Public Notice

US Army Corps
of Engineers
Alaska District
Regulatory Branch (1145b)
Post Office Box 6898
Elmendorf Air Force Base
Alaska 99506-0898

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SPECIAL PUBLIC NOTICE SPN 2005-08

EVALUATION AND REVIEW OF NEW SUBDIVISIONS DEVELOPED COMPLETELY OR PARTIALLY IN WETLANDS AND OTHER WATERS OF THE UNITED STATES

Special Public Notice 86-5 was published on November 1, 1986. This SPN-2005-08 provides an updated guide to facilitate an orderly and systematic Department of the Army permit evaluation and review process for new subdivisions developed completely or partially in wetlands or Other Waters of the United States (OWUS). This updated framework provides guidance on how the U.S. Army Corps of Engineers (USACE), Alaska District, implements its responsibilities under Section 404 of the Clean Water Act, with regard to the development of new subdivisions which would result in the placement of fill into waters of the United States, including wetlands.

BACKGROUND INFORMATION AND HISTORICAL PERSPECTIVE:

The USACE is responsible for regulating discharges of dredged and/or fill material into all waters of the United States, including wetlands. Pursuant to the Clean Water Act, development interests must obtain a Department of the Army (DA) permit prior to the placement of such material. The USACE's implementing regulations were established to ensure that the chemical, physical and biological integrity of our nation's water is protected. Prior to rendering a decision on individual development proposals, the USACE actively solicits and considers the viewpoints of interested individuals and organizations including State, Federal, Native and local governing bodies and agencies and conservation groups through our public interest review process.

On December 24, 1980, the Environmental Protection Agency (EPA) finalized guidelines for specification of disposal sites for dredged or fill material. These guidelines, referred to as the 404(b)(1) guidelines, were jointly developed between EPA and the USACE, and serve as mandatory criteria by which the USACE evaluates permit applications (proposed action) to discharge fill material into all waters of the United States, including wetlands. Specifically, the 404(b)(1) guidelines require the USACE to conduct a 404(b)(1) analysis as part of the public interest review process. The USACE is obligated by Federal law to implement the provisions of the 404(b)(1) guidelines. The District Engineer may not issue a permit unless the proposed development activity meets the guidelines, and issuance of the permit would not be contrary to the public interest. [More information on the 404(b)(1) guidelines can be found in 40 CFR Part 230, Federal Register, Vol. 45, No. 249, pgs. 85336-85357.]

The Environmental Protection Agency's 404(b)(1) guidelines also require that the proposed discharge of dredged or fill material into wetlands and OWUS contain all appropriate and practicable steps to minimize potential impacts on the aquatic ecosystem. Therefore applicants must demonstrate that they have avoided, minimized and if necessary compensated for the loss of wetlands or OWUS. If the

proposed activity does not require access or proximity to or siting within a "special aquatic site" (i.e., wetlands, mudflats, etc.), a less damaging practicable alternative that does not involve a "special aquatic site" is presumed to be available, unless clearly demonstrated otherwise by the permit applicant. The applicant must demonstrate that the proposed action represents the least environmentally damaging practicable alternative.

The least environmentally damaging practicable alternative may include: construction in uplands; reducing the size of the proposal to the minimum discharge necessary for the project; or the inclusion of compensatory mitigation. An alternative is practicable if it is available and capable of being done after taking into consideration costs, logistics, or available technology, in light of the overall project purpose. If it is otherwise a practicable alternative, an area not presently owned by the applicant that could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity may be considered a viable alternative.

USACE regulations, 33 CFR 325.1(d)(2) and 33 CFR 230, 33 CFR 325 App. B, discuss "reasonably related" and "direct and indirect environmental effects" to avoid piecemeal work associated with the same project. Evaluations of subdivision developments must address the effects of all the ancillary subdivision development, including the house pads, septic systems, driveways, garage pads, storage pads, yards, utilities, and any additional fill material placed in wetlands and OWUS to reasonably develop each typical lot. The USACE analysis also needs to look at what lots might reasonably be developed in the future to avoid piecemealing of projects.

The Corps of Engineers, Alaska District continues to receive permit applications for access roads to facilitate the development of already platted subdivisions. The applicant's intent has been to construct the access roads, sell the platted lots, and let the individual lot owners improve their property. Recent developers have included: contractors; corporations; private party developers; the University of Alaska; the State of Alaska, Division of Lands; the State of Alaska Mental Health Trust; cities; and boroughs.

GUIDELINES FOR SUBDIVISION DEVELOPMENT

The USACE has determined that the following methods for subdivision development avoid piecemealing, and allows for proper evaluation under the 404(b)(1) guidelines. These alternatives shall apply to all new subdivisions.

Alternative No. 1:

The applicant/developer will apply for the entire amount of fill material required for the subdivision development. Responsibility to oversee the construction in compliance with the conditions of a permit (if issued) would fall entirely upon the applicant/developer. The Corps will require the developer to provide a preliminary jurisdictional determination for the subdivision completed by a consultant. The permit application must include all fill proposed to be placed in wetlands and OWUS. The proposed site plan needs to include where all the access roads would be located, where all culverts are proposed, and what lots are designated for development. The plan will need to show how the developer has avoided and minimized impacts to wetlands and OWUS. Upon completion, if a permit is issued, a final plat map must be submitted to the Corps.

Alternative No. 2:

The applicant/developer will apply for permits to construct access roads and provide sufficient information for the evaluation of the overall development, but leave it up to individual lot buyers to obtain permits for future individual lot development. The Corps will require the developer to

provide a preliminary jurisdictional determination for the subdivision completed by a consultant. The permit application must include an estimate of the number of lots to be developed and the typical site plan for the lots in wetlands and OWUS. The proposed site plan needs to include where the access roads would be located, where all culverts are proposed, and what lots are planned for development.

For a DA permit application to be complete, the application shall contain information describing the maximum development allowable under local zoning regulations. This would allow the USACE to determine the maximum potential affect prior to the issuance of any permit(s).

PROCESS REQUIREMENTS

Applications for new subdivision DA permits shall contain information and drawings describing reasonable and typical lot improvements. Engineer Form 4345, Application for Department of Army permit, must be completed for a new subdivision. The application will include the total amount of fill material and the maximum dimensions for driveway pads, house foundation pads, garages, fill for yards, and sanitation facilities in the wetlands areas and OWUS. If mechanized land clearing, or stockpiling of overburden in wetlands or OWUS is planned, this activity must also be described in the DA application. The DA application must include a legal description of the lots and land that will be developed. The application conversely must describe which lots would not be developed, and which lots or areas are proposed for mitigation for the proposed subdivision. Enclosed is a project 404(b)(1) avoidance and minimization checklist for use while developing a subdivision partially or totally in wetlands and OWUS. A new DA permit application can take up to 120 days to complete the evaluation and public interest review.

OTHER AVAILABLE USACE AUTHORIZATIONS

Other authorizations are available for the permitting of individual house lots in existing subdivisions in Alaska depending upon the region and location. In some cases Nationwide Permits may be available to permit the activity. A complete list of DA Nationwide Permits may be found at http://www.poa.usace.army.mil/reg/NWPs.htm. In Southeast Alaska the Abbreviated Permitting Process, (APP), 2001-001 is available. The City of Homer General Permit, Anchorage General Permit, Juneau General Permit, the Residential Housing General Permit, the City of Nome General Permit, are all examples of permits in different regions. A complete list of DA General Permits may be found at http://www.poa.usace.army.mil/reg/gps.htm.

IN SOUTHEAST ALASKA

If alternative No. 2 for subdivisions is used in Southeast Alaska it is anticipated that many of the individual lot owners will be able to utilize APP-2001-001. This APP allows up to 0.75 acres of wetlands to be filled for house pads, driveways, garages and septic systems. Use of the APP will assist the property owner in getting a DA authorization in a timely manner while also saving the property owner money.

COORDINATION

The USACE encourages prospective applicants for new subdivisions to participate in pre-application coordination with the Alaska District, Regulatory Branch and other interested agencies and organizations, prior to submitting an application.

The intent of this special public notice is to avoid situations where individual lot owners are faced with the following: 1) Permit denials. 2) Construction delays. 3) Regulatory enforcement actions. 4) Minimally adequate or unworkable lot configurations caused by avoidance measures. 5) Unworkable lot configurations caused by poor planning and design.

Questions and requests for such coordination may be addressed by calling toll free in Alaska at (800)-478-2712 or 907-753-2712. Written requests, comments, or concerns can be addressed to Regulatory Branch, Post Office Box 6898, Elmendorf AFB, Alaska 99506-0898. For additional information on the Corps program you are encouraged to visit the Corps web site at http://www.poa.usace.army.mil/reg/.

District Engineer
U.S. Army, Corps of Engineers

SUBDIVISION

CHECK LIST FOR 404(B)(1) GUIDLINES FOR AVOIDANCE AND MINIMIZATION OF IMPACTS

- Did you consider the topography, land form, and ground conditions in your subdivision plan and road layout?
- Map all subdivision roads on your USACE drawings. Are the roads based upon avoiding and minimizing impacts in and to wetlands and OWUS?
- Plan all subdivision roads using geotextile fabric (as appropriate) as part of the roadbed.
- Map all culvert locations on your USACE drawings. Be sure to size the culverts for the local conditions and to pass the expected high flow.
- Map and locate all anadromous fish streams on your USACE drawings.
- Map all streams, stream buffers, lakes and lake buffers on your USACE drawings.
- Map resident fish streams on your USACE drawings.
- Map all buffers around eagle trees on your USACE drawings.
- Map all buffers around historic sites on your USACE drawings.
- Map all green belts on your USACE drawings.
- Map all mitigation parcels and proposed land set-asides on your USACE drawings.
- Map all community parks and school sites on your USACE drawings.
- Map woody debris disposal areas on your USACE drawings.
- Map all waste disposal (overburden) areas on your USACE drawings.
- Map utility locations, such as electric, gas, sewer, and marine outfalls.
- Map all docks and upland access on your USACE drawings.
- Map all boat launches and public access points on your USACE drawings.
- Identify your material source (gravel, rock, or other) proposed for the road and pad construction. If the material is from the subdivision please place the location on your USACE drawings.
- In coastal subdivisions, identify, locate, and map the high tide line and mean high water on your USACE drawings.
- Be sure you are in compliance with local zoning and planning requirements.
- Be sure you are in compliance Alaska Department of Environmental Conservation (ADEC) requirements for water quality and sewage. See the ADEC web site at http://www.dec.state.ak.us/
- Be sure you are in compliance with Right of Way requirements for access road connections to the road system, with the City, Borough, or State.
- Be sure you have considered aufies, ground water, surface water, and other environmental considerations in the design of culverts and cut slopes.
- Be sure you are in compliance with the local Coastal District requirements. See the Alaska Coastal Management Program web site at http://www.alaskacoast.state.ak.us/