



**US Army Corps
of Engineers**
Alaska District
Regulatory Branch (1145b)
Post Office Box 6898
Anchorage, Alaska 99506-6898

Public Notice

Date:

9 August 2004

Identification Number

SPN-2004-09

In reply refer to above identification number

PN Expiration Date: 8 Sep 2004

SPECIAL NOTICE 04-09

PROPOSED ISSUANCE OF ALTERNATIVE PERMIT PROCESSING PROCEDURE FOR
CATEGORICAL EXCLUDED, FEDERALLY FUNDED, TRANSPORTATION PROJECTS

Notice is hereby given that the United States (U.S.) Army Corps of Engineers, Alaska District (Corps), under the 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), is soliciting comments on the development of an alternative permit processing procedure (APP) for transportation projects funded, fully or partially, by Federal Highway Administration (FHWA) and are categorically excluded (CE) from National Environmental Policy Act (NEPA) documentation. These projects would be designed, permitted, and constructed by Alaska Department of Transportation and Public Facilities (ADOT&PF) federally funded transportation projects. The proposed APP would be developed for a single user, ADOT&PF.

INTRODUCTION:

Section 1309 of the Transportation Equity Act for the 21st Century (TEA-21) requires a coordinated environmental review process to expedite Federal highway and other transportation projects. The Corps and other federal and state agencies are developing streamline environmental review processes in accordance with TEA-21 and other relevant environmental statutes in ways that reinforce the Corps' ability to maintain and restore the chemical, physical and biological integrity of the waters of the U.S. The development of the APP is one tool being developed to streamline the environmental review process for FHWA projects.

PURPOSE: The purpose of the proposed APP is to reduce evaluation time, reduce unnecessary duplication of effort and increase predictability of decision-making on CE transportation projects funded, fully or partially, by FHWA and managed by ADOT&PF for which all substantive issues can be resolved during a short review period. It is intended that Department of the Army (DA) permit decisions under this APP will be made within 30 days of receipt of a complete application when no controversy arises. It is not the intent of this APP to be used for projects other than those funded, fully or partially, by FHWA and managed by ADOT&PF.

PROPOSED ACTIVITY AND PROCEDURES: This APP would expedite processing for all CE activities funded, fully or partially, by FHWA and managed by ADOT&PF. As stated in 40 CFR 1508.4, "Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations ...and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. In 23 CFR 771.117, FHWA defines CE as "actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts." Examples of such actions include, but are not limited to: modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lands; bridge rehabilitation; construction of bicycle and pedestrian lands, paths, and facilities; and/or, ferry terminal rehabilitation.

The Corps proposes to coordinate with National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS); Alaska Department of Natural Resources (ADNR), Office of Habitat Management and Permitting (OHMP), and ADNR, Office of Project Management and Permitting (OPMP); Alaska Department of Environmental Coordination (ADEC), and U.S. Environmental Protection Agency (EPA) during the development of the APP.

The APP lists Special Conditions and other requirements, which would be met in order for a project to be authorized pursuant to the procedure. When ADOT&PF decided to apply for authorization via the APP, they would demonstrate how they would comply with all Special Conditions and other requirements. If the proposed work could not be performed under the requirements of the conditions, the APP could not be used for authorizing the proposed work, and the application would be processed as an application for an individual DA permit under the standard processing procedures with a separate Public Notice as per 33 CFR 325.2(a)(1-5). Review of each proposed activity would be coordinated with NMFS, USFWS, OHMP, OPMP, EPA, ADEC, the State Historic Preservation Officer (SHPO), the appropriate coastal district, and, when appropriate, any local government or borough or interested party. At any time, should a reviewing agency wish to forgo its role in the review process due to time or budget constraints, or for any other reason, it may do so by informing this office in writing. Reviewing agencies are encouraged to identify in writing thresholds below which they would forgo further review and to inform this office in writing.

This APP would be in effect for a period of 5 years. A summary of the number of projects authorized, project type, construction status, and number of acres utilized would be made available to all resource agencies and interested parties each year. At the end of the 5-year period, an evaluation of the procedure would be made and at that time, it would be decided whether or not the APP should be renewed. This APP may be modified or revoked by issuance of a Public Notice at any time the District Engineer determines it is appropriate to do so. Following

such revocation any future activities in areas covered by this APP would be processed as standard individual permits.

LOCATION: The APP procedure would apply to projects within all waters of the U.S., including all navigable waters and wetland located within the State of Alaska.

WATER QUALITY CERTIFICATION: A certification or waiver of certification as required under Section 401 of the Clean Water Act (P.L. 95-217) must be received from the ADEC (or EPA for Metlakatla Indian Reservation) for this APP. ADEC or EPA, as a reviewing agency under these procedures, would also review each application in their area of responsibility and advise the DA whether or not the specific proposal meets the water quality certification or waiver requirements.

COASTAL ZONE MANAGEMENT ACT CERTIFICATION: The APP would not be issued until the OPMP has concurred that the APP is consistent with the Alaska Coastal Management Plan (ACMP). OPMP, as a reviewing agency under these procedures, would also review each application and advise the DA whether the proposal meets specific coastal zone management consistency requirements.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposed APP procedure. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

CULTURAL RESOURCES: Federal applicants must follow the provisions of Section 106 of the National Historic Preservation Act by consultation with the SHPO to identify, evaluate, and assess the effect of their projects on historic properties, as per Section 106 of the National Historic Preservation Act. Mitigation of adverse effects shall be accomplished in consultation with the Advisory Council on Historic Preservation (Council). Coordination with SHPO would occur during the development of the APP and each application would be coordinated with SHPO by DA.

ENDANGERED SPECIES: USFWS and NMFS would be consulted during the development of the APP for conservation recommendations regarding potential impacts to threatened or endangered species by the use of the APP to authorize work. If the APP were issued, ADOT&PF would provide documentation that USFWS and NMFS were contacted regarding the potential existence of threatened or endangered species, at the project site. It would be ADOT&PF's responsibility to obtain range maps and background information from these agencies on an annual basis to aid in determining whether or not such species are present. Where endangered or threatened species were identified (by data provided to this office and to the ADOT&PF by the USFWS or NMFS) as a concern, ADOT&PF, as non-federal representative for FHWA, would provide documentation for each proposed project that the USFWS or NMFS has been contacted as per 50 CFR 17.11 and 17.12, July 15, 1991, "Endangered and Threatened Wildlife and Plants" and subsequent updates. The subsequent discovery of the presence of a threatened or endangered species which may be affected by a permitted action or related activities would result in

immediate suspension of the APP for the specific operation until Section 7 consultation required by the Endangered Species Act of 1973, as amended, were completed. ADOT&PF, as non-federal representative for FHWA, would be the lead agency in the Section 7 consultation for individual projects. Each application would be coordinated with USFWS or NMFS.

ESSENTIAL FISH HABITAT: Through the publication of this Public Notice, the Corps hereby initiates consultation with the NMFS on Essential Fish Habitat (EFH) for issuance of the APP process. The desired outcome of this consultation is a General Concurrence (GC) under the Interim Final Rule to Implement the Essential Fish Habitat Provisions of the Magnuson-Stevens Act (50 CFR 600.920). The GC process is used to identify specific types of Federal actions that may adversely affect EFH, but for which no further consultation is generally required because the NMFS has determined that the identified types of actions will likely result in no more than minimal adverse effects to EFH individually and/or cumulatively. GCs may be used for categories of Federal actions that are similar in nature and similar in their impact on EFH, and that will not cause greater than minimal impacts on EFH, either individually or cumulatively. Actions that qualify for a GC would not cause more than minimal adverse effects to EFH, and therefore would not require NMFS to develop separate EFH conservation recommendations for individual actions pursuant to Section 305(b)(4) of the Magnuson-Stevens Act. However, EFH conservation recommendations may be provided as part of the GC in cases where actions would normally cause more than minimal effect but, if modified, e.g. a seasonal restriction, would not cause more than a minimal effect. Individual projects evaluated under the APP would not normally require additional EFH consultation, unless NMFS so requests.

EVALUATION: The decision whether to adopt the APP procedure would be based on a determination that the purpose specified above can be accomplished in an environmentally acceptable manner. This determination will be made after preparation of an Environmental Assessment (EA) including anticipated cumulative effects. Each individual action proposed under the APP procedure would be evaluated pursuant to EPA's 404(b)(1) Guidelines.

The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Native groups; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed procedure. Any comments received will be considered by the Corps to determine whether this procedure should be adopted. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors. Comments are used in the preparation of an EA pursuant to the National Environmental Policy Act (NEPA). Because an EA will be written for the APP process, EAs will not be written for each individual action.

The APP procedure will not be implemented if it is determined that significant impacts to the quality of the human environment could result from activities subject to the procedure. Comments are also

used to determine the need for a public hearing and to determine the overall public interest of the proposed procedure.

Comments on the described APP procedure, with the reference number, should reach this office no later than the expiration date of this Public Notice to become part of the record and be considered in the decision. If further information is desired concerning this notice, contact Dr. Janice Stuart at (907) 753-2720, or (800) 478-2712 or by email at jan.f.stuart@poa02.usace.army.mil.

AUTHORITY: This proposed APP procedure would be issued or denied under the following authorities:

(X) Perform work in or affecting navigable waters of the United States - Section 10 Rivers and Harbors Act 1899 (33 U.S.C. 403).

(x) Discharge dredged or fill material into waters of the United States - Section 404 Clean Water Act (33 U.S.C. 1344). Therefore, our public interest review will consider the guidelines set forth under Section 404(b) of the Clean Water Act (40 CFR 230).

District Engineer
U.S. Army, Corps of Engineers

Attachments