

Public Notice

US Army Corps
of Engineers
Alaska District

Date: 27 June 2006
Identification No: APP 93-1 Reissuance

In reply refer to above Identification Number

Regulatory Branch (1145b)
Post Office Box 6898
Elmendorf AFB, Alaska 99506-0898

Special Public Notice

ALTERNATIVE PERMIT PROCESSING PROCEDURE 93-1 DISCHARGE OF DREDGED AND/OR FILL MATERIAL FOR WATER, WASTEWATER, AND SANITATION FACILITIES IN ALASKAN VILLAGES

The District Engineer, Alaska District, Corps of Engineers (Corps), has issued an Alternative Permit Processing procedure 93-1 (APP 93-1) for certain activities under authority of Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C. 1344 et seq.) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) to authorize the placement of dredged and/or fill material and structures into waters of the United States (U.S.), including wetlands, for activities associated with individual and community sanitation systems, along with their associated support facilities, in villages throughout Alaska.

In response to Special Public Notice 2005-13, dated November 18, 2005, the proposed APP 93-1 was revised to reflect comments submitted by local, State, and Federal agencies and the interested public. Based on a review of all pertinent information, I have concluded that issuance of this procedure will not have more than minimal adverse impacts on the environment and is not contrary to the public interest.

This APP establishes an expedited procedure to authorize the placement of dredged and fill material into waters of the U.S. including wetlands, and the placement of structures in navigable waters, associated with the construction of sanitary facilities within Alaska, primarily in rural areas. Sanitation facility is herein defined as a facility that is designed to provide clean water or remove domestic waste from the local environment and consists principally of individual wells and septic systems, as well as community sewer, septic, and water systems. Solid waste disposal sites (landfills), soil remediation facilities, and industrial or commercial water and wastewater treatment facilities are excluded from this definition and from this APP.

Applications for review under this APP are restricted to projects funded by Federal and State agencies, primarily the U.S. Indian Health Service (IHS), Alaska Area Native Health Service (AANHS); Federally Recognized Alaskan Tribes carrying out IHS programs under PL 93-638; and the State of Alaska Village Safe Water Program (VSWP). Applications for projects funded by other State or Federal agencies will be reviewed under the pre-application procedures described herein, as will applications in which funding is only partially State or Federal.

Applicants wishing to perform work under APP 93-1 must review these terms and conditions carefully and submit a letter or application with appropriate information and project drawings to the Corps to receive confirmation that their

work would be covered under this APP. No work can proceed without that confirmation. If the proposed work does not meet the requirements of the terms and conditions, the APP does not apply and the application would be processed under individual permit evaluation procedures.

APP 93-1 has been reissued for a period of five years, effective the date of the signature shown on the last page of the procedure. The District Engineer may at any time during this five-year period, alter, modify, suspend, or revoke this procedure if he/she deems such action to be in the public interest.

Please contact us at (907) 753-2712, toll free in Alaska at (800) 478-2712, email at regpagemaster@poa02.usace.army.mil, or by mail at the letterhead address, if you have questions. For additional information about your regulatory program, visit our web site at www.poa.usace.army.mil/reg.

District Engineer
Alaska District
U.S. Army Corps of Engineers

Attachments

**ALTERNATIVE PERMIT PROCESSING PROCEDURE 93-1
FOR WATER, WASTEWATER, AND SANITATION FACILITIES IN ALASKA, JUNE 2006**

INTRODUCTION

This Alternative Permit Processing procedure (APP) is intended to expedite the processing of projects for which all substantive issues can be resolved in an abbreviated time frame. A permit decision will normally be rendered within 30 days as noted under the procedures section. A recipient of a permit shall be referred to as a permittee. All activities authorized by the APP will be subject to the following general and special conditions. Deviation from particular special conditions may be considered on a case by case basis.

APPLICABILITY

This APP applies to permit applications for the discharge of dredged and/or fill material into waters of the United States (U.S.) for the primary purpose of construction or upgrade of community sanitation facilities, primarily water systems, and wastewater and sewer facilities, along with associated support facilities (such as access roads, washeterias, or water tanks) throughout Alaska. The APP is intended for projects constructed and/or funded by U.S. Indian Health Service (IHS), Federally Recognized Alaskan Tribes carrying out IHS programs under PL 93-638, the Alaska Village Safe Water Program (VSWP), or other local, state, or Federal entities. It is not the intent of this APP to consider projects in major population centers such as the Municipality of Anchorage, Fairbanks, Juneau, Sitka, Ketchikan, Kenai, Homer, Seward, Petersburg, Wasilla, Palmer, Unalaska/Dutch Harbor, Naknek, Bethel, King Salmon, Soldotna, Dillingham, Kodiak, Valdez, Cordova or other large communities. However, projects in such locations may be considered on a case by case basis with written justification.

Solid waste disposal sites (landfills) and soil remediation facilities are excluded from this process, as are industrial or commercial waste and wastewater disposal and treatment facilities.

REQUIREMENTS FOR APP USE

This APP includes the General Conditions listed in DA Permit, ENG Form 1721, Nov 86, a copy of which is attached, and the Special Conditions and Procedures found in the text that follows. All General and Special Conditions must be met in order for the work to be authorized under the APP. If the proposed work does not meet the requirements of the terms and conditions, this APP will not apply (except as noted above), and the application will be processed as an application for an individual DA permit under the standard processing procedures with a separate Public Notice per 33 CFR 325.2. If work is authorized, failure to comply with these conditions and the terms of the APP may result in suspension of the work, revocation of the permit, removal of the fill, restoration of the wetlands, and/or imposition of penalties as provided by law. No work shall be performed under this APP until it has been specifically authorized by DA, as described in paragraphs "C" and "D" under procedures.

SPECIAL CONDITIONS:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.

2. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Commander (oan), 17th Coast Guard District, P.O. Box 25517, Juneau, Alaska 99802; (907) 463-2269.
3. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
4. Land clearing, and fill in wetlands must be limited to the amount reasonably necessary for the construction of proposed facilities. To the extent feasible and prudent this includes minimizing and consolidating all facilities, especially transportation corridors and crossings of anadromous fish streams. Also, dimensions of fill pads for buildings, sewage lagoons, access roads, driveways, and related features shall not exceed five acres within Waters of the United States. Additionally, within the five acres, the combined length of access roads must not exceed 5,000 feet, and written justification must be provided if the proposed road length exceeds 2,000 linear feet.
5. The boundaries of fill areas in wetlands must be staked or flagged every 100 feet prior to construction to prevent inadvertent encroachment of wetlands.
6. If fuel storage tanks must be placed within 200 feet of any open water body, they must be of less than 10,000 gallons capacity, placed within an impermeable dike of 110 percent capacity of the largest independent container and written justification for this placement along with leak and spill prevention specifications must be provided to the Corps. In addition, all fuel storage shall meet all Local, State and Federal storage and handling requirements.
7. Disturbed ground and exposed soil not covered with fill, structures, or other features must be stabilized and revegetated with native species vegetation in an appropriate and timely manner to minimize erosion and sedimentation, so that a durable vegetation cover is established and maintained.
8. Projects proposing placement of fill in Waters of the United States within 100 feet of the ordinary high water mark or high tide line of any open water body, including streams, sloughs, rivers, ponds, lakes, estuaries, marine waters, or permanently flooded emergent wetlands, must provide written justification of this necessity. When fill is required within 100 feet of any open water body, a vegetation buffer shall be left in place between the water body and the facility. A plan to incorporate a buffer must be included with the application.
9. To the extent practicable, the fill must consist of clean, uncontaminated gravel or rock. If petroleum contaminated (crude oil or refined oil products) material is used, a written justification demonstrating that the material has been treated to meet Alaska Department of Environmental Conservation (ADEC) cleanup standards for reuse and other ADEC requirements in effect at the time, must accompany the permit application. The justification must include test data, required and approved by ADEC, documenting that the treated material meets the relevant ADEC standards.

10. The discharge of material below ordinary high water in anadromous fish streams must be coordinated with the Alaska Department of Natural Resources, Office of Habitat Management and Permitting (OHMP). If the fill consists of treated petroleum contaminated material, written justification must be submitted and an OHMP Fish Habitat permit must be received.
11. If permafrost is present, gravel thickness or insulation shall be sufficient to prevent thermal degradation.
12. Natural drainage patterns must be maintained using appropriate ditching, culverts, storm drain systems and other measures, to the extent practicable, without introducing ponding or drying. Excessive ponding and/or dewatering of areas adjacent to fill areas shall indicate non-compliance of this condition.
13. In no instance shall tundra or other natural ponds be permitted for primary sewage treatment. In an instance where a natural pond is to be converted into secondary treatment, written justification must be submitted with the permit application.
14. No activities shall be conducted in waters specified as being important for the spawning, rearing, or migration of anadromous fish under AS 41.14.870 without prior authorization from the OHMP. Applicants shall obtain and comply with any OHMP Fish Habitat Permit issued under AS 41.14.870, if a permit is required.
15. No activities shall be conducted in a fish stream that could interfere with the free upstream and downstream passage of fish without prior authorization from OHMP. Applicants shall obtain and comply with any OHMP Fish Habitat Permit issued under either AS 41.14.840 or .870, if a permit is required.
16. The Permittee shall stabilize and maintain dredged and/or fill material in areas subject to Corps of Engineers' jurisdiction, so that erosion of sediment into adjacent waters or wetlands is avoided.
17. Storage, transport, and disposal of excavated material within Waters of the United States must be managed to prevent sedimentation of adjacent wetlands and waters, and to prevent leachate from causing odor problems or degradation of water quality. Excavated materials must be stored and disposed at least 100 feet from any water body. If the storage or disposal of the material is within 100 feet of the water body, written justification must be provided. Excavation of overburden must be followed by placement of fill within the shortest reasonable time, so that substrate is not left exposed for extended periods.
18. Storage facilities for toxic or hazardous wastes shall meet Local, State, and Federal requirements for storage and handling of such materials.
19. The applicant shall provide evidence of consultation (with permit application) with the Federal Aviation Administration concerning distance from clear zones of airports so that birds attracted to sewage lagoons are not a hazard to airport traffic.
20. Reasonable precautions and controls must be used during construction to prevent incidental and accidental discharge of petroleum products. Materials such as sorbent pads and booms must be readily available on-site, and must be used to contain and cleanup any petroleum product spilled as a result of construction activity.

21. Federal applicants must consult with State Historic Preservation Officer (SHPO) and, if necessary, the Advisory Council on Historic Preservation (Council) on the effects of their projects on historic properties, as per Section 106 of the National Historic Preservation Act. Should an adverse effect to historic properties be identified, DA will become an interested party to the consultation, and local historic councils will be notified. State applicants must consult with DA and SHPO to accomplish the same purpose. When the applicant is the State, DA will assume lead agency role in Section 106 consultation unless there are extenuating circumstances.

22. If, during prosecution of the work, previously unknown archeological or historic remains are located, the permittee shall immediately inform this office (753-2712; (800) 478-2712), local historic councils (if present), and SHPO (269-8721) of what has been found. In the case of a Federal applicant, the applicant and SHPO shall determine if the remains are eligible for inclusion in the National Register of Historic Places and determine, in consultation with the Council, any appropriate mitigation. The DA shall function as an interested party. In the case of a State applicant, the DA shall take the lead agency role in consultation.

23. Pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (Act), the proposed activity shall not adversely affect any species listed as threatened or endangered under the Act. Additionally, the proposed activity shall not jeopardize the continued existence of any proposed species under the Act. All applicants must contact the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) to determine whether any listed or proposed species may be present at the site of the proposed activity and include documentation of this in their application. The Corps shall, as required by Section 7 of the Act, consult with USFWS and the NMFS once applications are complete. If it is determined that listed species are likely to be adversely affected, and/or proposed species are likely to be jeopardized by the permitted action or related activities, this APP shall not apply to this specific activity, or shall be suspended until Section 7 Consultation is complete.

24. The activity shall not be located within 660 feet of an eagle nest site unless the USFWS determines that the activity will not adversely impact the eagles. The applicant has additional responsibilities to protect eagles under provisions of the Bald Eagle Protection Act.

25. There shall be no discharges authorized in a National Wildlife Refuge, existing or nominated Wild and Scenic River, National Park system unit, or other National Conservation Area lands without prior consultation with the appropriate agencies and unless the activity is specifically authorized by the appropriate land management agencies prior to initiating the work.

26. There shall be no discharges authorized in designated State Critical Habitat Areas, Game Refuges, Sanctuaries, or Areas Which Merit Special Attention (which have been incorporated into the coastal zone management plan) without prior consultation and unless the activity is specifically authorized by the appropriate land management agencies prior to initiating the work.

27. This APP does not supersede activities currently covered by DA nationwide permits. No additional authorization is required from the DA for nationwide permitted activities if all terms and conditions of the applicable nationwide permit(s) are met.

28. 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, and those approvals shall be obtained prior to conducting work under this APP.

29. The conditions found on the State of Alaska Department of Environmental Conservation, Certificate of Reasonable Assurance pursuant to Section 401 of the Clean Water Act are attached to the Department of the Army General Permit.

OTHER INFORMATION

The Alaska District has fulfilled the Essential Fish Habitat (EFH) consultation requirement with the National Marine Fisheries Service. Since the EFH recommendations have been adopted as management area prescriptions, no further EFH consultation is required. In the event that any deviation from these recommendations is proposed, an individual EFH consultation will be necessary.

PROCEDURES

1. An applicant desiring authorization under this APP must submit a description of the proposed work to: U.S. Army Corps of Engineers, Regulatory Branch, Post Office Box 6898, Elmendorf AFB, Alaska 99506-0898. An application will be considered complete when the following elements are present:

a. Plans (8-1/2" x 11") which clearly show the proposed fill and structures to be built thereon, including dimensions, in overview and cross section.

b. A vicinity map and description of the location of the project, including Section, Township, Range, Meridian, and/or legal description (lot, block, survey number).

c. The quantity (in cubic yards), type, and source of fill material to be discharged; amount to be stockpiled and its footprint, if in wetlands.

d. Information regarding prior disturbance, if any.

e. The name and location of the nearest water body as well as any known drainages surrounding the facility.

f. The purpose of the fill (e.g., foundation for building road, sewer project, etc).

g. A written justification should any of the following apply: a) any fill (including any fuel storage facility) within 100 feet of an open water body and a plan for a vegetation buffer must also be included in this instance, b) any use of treated fill, c) conversion of a tundra pond into a sewage lagoon, d) if the project is associated with a "large" town such as those on the list on page 1, and e) any other unusual circumstance.

h. A discussion of other alternatives (location, methods, size) considered.

i. Aerial photography of the site, if reasonably available.

2. The application is considered complete when the applicant furnishes the required information above, documentation of initial consultation with the appropriate agencies on endangered species, essential fish habitat, wildlife hazards, and cultural resources, and appropriate information necessary to demonstrate the project complies with the terms and conditions of this APP.

3. A pre-application meeting may also be scheduled if involved parties are agreeable to such a meeting, or if the proposed project could be considered controversial.
4. When the DA determines the application is complete, meets the terms and conditions of the procedure, and that there would be minimal impact, the application and supporting material will be faxed to the appropriate commenting agencies and any interested party for a period of 15 calendar days.
5. Commenting agencies, the affected coastal district(s), and interested parties have the right to verbally comment within the 15 calendar days and request a 10-calendar day extension to furnish written comments by mail, fax, or e-mail. If the matter is resolved in writing or by telephone within the extension period, DA shall issue the permit.
6. If any commenting party, within the 15-day review period, states in writing, by fax, by e-mail, or by telephone that the project does not fit the terms of the APP or should not be issued under the APP, the application will be processed under individual DA permit procedures with a separate public notice [33 CFR Part 325.2(a) (1-5)].
7. Because procedures under the 404(q) Memorandum of Agreement (MOA) fully apply under the APP procedure, NMFS, USFWS, and/or the Environmental Protection Agency may maintain that issues have not been resolved, and request additional time to provide comments. Such requests for time extensions will follow and fully comply with the respective 404(q) MOA. Parties other than Federal agencies will also have an opportunity to provide comments when a time extension has been granted.
8. It is the goal of the DA to render a permit decision within 30 calendar days of the receipt of a complete application. In the event the applicant has not been contacted by the DA within 30 calendar days of receipt of the application, the applicant may seek oral authorization to proceed. Oral authorization will be granted only after a decision to issue the permit has been made, a 404 (b) (1) evaluation has been completed, and only in cases where there are no unresolved issues. Oral authorization will be followed immediately (normally within one working day) by written authorization.
9. Once the decision has been made to authorize the proposed work, a permit will be drafted for the applicant's signature. After the applicant signs two copies of the permit, the DA will countersign the documents and return one copy to the applicant along with an Authorization Notice. The permit form will carry the following sentence: "Standard procedures [33 CFR Part 325.2(a)] were not followed in granting this authorization."

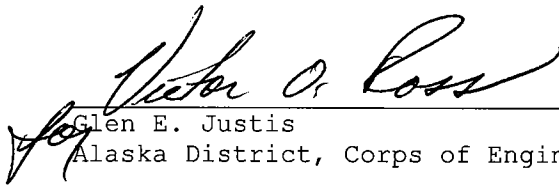
MONITORING

The applicant shall provide copies of plans (cross sections and plan views) to DA once each project is finished. These shall be compiled yearly in December and January, and along with a summary of the projects completed and the acreage affected, provided to the commenting agencies and interested parties that request to receive the reports. Periodic field inspections of projects authorized under the APP shall be undertaken by this office. Reports shall be prepared for all field inspections and entered into the official file. The Regulatory Branch shall maintain a file of APP related documents and monitoring efforts. Information contained in the APP file shall provide the basis for the decision whether or not to renew or revise the APP.

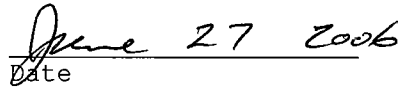
EXTENSION, MODIFICATION, AND REVOCATION OF ABBREVIATED PERMIT PROCEDURE

This APP will be in effect for a period of 5 years. At the end of the 5-year period, an evaluation of the APP procedure will be made and at that time, it will be decided whether or not this APP should be renewed. This APP may be modified or revoked by issuance of a Public Notice at any time the DE determines that it is appropriate to do so. Following such revocation any future activities in areas covered by this APP will be processed as standard individual permits.

FOR THE DISTRICT ENGINEER:



Glen E. Justis
Alaska District, Corps of Engineers



Date

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF WATER

Non-Point Source Pollution Water Control 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/>

June 9, 2006

Certified Mail 7003-2260-0004--8557

Mr. Victor Ross
U.S. Army Corps of Engineers
Alaska District Regulatory Branch
P.O. Box 6898
Anchorage, AK 99506-0898

Subject: APP 93-1
Reference No. SPN 2005-13
State ID No. AK0604-08AA

RECEIVED
JUN 12 2006
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF WATER

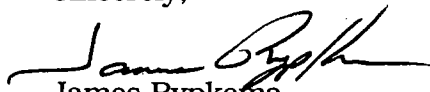
Dear Mr. Ross:

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 the issuance of Alternative Permit Processing Procedure 93-1 for discharge of dredged or fill material for water, wastewater, and sanitation facilities in Alaskan villages.

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,


James Rypkema
Program Manager

Enclosure

cc: (with encl.)

Nicole Allison, DNR/OPMP
Mac McLean, DNR/OHMP
F&WS

Stewart Seaberg, DNR/OHMP
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 U.S. Army Corps of Engineers, PO Box 6898, Anchorage, AK 99506-0898 for the discharge of dredged or fill material into limited wetland areas for activities associated with individual and community sanitation systems, along with their associated support facilities, in villages throughout Alaska.

The proposed activity is located within Alaskan villages.

Public notice of the application for this certification was given as required by 18 AAC 15.180.

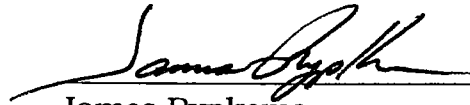
Water Quality Certification is required under Section 401 because the proposed activity will be authorized by a Corps of Engineers permit, reference number SPN-2005-13, and a discharge may result from the proposed activity.

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.

1. APP 93-1 activities must assure that suspended sediment and turbidity do not affect waters beyond the immediate work area. Silt fences, silt curtains, or other diversion or containment structures shall be installed to contain sediment and turbidity at the work site (a) parallel to and within 10 feet of the toe of any fill, or soil exposed within 25 feet of a standing or flowing waterbody, if the fill site has a downslope or surface connection to the waterbody; and (b) adjacent to any fill placed or soil exposed within a standing or flowing waterbody. All silt fences, curtains, and other structures must be installed properly and maintained in a functioning manner for the life of the construction period where fill material and exposed soils might cause transport of sediment or turbidity beyond the immediate construction site.
2. Fill placed during winter construction within wetlands that during the summer contain surface water that is connected to natural bodies of water, must be stabilized or contained in the spring prior to breakup, to insure that silts are not carried from the fill to the natural bodies of water in the summer.

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 (18AAC15.100).

Date June 9, 2006



James Rypkema
Program Manager

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF PROJECT MANAGEMENT AND PERMITTING
ALASKA COASTAL MANAGEMENT PROGRAM

FRANK H. MURKOWSKI
GOVERNOR

■ SOUTH CENTRAL REGIONAL OFFICE
550 W. 7TH AVENUE, SUITE 1660
ANCHORAGE, ALASKA 99501
PH: (907) 269-7470 / FAX: (907) 269-3981

□ CENTRAL OFFICE
P.O. BOX 110030
JUNEAU, ALASKA 99801-0030
PH: (907) 465-3562 / FAX: (907) 465-3075

□ PIPELINE COORDINATOR'S OFFICE
411 WEST 4TH AVENUE, SUITE 2C
ANCHORAGE, ALASKA 99501-2343
PH: (907) 257-1351 / FAX: (907) 272-3829

www.alaskacoast.state.ak.us

6/8/06

Victor Ross
U.S. Army Corps of Engineers (COE)
P.O. Box 6898
Elmendorf AFB, AK 99506-0898

Subject: Reauthorization of Alternative Permitting Process (APP) 93-1
State I.D. No. AK0604-08AA
Final Consistency Response

Dear Mr. Ross:

The Office of Project Management & Permitting (OPMP) has completed coordinating the State's review of your proposed project for consistency with the Alaska Coastal Management Program (ACMP). OPMP has developed the attached final consistency response based on reviewers' comments. This final consistency response, developed under 11 AAC 110, applies to the federal consistency determination required for the activity per 15 CFR 930, Subpart C.

Based on an evaluation of your project by the Alaska Departments of Environmental Conservation, Fish and Game, and Natural Resources and the affected coastal resource district, OPMP *concurs* with your determination that the project is consistent with the ACMP and affected coastal district's enforceable policies to the maximum extent practicable.

This is the *final consistency decision* for your project.

This consistency response is only for the project as described. If you propose any changes to the approved project, including its intended use, prior to or during its siting, construction, or operation, you must contact this office immediately to determine if further review and approval of the revised project is necessary.

By copy of this letter I am informing the U.S. Army Corps of Engineers of OPMP's final finding.

If you have any questions regarding this process, please contact me at 907-269-7475 or email Nicole_allison@dnr.state.ak.us.

Sincerely,



Nicole Allison
Project Review Coordinator

Enclosures

cc: Randy Bates, ACMP
Kim Kruze, ACMP
Jim Renkert, ACMP Anchorage
Joe Donohue, ACMP Juneau
Jen Becker, ACMP Juneau
Gina Shirey-Potts, ACMP Coastal Coordinator
Jackie Brock, ACMP Coastal Coordinator
Kevin Johnson, ACMP Liaison MLW South central/west
Roselynn Smith, ACMP Liaison MLW Northern
Doug Sanvik, MLW Southeast
Stewart Seaberg, OHMP Anchorage
Megan Marie, OHMP Anchorage
Mac Mclean, OHMP Fairbanks
Mike Bethe, OHMP Palmer
Lee McKinley, OHMP Kenai
Jackie Timothy, OHMP Juneau
Jim Cariello, OHMP Stikine
Mark Minnillo, OHMP POW Island
Margie Goatley, SHPO
Mel Langdon, DEC Anchorage
William Ashton, DEC Anchorage
Tim Wingerter, DEC Anchorage
Jim Powell, DEC Juneau
Shawn Stokes, DEC Juneau
Mark Fink, ADF&G
Ellen Simpson, ADF&G
Victor Ross, COE Regulatory Specialist

COATAL DISTRICTS:

Morris Nassuk, Bering Straights CRSA
Jim Dory, Nome
Walter Porter, Northwest Arctic Borough
Richard Abboud, Bethel
Johnny Aiken, North Slope

John Mercurief, St. Paul
John Oscar, Cenaliulriit CRSA
Tina Anderson, Aleutians East Yvonne Copy, Bristol Bay Borough
Mary Ogle, Kodiak Island Borough

Martin Lydick, Kodiak Island Borough
Karol Kolehmainen, Aleutians West
Andrew DeValpine, Bristol Bay CRSA
Marv Smith, Lake and Peninsula
Thede Tobish, Anchorage
Gary Williams, Kenai Peninsula Borough
Carol Smith, Valdez
Jim Goossens, Cordova
Susan Lee, Matanuska Susitna Borough
Mark Earnest, Whittier
Mary Walter Jack, Angoon
Mayor Paul Reese, Kake
Marlene Campbell, Sitka
Brian Templin, Craig
Erin Reeve, Ketchikan
Marg Harris, Skagway
Scott Hansen, Haines
John Morris, Klawock
Mike Harper, Thorne Bay
Jerry Medina, Hoonah
Allan Stewart, Pelican
Carol Rushmore, Wrangell
Mayor Stechen Dilts, Sr., Hydaburg
Leo Luczak, Petersburg
Skip Ryman, Yakutat
Teri Camery, Juneau

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

DATE ISSUED: 6/8/06

PROJECT TITLE: REAUTHORIZATION OF ALTERNATIVE PERMITTING PROCESS 93-1 (APP 93-1)

STATE ID. NO.: AK0604-08AA

PROJECT DESCRIPTION AND SCOPE OF THE PROJECT SUBJECT TO CONSISTENCY REVIEW:

The activity subject to this review is the reauthorization of Alternative Permitting Process (APP) 93-1. This APP 93-1 was last reviewed and found to be consistent by this office, formerly known as the Division of Governmental Coordination (DGC), in February of 2000 under State I.D. # AK 9903-13AA. Please refer to the COE Special Public Notice 05-13 and Consistency Determination for specific information on the proposed APP 93-1.

CONSISTENCY STATEMENT: OPMP concurs with the consistency certification submitted by Mr. Ross.

AUTHORIZATIONS: State agencies shall issue the following authorizations within five days after OPMP issues the final consistency determination that concurs with the applicant's consistency certification, unless the resource agency considers additional time to be necessary to fulfill its statutory or regulatory authority.

Alaska Department of Environmental Conservation (DEC)
Certificate of Reasonable Assurance (401)

The Department of Environmental Conservation (DEC) will review any activities subject to DEC permits, certifications, approvals, and authorizations for consistency with 11 AAC 112.310. The issuance of the permits, certifications, approvals, and authorizations by DEC establishes consistency with 11 AAC 112.310 for those specific activities.

Please note that, in addition to their consistency review, State agencies with permitting responsibilities will evaluate this proposed project according to their specific permitting authorities. Agencies will issue permits and authorizations only if they find the proposed project complies with their statutes and regulations in addition to being consistent with the coastal

program. An agency permit or authorization may be denied even though the State concurs with the ACMP. Authorities outside the ACMP may result in additional permit/lease conditions. If a requirement set out in the project description (per 11 AAC 110.260) is more or less restrictive than a similar requirement in a resource agency authorization, the applicant shall comply with the more restrictive requirement. Applicants may not use any State land or water without Department of Natural Resources (DNR) authorization.

APPEAL: This final consistency response is a final administrative order and decision under the ACMP and for purposes of Alaska Appellate Rules 601-612. Any appeal from this decision to the superior court of Alaska must be made within thirty (30) days of the date this response is issued.

ADVISORIES:

There are some instances when standards in the local Coastal District Management Plans are more stringent than those specified in the APP 93-1 special conditions. As an administrative requirement the COE should advise applicants who qualify for the APP process that they *must* have all permits in hand that are required for their project. Often when an applicant receives a permit for COE approval under an expedited approval processes such as this, they believe they have completed the process and are free to carry out their project without the required local authorizations. It is important that the COE make a clear and explicit statement that local permits *must* be obtained as a condition of COE approval.

In regard to the language of Special Conditions #10, #14, and #15, the Department of Natural Resources, Office of Habitat Management and Permitting (OHMP) request that the following changes be made:

Special Condition #10

- 1) OHMP Title 41 authority does not extend beyond the ordinary high water mark of anadromous fish streams. The words "*adjacent to (within 100 feet) or*" should be deleted from the first line of this condition.
- 2) "...*Alaska Department of Fish and Game (ADFG)*" should be replaced with "Alaska Department of Natural Resources, Office of Habitat Management and Permitting (OHMP)."
- 3) "...*an ADFG Title 16 permit must be received*" should be replaced with "an OHMP Fish Habitat Permit must be received."

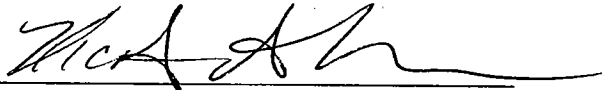
Special Condition #14

- 1) "...*anadromous fish under AS 16.05.8709 (a) without prior authorization from ADFG*" should be replaced with "anadromous fish under AS 41.14.870 without prior authorization from OHMP."
- 2) "...*comply with any ADFG Fish Habitat Permit issued under AS 16.05.870...*" should be replaced with "...comply with and OHMP Fish Habitat Permit issued under AS 41.14.870..."

Special Condition #15

- 1) "...without prior authorization from the ADFG" should be replaced with "without prior authorization from OHMP."
- 2) "...comply with any ADFG Fish Habitat Permit issued under AS 16.05.840 or .870..." should be replaced with "...comply with and OHMP Fish Habitat Permit issued under AS 41.14.840 of .870..."

Proposed Consistency Response Prepared By:
Nicole Allison Project Review Coordinator
550 W. 7th Avenue, Suite 1660
Anchorage, AK 99501
(907) 269-7475



Nicole Allison

6/8/06

ACMP CONSISTENCY EVALUATION

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>).

This APP applies to permit applications for the discharge of dredged and /or fill material into waters of the United States (U.S.) for the primary purpose of construction or upgrade of community sanitation facilities, primarily water systems and wastewater and sewer facilities, along with associated support facilities (such as access pads, washeterias, or water tanks) throughout Alaska. The APP is intended for projects constructed and /or funded by U.S. Indian Health Service (IHA), Federally Recognized Alaskan Tribes carrying out HIS programs under PL 93-638, the Alaskan Village Safe Water Program (VSWP), or other local, state, or Federal Entities. It is not the intent of this APP to consider Projects in major population centers such as the Municipality of Anchorage, Juneau, Sitka Homer, Wasilla, Bethel, King Salmon, Kodiak, Cordova, Unalaska, or other large communities. However, projects in such locations may be considered on a case by case basis with written justification. Solid waste disposal sites (landfills) and soil remediation Facilities are excluded from this process, as are industrial or commercial waste and wastewater disposal and treatment facilities.

All General and Special Conditions must be met in order for the work to be authorized under the APP. If the proposed work does not meet the requirements of the terms and conditions, this APP will not apply (deviations may be considered on a case by case basis), and the application will be processed as an application for an individual DA permit under the standards processing procedures with a separate Public Notice per 33 CFR 325.2.

This APP was previously reviewed and found to be “consistent with alternative measures” by the Office of Governmental Coordination (OGC) under State ID # AK99-13AA. The current review for the Reauthorization of APP 93-1 has yielded no comments that would suggest the proposal is inconsistent.

The 28 General and Special Conditions identified in the APP are sufficient for the proposal to be deemed consistent with the ACMP. Specifically, Special conditions 3,6,8,11,17,and 18 safeguard against damages that may be caused by natural hazards, pursuant to the enforceable policies of 11 AAC 112.210, Natural Hazard Areas. Moreover, the Special conditions 4,5,7,8,9,10,12,13, 14,15, 16,17,18,and 20 provide for the “avoid, minimize or mitigate” standards of 11 AAC 112.300, Habitats: wetlands, tideflats, rivers, lakes, and streams.

The 15-day Public Notice/review period for each project would allow adequate time for agency input and evaluation on a case by case basis as to the applicability of this APP.

The COE is advised that, according to 11 AAC 112.310, the statutes and regulations of the Department of Environmental Conservation (DEC) with respect to the protection of air, land, and water

quality identified in AS 46.40.040(b) are incorporated into the program and, as administered by that department, constitute the exclusive components of the program with respect to those purposes. (Eff. 7/1/2004, Register 170) The DEC will provide their evaluation of this proposal with the issuance of the required 401 Certification.

DEPARTMENT OF THE ARMY PERMIT

Permittee: _____

Permit No.: _____

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

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

"Standard Procedures [33 CFR Part 325.2(a)] were not followed in granting this authorization"

All work will be performed in accordance with the attached plan, sheets [1-?], dated [DATE].

Project Location:

Permit Conditions:

General Conditions

1. The time limit for completing the work authorized ends on **3 years from the end of issuing month.** If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We 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.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.
2. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Commander (oan), 17th Coast Guard District, P.O. Box 25517, Juneau, Alaska 99802; (907) 463-2269.
3. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
4. Land clearing, and fill in wetlands must be limited to the amount reasonably necessary for the construction of proposed facilities. To the extent feasible and prudent this includes minimizing and consolidating all facilities, especially transportation corridors and crossings of anadromous fish streams. Also, dimensions of fill pads for buildings, sewage lagoons, access roads, driveways, and related features shall not exceed five acres within Waters of the United States. Additionally, within the five acres, the combined length of access roads must not exceed 5,000 feet, and written justification must be provided if the proposed road length exceeds 2,000 linear feet.
5. The boundaries of fill areas in wetlands must be staked or flagged every 100 feet prior to construction to prevent inadvertent encroachment of wetlands.
6. If fuel storage tanks must be placed within 200 feet of any open water body, they must be of less than 10,000 gallons capacity, placed within an impermeable dike of 110 percent capacity of the largest independent container and written justification for this placement along with leak and spill prevention specifications must be provided to the Corps. In addition, all fuel storage shall meet all Local, State and Federal storage and handling requirements.
7. Disturbed ground and exposed soil not covered with fill, structures, or other features must be stabilized and revegetated with native species vegetation in an appropriate and timely manner to minimize erosion and sedimentation, so that a durable vegetation cover is established and maintained.
8. Projects proposing placement of fill in Waters of the United States within 100 feet of the ordinary high water mark or high tide line of any open water body, including streams, sloughs, rivers, ponds, lakes, estuaries, marine waters, or permanently flooded emergent wetlands, must provide written justification of this necessity.
When fill is required within 100 feet of any open water body, a vegetation buffer shall be left in place between the water body and the facility. A plan to incorporate a buffer must be included with the application.

9. To the extent practicable, the fill must consist of clean, uncontaminated gravel or rock. If petroleum contaminated (crude oil or refined oil products) material is used, a written justification demonstrating that the material has been treated to meet Alaska Department of Environmental Conservation (ADEC) cleanup standards for reuse and other ADEC requirements in effect at the time, must accompany the permit application. The justification must include test data, required and approved by ADEC, documenting that the treated material meets the relevant ADEC standards.
10. The discharge of material below ordinary high water in anadromous fish streams must be coordinated with the Alaska Department of Natural Resources, Office of Habitat Management and Permitting (OHMP). If the fill consists of treated petroleum contaminated material, written justification must be submitted and an OHMP Fish Habitat permit must be received.
11. If permafrost is present, gravel thickness or insulation shall be sufficient to prevent thermal degradation.
12. Natural drainage patterns must be maintained using appropriate ditching, culverts, storm drain systems and other measures, to the extent practicable, without introducing ponding or drying. Excessive ponding and/or dewatering of areas adjacent to fill areas shall indicate non-compliance of this condition.
13. In no instance shall tundra or other natural ponds be permitted for primary sewage treatment. In an instance where a natural pond is to be converted into secondary treatment, written justification must be submitted with the permit application.
14. No activities shall be conducted in waters specified as being important for the spawning, rearing, or migration of anadromous fish under AS 41.14.870 without prior authorization from the OHMP. Applicants shall obtain and comply with any OHMP Fish Habitat Permit issued under AS 41.14.870, if a permit is required.
15. No activities shall be conducted in a fish stream that could interfere with the free upstream and downstream passage of fish without prior authorization from OHMP. Applicants shall obtain and comply with any OHMP Fish Habitat Permit issued under either AS 41.14.840 or .870, if a permit is required.
16. The Permittee shall stabilize and maintain dredged and/or fill material in areas subject to Corps of Engineers' jurisdiction, so that erosion of sediment into adjacent waters or wetlands is avoided.
17. Storage, transport, and disposal of excavated material within Waters of the United States must be managed to prevent sedimentation of adjacent wetlands and waters, and to prevent leachate from causing odor problems or degradation of water quality. Excavated materials must be stored and disposed at least 100 feet from any water body. If the storage or disposal of the material is within 100 feet of the water body, written justification must be provided. Excavation of overburden must be followed by placement of fill within the shortest reasonable time, so that substrate is not left exposed for extended periods.
18. Storage facilities for toxic or hazardous wastes shall meet Local, State, and Federal requirements for storage and handling of such materials.
19. The applicant shall provide evidence of consultation (with permit application) with the Federal Aviation Administration concerning distance from clear zones of airports so that birds attracted to sewage lagoons are not a hazard to airport traffic.
20. Reasonable precautions and controls must be used during construction to prevent incidental and accidental discharge of petroleum products. Materials such as sorbent pads and booms must be readily available on-site, and must be used to contain and cleanup any petroleum product spilled as a result of construction activity.

21. Federal applicants must consult with State Historic Preservation Officer (SHPO) and, if necessary, the Advisory Council on Historic Preservation (Council) on the effects of their projects on historic properties, as per Section 106 of the National Historic Preservation Act. Should an adverse effect to historic properties be identified, DA will become an interested party to the consultation, and local historic councils will be notified. State applicants must consult with DA and SHPO to accomplish the same purpose. When the applicant is the State, DA will assume lead agency role in Section 106 consultation unless there are extenuating circumstances.

22. If, during prosecution of the work, previously unknown archeological or historic remains are located, the permittee shall immediately inform this office (753-2712; (800) 478-2712), local historic councils (if present), and SHPO (269-8721) of what has been found. In the case of a Federal applicant, the applicant and SHPO shall determine if the remains are eligible for inclusion in the National Register of Historic Places and determine, in consultation with the Council, any appropriate mitigation. The DA shall function as an interested party. In the case of a State applicant, the DA shall take the lead agency role in consultation.

23. Pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (Act), the proposed activity shall not adversely affect any species listed as threatened or endangered under the Act. Additionally, the proposed activity shall not jeopardize the continued existence of any proposed species under the Act. All applicants must contact the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) to determine whether any listed or proposed species may be present at the site of the proposed activity and include documentation of this in their application. The Corps shall, as required by Section 7 of the Act, consult with USFWS and the NMFS once applications are complete. If it is determined that listed species are likely to be adversely affected, and/or proposed species are likely to be jeopardized by the permitted action or related activities, this APP shall not apply to this specific activity, or shall be suspended until Section 7 Consultation is complete.

24. The activity shall not be located within 660 feet of an eagle nest site unless the USFWS determines that the activity will not adversely impact the eagles. The applicant has additional responsibilities to protect eagles under provisions of the Bald Eagle Protection Act.

25. There shall be no discharges authorized in a National Wildlife Refuge, existing or nominated Wild and Scenic River, National Park system unit, or other National Conservation Area lands without prior consultation with the appropriate agencies and unless the activity is specifically authorized by the appropriate land management agencies prior to initiating the work.

26. There shall be no discharges authorized in designated State Critical Habitat Areas, Game Refuges, Sanctuaries, or Areas Which Merit Special Attention (which have been incorporated into the coastal zone management plan) without prior consultation and unless the activity is specifically authorized by the appropriate land management agencies prior to initiating the work.

27. This APP does not supersede activities currently covered by DA nationwide permits. No additional authorization is required from the DA for nationwide permitted activities if all terms and conditions of the applicable nationwide permit(s) are met.

28. 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, and those approvals shall be obtained prior to conducting work under this APP.

29. The conditions found on the State of Alaska Department of Environmental Conservation, Certificate of Reasonable Assurance pursuant to Section 401 of the Clean Water Act are attached to the Department of the Army General Permit.

Special Information:

Any condition incorporated by reference into this permit by General Condition 5, remains a condition of this permit unless expressly modified or deleted, in writing, by the District Engineer or his authorized representative.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

() Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

() Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITEE) AND TITLE

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT ENGINEER)

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions have the transferee sign and date below.

(TRANSFEREE)

(DATE)