmendorf AFB, AK 99506-0898, for the general permit that 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. Excluded areas (non-rural) are within the city and municipal boundary limits of Anchorage, Eagle River, Palmer, Wasilla, Fairbanks, Juneau/Douglas, Homer, Seward, Kenai, and Soldotna. This GP does not supersede local wetland management plans, coastal 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.


The proposed activity is located in rural areas of Alaska. Public notice of the application for this certification was given as required by 18 AAC 15.180.

Water Quality Certification is required under Section 401 because the proposed activity will be authorized by a Corps of Engineers permit, reference number POA-2007-541, and a discharge may result from the proposed activity.

Having reviewed the application and comments received in response to the public notice, the Alaska Department of Environmental Conservation certifies that there is reasonable assurance that the proposed activity, as well as any discharge which may result, will comply with applicable provisions of Section 401 of the Clean Water Act and the Alaska Water Quality Standards, 18 AAC 70, provided that the following alternative measures are adhered to. No alternative measures added for this certification.

This certification expires five (5) years after the date the certification is signed. If your project is not completed by then and work under Corps of Engineers Permit will continue, you must submit an application for renewal of this certification no later than 30 days before the expiration date (18 AAC 15.100).

Date 10/9/07

  
Sharmon M. Stambaugh  
Environmental Program Manager

# STATE OF ALASKA

MCH  
SARAH PALIN, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES OFFICE OF PROJECT MANAGEMENT/PERMITTING ALASKA COASTAL MANAGEMENT PROGRAM

☐ SOUTHCENTRAL REGIONAL OFFICE  
550 W 7<sup>th</sup> AVENUE SUITE 1660  
ANCHORAGE, ALASKA 99501  
PH: (907) 269-7470 FAX: (907) 269-3891

\* CENTRAL OFFICE  
P.O. BOX 111030  
JUNEAU, ALASKA 99811-1030  
PH: (907) 465-3562 FAX: (907) 465-3075

☐ PIPELINE COORDINATOR'S OFFICE  
411 WEST 4<sup>th</sup> AVENUE, SUITE 2C  
ANCHORAGE, ALASKA 99501  
PH: (907) 257-1351 FAX: (907) 272-3829

October 11, 2007

Ms. Marcia Heer  
US Army Corps of Engineers, Alaska District  
Regulatory Branch - CEP-CO-R  
PO Box 6898  
Elmendorf AFB, Alaska 99506-0898

Dear Ms. Heer:

**Subject: General Permit 2007-541 Reissue  
(Placement of dredged and/or fill materials into waters of the U.S. for non-commercial residential and community construction projects in rural Alaska)  
State I.D. No. AK 0707-01J  
Final Consistency Response – Concurrence**

The Office of Project Management and Permitting (OPMP) has completed coordinating the State's review of the re-issuance of the U.S. Army Corps of Engineers' General Permit (GP) 2007-541 in rural Alaska, for consistency with the Alaska Coastal Management Program (ACMP). This GP was previously identified as GP-89-03N.

Based upon review by the Alaska Department of Natural Resources and Alaska Coastal Districts, OPMP has developed the enclosed consistency response, in which the State concurs with the consistency determination that was submitted by the U.S. Army Corps of Engineers, that the project as proposed and amended is consistent with the ACMP and affected coastal district's enforceable policies, to the maximum extent practicable. This will be the final ACMP response on this project as proposed and amended.

By copy of this letter, I am informing the U.S. Army Corps of Engineers and State review participants of OPMP's finding. If you have any questions, please contact me at 907-465-8790 or email [erin.allee@alaska.gov](mailto:erin.allee@alaska.gov).

Sincerely,

  
Erin Allee  
ACMP Project Specialist

Enclosure

*"Develop, Enhance, and Conserve Natural Resources for Present and Future Alaskans."*

cc: William Ashton - ADEC, Anchorage  
Brenda Krauss - ADEC, Anchorage  
Mark Fink - ADFG, Anchorage  
Dick Mylius – ADNR/DMLW, Anchorage  
Gary Prokosch - ADNR/DMLW, Anchorage  
Clark Cox - ADNR/DMLW, Anchorage  
Sam Means - ADNR/DMLW, Anchorage  
Marcie Menefee - ADNR/DMLW, Anchorage  
Gary Schultz - ADNR/DMLW, Fairbanks  
Jeanne Proulx - ADNR/DMLW, Fairbanks  
Roselynn Smith - ADNR/DMLW, Fairbanks  
Brady Scott - ADNR/DMLW, Juneau  
Alex Dugaqua - ADNR/DMLW, Juneau  
Jackie Timothy - ADNR/OHMP, Juneau  
Mac McLean - ADNR/OHMP, Fairbanks  
Mark Minnillo – ADNR/OHMP, Craig  
Jim Cariello – ADNR/OHMP, Petersburg  
Lee McKinley - ADNR/OHMP, Kenai  
Mike Bethe - ADNR/OHMP, Mat-Su  
Christine Ballard – ADNR/OPMP, Anchorage  
Tom Atkinson – ADNR/OPMP, Anchorage  
Claire Batac – ADNR/OPMP, Juneau  
Judy Bittner - ADNR/SHPO, Anchorage  
Margie Goatley - ADNR/SHPO, Anchorage  
Michael Eberhardt – ADNR/SPOR, Juneau  
Pam Russell – ADNR/SPOR, Kenai  
General Delivery - NMFS, Anchorage  
Approved Coastal Districts (Including Petersburg and Wrangell)

**ALASKA COASTAL MANAGEMENT PROGRAM  
FINAL CONSISTENCY RESPONSE  
CONCURRENCE**

**DATE ISSUED:** October 11, 2007

**PROJECT TITLE:** General Permit 2007-541 Reissue (Placement of dredged and/or fill materials into waters of the U.S. for non-commercial residential and community construction projects in rural Alaska)

**STATE ID. NO.:** AK 0707-01J

**AFFECTED COASTAL RESOURCE DISTRICTS:** Statewide

**APPLICANT:** U.S. Army Corps of Engineers, Alaska District / Ms. Marcia Heer

**DESCRIPTION OF PROJECT SUBJECT TO REVIEW:**

The following description is taken from the U.S. Army Corps of Engineers July 3, 2007 "Public Notice of Application for Permit":

"The public is hereby notified that the Alaska District, U.S. Army Corps of Engineers (Corps) is proposing to reissue, revise, expand, and rename General Permit (GP) 89-03N, 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.

If re-issued, this GP will be in effect for five more years and will be re-named. GP 2007-541. The activities intended for re-authorization under this GP are essentially the same, with the clarification of authorized uses and permit conditions. A copy of the Draft Proposed GP is attached. We are soliciting and accepting comments on our intent to reissue this GP for the next 30 days.

**INTRODUCTION:** 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.

On December 6, 2001, the Corps reauthorized GP 89-03N, which expired on December 6, 2006. Since the last reissuance, the GP has been used 130 times, resulting in 42.07 acres of wetlands fill. Table 1 summarizes the type of projects and associated acreage authorized by this GP during the last five years. 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 Authorized by GP 89-03N from 2001-2006.**

<b>Project Type</b>	<b>Acreage</b>	<b>Number of GP's Issued</b>
Housing	15.16	93
Utilities	8.75	4
Health Clinics	6.57	15
Community Projects	6.18	12
Roads/Trails/Boardwalks	5.41	6
<b>Totals</b>	<b>42.07</b>	<b>130</b>

The following changes are proposed to the GP:

- The name of this GP will change from GP 89-03N to GP 2007-541.
- Previously, GP 89-03N excluded large urban areas within Alaska or areas that were covered by existing GP's. Since many of the smaller rural cities are not currently covered by existing GP's, we are proposing that the following geographic areas no longer be excluded from this GP: Ketchikan, Wrangell, Petersburg, Sitka, Haines, Skagway, Kodiak, Valdez, Cordova, Unalaska, North Pole, and Kotzebue. In addition, since GP 83-8P, Arctic Slope Housing Authority Region will not be reauthorized, those areas which include Anaktuvuk Pass, Atkasuk, Barrow, Kaktovik, Nuiqsut, Point Lay, Point Hope, and Wainwright would no longer be excluded from reauthorized GP 2007-541.
- The allowable amount of fill in wetlands for individual house fill pads, including driveways and other fill structures associated with the project, would increase from 12,500 square feet (0.29 acres) to one-half acre.
- The allowable amount of fill in wetlands for individual community development projects, such as schools and health clinics including driveways and other fill structures associated with the project, would increase from 22,000 square feet (0.51 acres) to one acre.
- Condition #1 has been revised to allow fill associated with culverts or bridges for crossings in streams and sloughs.
- Previously, the GP did not allow work in fish bearing waters. The GP has been revised to allow limited work (culverts and bridges) in anadromous streams and sloughs.
- The maximum length of access roads authorized under this GP would now be limited to 2,000 feet. Previously roads exceeding 2,000 feet were allowed pending agency review. We are proposing to increase the allowable road width total footprint from 30 feet to 48 feet.
- Previously, agency coordination under this GP was only required for projects with roads that exceeded 2,000 feet in length. We are now proposing agency coordination will be required for any projects where our preliminary review finds potential impacts to resources such as threatened and endangered species, essential fish habitat, anadromous waters, or cultural resources.
- The allowable maximum size of driveways authorized under this GP has increased. Previously the maximum size was 100 feet long by 30 feet wide. The reauthorized GP would increase maximum size of driveways to 200 feet long by 40 feet wide.
- A condition has been added to help avoid impacts to nesting migratory birds. See condition # 12.
- Most other conditions remain the same as the previous GP. Some have been rewritten for clarification or relocated in the GP Limitations section.

**PROPOSED ACTIVITY:** The Corps of Engineers proposes to reauthorize and expand GP 89-03N (Residential and Community projects within the State of Alaska) with revisions and change the administrative number to GP 2007-541. See attached Draft Proposed GP 2007-541 for additional

information. This GP would authorize proposed discharges 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.

**GENERAL PERMIT BOUNDARY:** The GP boundary is the entire state of Alaska, excluding the following areas: within the city and municipal boundary limits that include contiguous or adjacent suburbs of Anchorage, Eagle River, Palmer, Wasilla, Fairbanks, Juneau, Douglas, Homer, Seward, Kenai, and Soldotna. This GP does not supersede local wetland management plans, coastal management plans, or other general permits such as those that occur in Anchorage, Bethel, Nome, and Homer. This GP may be applied only where it does not conflict with an existing policy."

**SCOPE OF PROJECT TO BE REVIEWED:**

The scope of the project subject to this consistency review will be limited to the information listed in the Corps' "Public Notice of Application for Permit" and supplied attachments for GP 2007-541 (POA-2007-541, issued on July 3, 2007). The Draft Proposed GP 2007-541 is included in the Public Notice documents.

**COMMENTS:**

OPMP received comments from the Department of Natural Resources - Division of Mining, Land and Water and Office of Habitat Management and Permitting, and from the following Coastal Districts: Aleutians West Coastal Resource Service Area, Kenai Peninsula Borough, Ketchikan Gateway Borough, and Lake and Peninsula Borough.

**ALTERNATIVE MEASURES:**

OPMP received consistency comments including alternative measures from the Office of Habitat Management and Permitting, and the Aleutians West Coastal Resource Service Area. To achieve consistency with the standards and policies of the ACMP (including Statewide Standards and Coastal District Enforceable Policies), on September 25, 2007 the applicant agreed (see attached Project Amendment form) to incorporate the following amendments into the final project description:

**AMENDMENTS TO GP 2007-541:**

**Alaska Department of Natural Resource's (ADNR), Office of Habitat Management and Permitting (OHMP):**

On August 6, 2007, OHMP recommended (see evaluation page 11) that the language in Condition #10 be modified from:

*"This GP does not apply to state designated Critical Habitat Areas or Game Refuges and Sanctuaries, unless the activity is specifically authorized by the agency with jurisdiction over these lands."*

To the following amended language agreed upon by OHMP and the USACE:

*"This GP does not apply to state designated Critical Habitat Areas, Game Refuges and Sanctuaries, and habitat areas identified as important by the various Alaska Coastal Districts (add weblink here) and Alaska Department of Natural Resources, unless the activity is specifically authorized by the agency with jurisdiction over these lands."*

OHMP also requested that the final GP include a condition or stipulation that states the following: Activities within resident or anadromous fish streams shall be consistent with the State of Alaska Department of Natural Resources, Office of Habitat Management and Permitting (ADNR-OHMP) Statutes AS 41.14.840-41.14.900 and must comply with any ADNR-OHMP Fish Habitat Permit issued for the project, if a permit is required. Violation of the ADNR-OHMP Fish Habitat Permit shall be grounds to suspend or revoke the authorization granted by this GP.

The USACE responded to this alternative measure with:

*“The GP has been revised since it went out on public notice so that projects authorized under this GP would not be allowed in anadromous stream or sloughs, including culverts and bridges.”*

**Aleutians West Coastal Resource Service Area (AWCRSA):**

On August 2, 2007 AWCRSA submitted comments (see evaluation page 13). On September 25, 2007 OPMP coordinated a teleconference between the AWCRSA and the USACE. During this meeting the following two alternatives were evaluated by OPMP, AWCRSA, and the USACE as options for considering local concern within the USACE process:

- 1) The USACE could incorporate the AWCRSA comments into their GP as a Regional Condition.
- 2) The USACE could exclude the AWCRSA from this GP by including it as a geographic exclusion area.

The recommendations that resulted from this meeting were to follow alternative #2 and to exclude the AWCRSA from this GP.

Alternative #2 was agreed upon by the USACE because even though they could incorporate local enforceable policies into their GP (in the form of regional conditions), they do not have any authority to enforce these policies.

Alternative #2 was agreed upon by AWCRSA because they felt that an Individual Permit for these types of projects allowed their enforceable policies to be applied on a review-by-review case.

The final GP will include the following amended language:

*“Excluded areas (non-rural) 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”*

**COASTAL DISTRICT COMMENTS AND USACE RESPONSE:**

**Ketchikan Gateway Borough Coastal District** - On July 30, 2007 the Ketchikan Gateway Borough commented that they would not support the issuance of permits for activities that could damage subsistence, sport, or commercial fisheries including mariculture activities. They stated that when these areas are identified through a consistency review or public comment, they request

that potential impacts are considered. They also would defer to ADF&G to make the determination if anadromous streams, sport and subsistence areas will be adversely affected by the potential fill discharge.

The USACE responded with: *“Projects authorized under this GP would not be allowed in habitats that support subsistence, sport, or commercial fisheries, including mariculture activities. Since the GP has been revised from what went out on PN, all projects will need to be coordinated with the agencies.”*

**Kenai Peninsula Coastal District** - On August 1, 2007 the Kenai Peninsula Coastal District commented by stating that the changes to GP 89-03 that are relevant in the Kenai Peninsula Borough Coastal Zone are those that double the amount of allowable fill for non-commercial residential and community projects in rural areas. Stated that increasing the amount of allowable fill may open the door for the regulatory arm of the Corps to permit the maximum allowable fill, when it may be prudent to allow less than the maximum to preserve the important habitat a wetlands serves. In instances that involve a large subdivision it is important to consider the total amount of fill that is proposed in the full build-out of the subdivision compared to the amount of wetland necessary to carry out it's ecological function.

The District recommended that to avoid terrestrial habitat alteration, minimizing the amount filled and cleared is appropriate.

The USACE responded with: *“The GP has been modified since it was out on public notice to limit it to 10 acres per community for the next 5 year re-authorization period. We have also reduced the allowable acreage for residential house pad and driveway from 0.5 to 0.3 acres.”*

**Lake and Peninsula Coastal District** - On August 2, 2007 the Lake and Peninsula Borough commented that they are in agreement with the ability of rural communities to utilize this GP for some of the projects not normally approved under a GP. They are in support of allowing fill into anadromous streams and sloughs to allow limited work on culverts and bridges, provided the fill is not accomplished during the fish timing windows identified by OHMP or ADF&G. They also support increasing the allowable road width and size for driveways.

The USACE responded with: *“The GP has been revised since it went out on public notice so that projects authorized under this GP would not be allowed in anadromous stream or sloughs, including culverts and bridges. In response to Fish and Wildlife Service concerns, the GP will limit driveway and road width to 30 feet.”*

#### **CONSISTENCY STATEMENT:**

The Alaska Departments of Natural Resources and coastal resource districts statewide have reviewed the USACE's proposal and amendments to modify and re-issue GP 2007-541 for a period of five years. Based on that review, the State of Alaska proposes to concur with the consistency determination submitted by the U.S. Army Corps of Engineers that this proposed General Permit as described and modified is consistent with the ACMP to the maximum extent practicable

This consistency response may include reference to specific laws and regulations, but this in no way precludes an applicant's responsibility to comply with all other applicable State and federal laws and regulations.

This consistency response is only for the project as described and amended. If, after issuance of this final consistency response, the applicant proposes any changes to the approved project, including its intended use, prior to or during its siting, construction, or operation, the applicant must contact this office immediately to determine if further review and approval of the modifications to the project is necessary. Changes may require amendments to the State authorizations listed in this response, or may require additional authorizations.

This final consistency response represents a consensus reached between you as the project applicant and the reviewing agencies and districts listed above; regarding the conditions necessary to ensure the proposed project is consistent with the ACMP.

This final consistency response is a final administrative decision for purposes of Alaska Appellate Rules 601-612. Any appeal from this decision to the superior court must be made within 30 days of the date of this determination.

If the proposed activities reveal cultural or paleontological resources, the applicant is to stop any work that would disturb such resources and immediately contact the State Historic Preservation Office (907-269-8720) and the U.S. Army Corps of Engineers (907-753-2712) so that consultation per section 106 of the National Historic Preservation Act may proceed.

**FINAL CONSISTENCY RESPONSE PREPARED BY:**

Erin Allee – ACMP Project Specialist  
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Alaska Coastal Management Program  
PO Box 111030  
Juneau, Alaska 99811-1030  
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Erin Allee

**ACMP CONSISTENCY EVALUATION**  
**General Permit 2007-541 Reissue - AK 0707-01J**  
**(Placement of dredged and/or fill materials into waters of the U.S. for non-commercial residential and community construction projects in rural Alaska)**

Pursuant to the following evaluation, the project as proposed is consistent with applicable ACMP statewide and affected coastal resource district enforceable policies (copies of the policies are available on the ACMP web site at <http://www.alaskacoast.state.ak.us>).

<b>STATEWIDE STANDARDS</b>
<b>11 AAC 112.200 Coastal Development</b>
<b>Evaluation:</b> OPMP has reviewed the proposed re-issuance of GP 2007-541 under 11 AAC 112.200 and has determined it to be consistent with this standard to the maximum extent practicable.
<b>11 AAC 112.210 Natural Hazard Areas</b>
<b>Evaluation:</b> OPMP has reviewed the proposed re-issuance of GP 2007-541 under 11 AAC 112.210 and has determined it to be consistent with this standard to the maximum extent practicable.
<b>11 AAC 112.220 Coastal Access</b>
<b>Evaluation:</b> OPMP has reviewed the proposed re-issuance of GP 2007-541 under 11 AAC 112.220 and has determined it to be consistent with this standard to the maximum extent practicable.
<b>11 AAC 112.230 Energy Facilities</b>
<b>Evaluation:</b> This statewide standard does <u>not</u> apply to GP 2007-541 as proposed and amended.
<b>11 AAC 112.240 Utility Routes and Facilities</b>
<b>Evaluation:</b> OPMP has reviewed the proposed re-issuance of GP 2007-541 under 11AAC 112.240 and has determined it to be consistent with this standard to the maximum extent practicable.
<b>11 AAC 112.250 Timber Harvest and Processing</b>
<b>Evaluation:</b> This statewide standard does <u>not</u> apply to GP 2007-541 as proposed and amended.
<b>11 AAC 112.260 Sand and Gravel Extraction</b>
<b>Evaluation:</b> OPMP has reviewed the proposed re-issuance of GP 2007-541 under 11AAC 112.260 and has determined it to be consistent with this standard to the maximum extent practicable.
<b>11 AAC 112.270 Subsistence</b>
<b>Evaluation:</b> OPMP has reviewed the proposed re-issuance of GP 2007-541 under 11 AAC 112.270 and has determined it to be consistent with this standard to the maximum extent practicable.

## 11 AAC 112.280 Transportation Routes and Facilities

### Evaluation:

OPMP has reviewed the proposed re-issuance of GP 2007-541 under 11 AAC 112.280 and has determined it to be consistent with this standard to the maximum extent practicable.

## 11 AAC 112.300 Habitats

Habitats in the coastal area encompassed by this Department of the Army General Permit that are subject to the program are: “*wetlands*” (11 AAC 112.300(b)(3)); “*rivers, streams and lakes*” (11 AAC 112.300(b)(4)) and “*important habitat*” (11 AAC 112.300(b)(9)).

**Wetlands** (11 AAC 112.300(b)(3)): Wetlands must be managed to avoid, minimize, or mitigate significant adverse impacts to water flow and natural drainage patterns. The proposed permit includes permit conditions and limitations that address the maintenance of natural drainage patterns and limits the overall size of the footprint. It mandates inter-agency coordination if sensitive habitats or species are present and calls for the stabilization and revegetation of disturbed soils. These permit conditions and limitations respectively serve to avoid and/or minimize potential adverse impacts to the water flow and natural drainage patterns of wetland habitat areas.

**Rivers Streams and Lakes** (11 AAC 112.300(b)(3)): Rivers streams and lakes must be managed to avoid, minimize or mitigate significant adverse impacts to natural water flow, active floodplains and natural vegetation within riparian management areas. The proposed permit includes permit conditions and limitations that address maintenance of natural drainage patterns, limits the overall size of fill footprints, limits the placement of fill materials within 100-feet of open water bodies (with the exception of fills associated with culverts and bridges) and calls for the stabilization and revegetation of disturbed soils. These permit conditions and limitations serve to avoid and/or minimize potential adverse impacts to the natural water flow and active floodplains of rivers, streams and lakes.

Riparian management areas of lakes and single river channels extend 100 feet from the ordinary high water mark (OHW) of the associated waterbody. Prohibiting fill within 100 feet of these water bodies would protect riparian vegetation inside this perimeter. For split channels, the riparian management area extends 200 feet on either side of the split. For braided channels, the riparian area extends outwards to 500 feet from the braid.

Permit conditions and limitations that address fill size, minimization of fill material and revegetation of disturbed areas serve to minimize adverse impacts to riparian vegetation in the larger riparian management area for split and braided channels.

**Important Habitat** (11 AAC 112.300(b)(9)(A) and (B)): ACMP regulations, in part, define “*important habitat*” as:

- 1) Habitat areas designated as such in a Coastal District Plan, pursuant to 11 AAC 114.250(h);
- 2) Habitat areas identified by the department where usage has a direct and significant impact on coastal waters and has been shown to be biologically and significantly productive (11 AAC 112.300(c)(1)(B)(i)(ii), and;
- 3) Habitats identified as state game refuges, state game sanctuaries, state range areas, or fish and game critical habitat under AS 16.20 (11 AAC 112.300(c)(1)(C)).
- 4) Habitat areas designated as important under a Coastal District Plan must be managed for the special productivity of the habitat in accordance with the applicable district enforceable policies (Item 1). Habitat areas designated as important by the department and habitats identified as state game refuges, state game sanctuaries, state range areas, or fish and game critical habitat under AS 16.20 must be managed to avoid, minimize or mitigate significant adverse impacts to special productivity in those areas (Items 2 and 3).

In each of these cases, permit conditions and limitations serve to meet habitat management requirement under the ACMP. Permit restrictions on the placement of fill and limitation of the size of the overall footprint avoid

or minimize potential impacts to special productivity. Requirements for agency coordination on projects where sensitive habitat or species are involved and maintenance of natural drainage patterns is an effort to manage for the special productivity of important habitats designated in the various coastal district plans. Condition 10 of GP 2007-541 specifically excludes use of the GP in state game refuges, state game sanctuaries, state range areas, or fish and game critical habitat (Item 3). It does not explicitly exclude the use of the GP in important habitat areas designated under the various Coastal District Plans, nor does it exclude other important habitat areas designated by the department. To adequately address *important habitats*, Condition 10 requires modification.

#### **Alternative Measures and ACMP Consistency**

With the addition of the following alternative measure, the OHMP concurs with the applicants determination of consistency. In order for GP 2007-541 to be consistent with the ACMP, the OHMP recommends that the language of Condition 10 of GP 2007-541 be modified to:

- 1) Exclude habitat areas identified as important by the various Coastal Management Districts, pursuant to 11 AAC 114.250(h); and,
- 2) Exclude habitat areas identified as important by the "department", as defined by 11 AAC 112.300(c)(1)(B) and (C).

#### **Advisories**

Some of the activities authorized by this GP require issuance of a Fish Habitat Permit from the OHMP prior to commencement of any construction (AS 41.14.840 and AS 41.14.870). One example of this would be the installation of culverts and bridges in fish bearing waters. Because the permitting authority of the U.S. Army Corps of Engineers and the OHMP overlaps for some of the activities authorized under this GP, the OHMP requests that the final GP 2007-541 include a condition or stipulation stating:

*Activities within resident or anadromous fish streams shall be consistent with State of Alaska Department of Natural Resources, Office of Habitat Management and Permitting (ADNR-OHMP) Statutes AS 41.14.840 – 41.14.900 and must comply with any ADNR-OHMP Fish Habitat Permit issued for the project, if a permit is required. Violation of the ADNR-OHMP Fish Habitat Permit shall be grounds to suspend or revoke the authorization granted by this GP.*

#### **Evaluation:**

The Office of Habitat Management and Permitting has reviewed the proposed re-issuance of this GP. To achieve consistency with the standards and policies of the ACMP (11 AAC 112.300), on September 25, 2007 the applicant agreed (see attached Project Amendment form) to incorporate the alternative measures into the final project description.

The language in Condition #10 be modified from:

*"This GP does not apply to state designated Critical Habitat Areas or Game Refuges and Sanctuaries, unless the activity is specifically authorized by the agency with jurisdiction over these lands."*

To the following amended language agreed upon by OHMP and the USACE:

*"This GP does not apply to state designated Critical Habitat Areas, Game Refuges and Sanctuaries, and habitat areas identified as important by the various Alaska Coastal Districts (add weblink here) and Alaska Department of Natural Resources, unless the activity is specifically authorized by the agency with jurisdiction over these lands."*

OHMP also requested that the final GP include a condition or stipulation that states the following: Activities within resident or anadromous fish streams shall be consistent with the State of Alaska Department of Natural Resources, Office of Habitat Management and Permitting (ADNR-OHMP) Statues AS 41.14.840-41.14.900 and must comply with any ADNR-OHMP Fish Habitat Permit issued for the project, if a permit is required. Violation of the ADNR-OHMP Fish Habitat Permit shall be grounds to suspend or revoke the authorization



granted by this GP.

The USACE responded to this alternative measure with:

*“The GP has been revised since it went out on public notice so that projects authorized under this GP would not be allowed in anadromous stream or sloughs, including culverts and bridges.”*

At the request of OHMP to include the above Advisories the USACE responded with:

“We have removed the culvert/bridge exclusion for condition 1. So no work is allowed in streams or other waters. It is unlikely a Fish Habitat Permit would be required for any of the activities authorized by this GP. The Corps is not able to enforce other agency mandates. Since the Corps is not able to enforce this condition, we are unable to include it as a condition of our GP.”

Therefore, the proposed re-issuance of GP 2007-541 under 11 AAC 112.300 as proposed and amended is consistent with this standard to the maximum extent practicable.

### **11 AAC 112.310 Air, Land & Water Quality**

**Evaluation:** The ADEC statutes and regulations with respect to air, land and water quality are no longer incorporated into the coordinated ACMP consistency reviews. The issuance of an ADEC authorization constitutes consistency with the ACMP for the authorized activity and this standard. Consistency with this standard will be established when the ADEC issues or waives the required authorizations.

### **11 AAC 112.320 Historic, Prehistoric, and Archaeological Resources**

**Evaluation:**

OPMP has reviewed the proposed re-issuance of GP 2007-541 under 11 AAC 112.320 and has determined it to be consistent with this standard to the maximum extent practicable.

### **AFFECTED COASTAL RESOURCE DISTRICT ENFORCEABLE POLICIES**

The following Coastal District submitted comments:

#### **Aleutians West Coastal Resource Service Area:**

**Evaluation:**

The AWCRSA CMP contains two enforceable policies specifically related to dredge and fill materials. They are:

#### **A-2 Dredge and Fill Requirements**

Placement of fill in coastal waters shall be located, designed, constructed, operated, and maintained to limit the extent of direct disturbance to the minimum area necessary to accommodate the proposed purpose or use. In doing so, the applicant shall implement a Best Management Practices Plan that he/she provided as part of the project application.

The COE ACMP Consistency Determination, page 2, states that the permit does not authorize activities in coastal waters and that fill material is not allowed within 100 feet of the high tide line of coastal waters. The permit is found consistent with this policy.

#### **A-3 Disposal of Dredged Materials**

Dredged materials placed on tidelands shall not cause significant adverse changes to shoreline processes, such as sediment transport, coastal erosion, and deposition patterns. Offshore disposal of dredge material shall avoid significant adverse impacts to coastal resources.

*As referenced above, the permit does not authorize activities in coastal waters and fill material is not allowed within 100 feet of the high tide line of coastal waters. This GP also does not apply to offshore projects. The*

*permit is found consistent with this policy.*

*The general permit is applicable to the entire state of Alaska. The AWCRSA has designated areas for subsistence and recreational use and there is potential for the permit to be applied to a project proposed within an AWCRSA designated subsistence or recreational use area. The COE ACMP Consistency Determination addresses this possibility and says that the COE will initiate local coordination when such projects are proposed.*

*The AWCRSA has policies relating to Historic, Prehistoric, and Archeological resources and the entire district has been designated as an area important to History or Prehistory (federal lands or waters excluded). These policies are:*

### **I-1 Cultural and Historic Resource Areas**

The evaluation and protection of historic and archaeological values of an area proposed for development within the designated area as described in the introduction to *Section I* shall be part of project planning. In addition to the requirements of the State Historic Preservation Officer, the developer shall:

- a) evaluate the potential for encountering historic and archaeological resources by contacting the Museum of the Aleutians;
- b) prepare a plan based on the evaluation for protecting historic and archeological resources found on the site during construction and incorporate it into the project description; and
- c) report observations of undocumented cultural resources to the landowner and the Museum of the Aleutians.

### **I-2 Resource Protection**

Uses and activities which may adversely affect cultural resource areas within the designated area as described in the introduction to *Section I* shall comply with the following standards:

- a) artifacts of significant historic, prehistoric, or archaeological importance shall not be disturbed during project development unless the State Historic Preservation Office in consultation with the landowner authorizes such disturbance;
- b) where disturbance is authorized an artifact curation agreement shall be prepared by the developer in consultation with the landowner, Museum and the appropriate state or federal preservation authorities; and
- c) where previously undiscovered artifacts or areas of historic, prehistoric, or archaeological importance are encountered during development, the discovery shall be protected from further disturbance pending evaluation by the State Historic Preservation Office and the Museum of the Aleutians.

*The permit describes consultation with the State Historic Preservation Office and the Alaska Heritage Resource Survey. To be consistent with our district policies the above provisions would need to be included in the permit.*

The final GP will include the following amended language:

*"Excluded areas (non-rural) 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"*

Therefore, the proposed re-issuance of GP 2007-541 under the AWCRSA Coastal Management Plan is consistent to the maximum extent practicable.

**PROJECT AMENDMENT**

I have reviewed the proposed State comments and recommendations for the project identified as **“General Permit 2007-541 Reissue (Placement of dredged and/or fill materials into waters of the U.S. for non-commercial residential and community construction projects in rural Alaska)”** State ID No. **AK 0707-01J**, to achieve consistency with the standards and policies of the ACMP and agree to amend the project description to (check one):

- fully incorporate all of the alternative measures described therein;  
 propose additional modifications to achieve consistency with the enforceable policies of the ACMP; or to  
 incorporate some of the alternative measures and also propose additional modifications. These modifications are described in the above document.

Marcia S. Heer (Corps of Engineers)  
(Applicant/Agent name)

October 5, 2007 (Date)

Please fax the signed and dated form to Erin Allee at OPMP at 465-3075 as soon as possible to enable OPMP/ACMP to issue your project's proposed and final ACMP consistency response.

**Amendments to GP 2007-541:**

**Alaska Department of Natural Resources (ADNR), Office of Habitat Management and Permitting (OHMP):**

On August 6, 2007, OHMP recommended that the language in Condition #10 be modified from:

*"This GP does not apply to state designated Critical Habitat Areas or Game Refuges and Sanctuaries, unless the activity is specifically authorized by the agency with jurisdiction over these lands."*

To the following amended language agreed upon by OHMP and the USACE:

*"This GP does not apply to state designated Critical Habitat Areas, Game Refuges and Sanctuaries, and habitat areas identified as important by the various Alaska Coastal Districts (add web link here) and Alaska Department of Natural Resources, unless the activity is specifically authorized by the agency with jurisdiction over these lands."*

OHMP also requested that the final GP include a condition or stipulation that states the following: Activities within resident or anadromous fish streams shall be consistent with the State of Alaska Department of Natural Resources, Office of Habitat Management and Permitting (ADNR-OHMP) Statutes AS 41.14.840-41.14.900 and must comply with any ADNR-OHMP Fish Habitat Permit issued for the project, if a permit is required. Violation of the ADNR-OHMP Fish Habitat Permit shall be grounds to suspend or revoke the authorization granted by this GP.

The USACE responded to this alternative measure with:

*"The GP has been revised since it went out on public notice so that projects authorized under this GP would not be allowed in anadromous stream or sloughs, including culverts and bridges."*

**Aleutians West Coastal Resource Service Area (AWCRSA):**

On August 2, 2007 AWCRSA submitted comments. On September 25, 2007 OPMP coordinated a teleconference between the AWCRSA and the USACE during this meeting the following two alternatives were evaluated by OPMP, AWCRSA, and the USACE as options for considering local concern within the USACE process:

- 1) The USACE could incorporate the AWCRSA comments into their GP as a Regional Condition.
- 2) The USACE could exclude the AWCRSA from this GP by including it as a geographic exclusion area.

The recommendations that resulted from this meeting were to follow alternative #2 and to exclude the AWCRSA from this GP.

The final GP will include the following amended language:

*"Excluded areas (non-rural) 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"*