



Public Notice US Army
Corps Of Engineers
Alaska District
Regulatory Branch
Post Office Box 6898
Anchorage, Alaska 99506-6898

Public Notice Date: 01 February 2005
Expiration Date: 20 Jan 2008
Identification No.: SPN 2005-02
In reply, refer to Identification Number

REISSUANCE GENERAL PERMIT 88-6P

CITY OF HOMER WETLAND FILL PROJECTS

Notice is hereby given that the 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.), is reissuing a general permit (GP) for the discharge of fill material into designated low value wetlands, in Homer, Alaska.

With regard to Special Public Notice 2004-11, dated November 19, 2004, revisions were not required in response to comments received from local, State, and Federal agencies, or the interested public. Based on review of all pertinent information, including a prepared Environmental Assessment, I have concluded that activities under the GP will have no more than minimal adverse impacts on the environment, individually and cumulatively, are similar in nature and importance, and issuance is not contrary to the public interest.

This GP will reduce evaluation time and unnecessary duplication of effort; and increase decision consistency of projects that are substantially similar. The activities covered by this GP retain the requirement of having only a minor impact on water quality when considered separately and cumulatively. It also provides increased efficiency in administration of the Clean Water Act without creating an undue burden on the public.

This GP lists conditions, and other requirements, that must be met in order for a project to be authorized pursuant to the GP. The GP will accommodate projects within the City of Homer that include the discharge of fill material into wetlands that were designated as "low value" in the 1989 Homer Wetlands Study. An applicant desiring to conduct residential, commercial, or industrial development work via the GP must review all conditions carefully. If the proposed work does not meet the requirements and conditions of the GP, a Department of the Army individual permit application must be submitted for evaluation with the standard processing procedures described in 33 CFR 325.2(a)(1-5).

GP 88-6P has been issued for a period of three (3) years, effective the date of the signature shown on the last page of the GP. The District Engineer may at any time during this three year period alter, modify, suspend, or revoke this GP if he/she deems such action to be in the interest of the public.

Any questions or requests for additional information should be directed to: Alaska District, Corps of Engineers, ATTN: Jack Hewitt, (907) 753-2724, toll free in Alaska at (800) 478-2712, or by e-mail at jack.j.hewitt@poa02.usace.army.mil

District Engineer

Effective Date: 1 February 2005
Expiration Date: 31 January 2008

General Permit 88-6P

The Alaska District Corps of Engineers, in accordance with 33 CFR 325.2(e)(2) as published in the Federal Register, Volume 51, Number 219, is issuing this General Permit (GP), pursuant to Section 404 of the Clean Water Act (PL 95-217, 33 U.S.C. 1344) for the placement of fill material into certain wetlands within the City of Homer.

I. ACTIVITY:

This GP authorizes the placement of fill into certain wetlands in the City of Homer for residential, commercial and industrial development. The wetlands covered by this GP were designated "low value" by an interagency study group consisting of representatives from the Corps of Engineers (Corps), the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (USFWS), and the Alaska Department of Fish and Game (ADF&G). The evaluation process is described in detail in the Environmental Assessment for this General Permit and in the Homer Wetlands Final Study Report (1989). Maps depicting those wetlands designated as high or low value are available for review at City of Homer's offices, or the Corps Anchorage office.

All wetlands designated high value on the wetland maps, intertidal areas, and unmapped areas within the city limits are not covered by this GP. This GP will no longer cover streams and creeks that have the National Wetland Inventory Classification of R3SB and R4SB, though they were designated "low value" wetlands in the 1989 Homer Wetland Study. Streams and creeks are not wetlands as defined in 33 Code of Federal Regulations Part 328.3(b), and applicants who wish to discharge dredged or fill material in these waters, should contact the Corps Anchorage office for information on permitting requirements.

This GP is applicable only in mapped low value wetlands within the city limits of the City of Homer.

II. MAPS:

Because of the number and size of the complete map set, the wetland areas are delineated on large-scale maps, which could not be appended to this notice. Detailed maps at a scale of 1-inch equals 100 feet are available for review at the City of Homer Planning Offices, Homer and at the Corps of Engineers Regulatory Branch, Anchorage.

III. PROCEDURE:

A. Application for Authorizations

1. All applicants desiring to discharge dredged and/or fill material under terms of this GP shall submit an application to the City Planning Department. The application will require descriptions of the location, proposed activity, purpose and need. The description will include quantities of fill, acreage of disturbed surface area, steps that the applicant proposes to take to comply with the terms and conditions of this GP; source of fill, and offsite

disposal locations, supported by applicable drawings and narrative. The application form is attachment 1 of this GP.

2. The City of Homer shall render an opinion as to whether the proposed activity meets the criteria of this GP. This will include; (1) a determination that the proposed project is located in wetlands designated as low value on the City of Homer wetland maps, (2) a determination that the project will not affect a high value wetland, as designated on the City of Homer wetland maps, and (3) the applicant agrees to and will comply with the terms and conditions of this GP and attests to that by signing the application.

- a. If in the City's opinion the proposed activity meets the criteria of this GP and the applicant agrees to abide by the terms and conditions (by signing the application form), the City of Homer will issue an opinion of compliance within 10 working days of receiving a complete application. While it is not legally binding and does not constitute issuance of or authorization under the GP, this opinion of compliance provides a measure of assurance that the proposed project will comply with the terms and conditions of the GP. The Corps retains its full legal authority and may suspend use of or find a violation of the GP at any time it determines that an activity is not in compliance with the GP, even if the City has issued an opinion of compliance.
- b. Compliance with the GP will require fulfillment of the general conditions specified here and of the special conditions applicable to particular sites, as well as fulfillment of any special conditions included in the City's opinion of compliance with the GPs, as determined by the City Planning Department. Any additional special conditions imposed by the City may not conflict with or reduce the requirements of the GP. At the time the City provides an opinion that the GP may apply, the City will give a copy of the conditions for this GP to the individual.
- c. If in the City's opinion the proposed activity does NOT meet the criteria of this GP, the City will return the application form to the applicant within 10 working days of receiving a complete application along with a Department of the Army permit application for the applicant to submit to the Corps at the following address:

U.S. Army Corps of Engineers
CEPOA-CO-R-S
Post Office Box 6898
Elmendorf AFB, Alaska 99506-6898

B. Reporting Requirements

1. The City is expected to confer with the Corps on questionable or borderline proposals before the requisite local opinion of compliance of the applicability of the GP is given.

2. The City of Homer shall compile information on opinions issued under this GP and provide the Corps with the following information on a quarterly basis:

- a. Copies of all applications made under this GP;
- b. Copies of all determinations made under this GP; and

c. Summary of projects started and/or completed within the quarter.

3. Reports shall be received in this office by the following dates:

- April 10 (for the period January 1 through March 31)
- July 10 (for the period April 1 through June 30)
- October 10 (for the period July 1 through September 30)
- January 10 (for the period October 1 through December 31)

If necessary, the reporting period may be cutoff on the 25th of the last month of the quarter in order to facilitate staff time in report compiling. Any opinions issued after the cutoff shall be reported in the next quarter.

4. In addition, a log of visits made to at least 20% of the sites for which GPs have been reviewed in the previous quarter shall be included in the reports. This information should include at a minimum:

- Summary of total acreage actually filled
- Summary of fill amount actually placed
- Summary of wetland types by acreage actually placed
- Summary of monitoring activities

Additional monitoring may be undertaken by the Corps of Engineers at their discretion.

5. The Corps will provide copies of the quarterly report to the following agencies: USFWS (WAES, 605 West 4th Avenue, Room 62, Anchorage, AK 99501), ADF&G (Habitat Division, 333 Raspberry Road, Anchorage, AK 99518) and other interested parties.

C. Renewal of General Permit

This GP will automatically expire after three years, unless reissued as a result of a new wetlands study, proposed by the City of Homer.

D. Reporting Requirements for General Permit Renewal

The City of Homer shall provide the following information to the Corps of Engineers not later than 1 month from the expiration of this GP:

- Summary of total acreage permitted
- Summary of fill amount permitted
- Summary of wetland types by acreage permitted
- Summary of types of activities permitted by acreage and number of permits

Reports shall be sent to:

- U.S. Army Corps of Engineers
- CEPOA-CO-R-S
- Post Office Box 6898
- Elmendorf AFB, Alaska 99506-6898

E. Additional Information

This GP does not require notification to the Corps prior to commencement of the authorized activity, nor does it require confirmation from the Corps that a proposed activity in full compliance with all terms and conditions of this GP is authorized and may proceed. Nevertheless, a general permittee may

choose to request in writing verification that his proposed activity is authorized by a specific GP. The written inquiry must be sent to the Alaska District, Corps of Engineers and must include the following information:

- (1) Name, address and telephone number of the general permittee;
- (2) Location of the proposed work;
- (3) Brief description of the proposed work which includes the information listed on the Application for Authorization form attached to this GP;
- (4) Identification of the general permit or permits which apply to the proposed work;
- (5) Any other information that the general permittee believes is appropriate.

To the extent that the Corps limited resources will allow, the Alaska District office will attempt to respond to such a request for verification in a timely manner. If the general permittee's written request for verification is complete, accurate and made in good faith, and the Alaska District does not respond to such inquiry within 45 days after the Alaska District receives such inquiry, the general permittee may proceed with the activity. In such a case, the general permittee's authorization can only be suspended, modified or revoked in accordance with the procedure set forth in 33 CFR 325.7. On the other hand, if the Corps later determines that the general permittee's written request for verification was inaccurate, incomplete or made in bad faith, and that the activity was not in fact authorized by the GP, the Federal Government may bring an appropriate enforcement action under 33 CFR Part 326.

IV. CONDITIONS:

All work done under this GP is subject to the following conditions:

1. This GP shall not apply for activities denied by any local, State and Federal agency having permitting authority.
2. The amount and type of fill authorized by this GP shall be the same as that amount authorized by the City of Homer in their various permits.
3. All activities authorized under this GP must meet a clearly demonstrated purpose and need; no speculative projects are authorized by this GP.
4. The applicant must design his project to minimize the area of wetlands to be filled. Any proposal shall be clearly justified based on need, as described in Condition #3.
5. Activities shall not adversely impact HIGH value wetland areas by causing ponding, drainage, siltation or inadvertent fill. Culverting, buffer zones, or other methods may be required in order to ensure compliance with this condition.
6. A minimum 65-foot waterbody setback shall be maintained in wetlands along all streams and water bodies unless the stream or waterbody is listed as having anadromous fish in the most recent edition of "An Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes," or determined by the Alaska Department of Fish and Game to be anadromous as a result of more recent study, in

which case the setback shall be 100 feet. Waterbody setbacks shall be measured horizontally from the ordinary high water mark of the waterbody. Any mechanized land clearing, excavation, or discharge of fill that is proposed in water body setbacks shall require authorization under an individual or nationwide permit; **it cannot be authorized by the GP.** If one portion of a project requires an individual permit review, the entire project shall be considered in the individual permit review; the general permits shall not be used to authorize just part of a project that requires an individual permit to complete another dependent part. The applicant shall consult with the Alaska District as to the independence of the work proposed for a GP from any later work, which would require an individual permit. The waterbody setbacks shall be treated as high value wetlands.

7. A minimum 25-foot transitional buffer shall be maintained between any fill undertaken pursuant to this GP and adjacent high value wetlands. Any mechanized land clearing, excavation, or discharge of fill that is proposed in buffers shall require authorization under an individual or nationwide permit; it cannot be authorized by the GP. If one portion of a project requires an individual permit review, the entire project shall be considered in the individual permit review; the GP shall not be used to authorize just part of a project that requires an individual permit to complete another dependent part. The applicant shall consult with the Alaska District as to the independence of the work proposed for a GP from any later work, which would require an individual permit. The transitional buffers shall be treated as the adjacent high value wetlands.
8. No discharge of dredged and/or fill material shall be authorized under this GP if it consists of unsuitable material, e.g., trash, debris, tree stumps, car bodies, etc., and all material discharged shall be free of toxic pollutants, in toxic amounts (toxic amounts are defined by Alaska state law). A soil remediation plan shall be approved by the Alaska Department of Environmental Conservation (ADEC) prior to commencing any work on a site containing contaminated soil. If contaminated soils are discovered during the activity, all work shall cease in the area of contamination; ADEC shall be contacted, and work shall commence only upon receiving ADEC approval.
9. Temporary sediment controls, such as silt fences, shall be properly installed and maintained until exposed soils are permanently stabilized. Methods shall be implemented to filter or settle out suspended sediments from all construction-related wastewater, storm drain system effluent, or runoff prior to its direct or indirect discharge into any natural body of water and/or wetlands. Prior to construction, a silt fence shall be installed on a line parallel to and within five feet of the proposed fill's toe of slope. Silt fences shall be installed and maintained to impede sediment or silt-laden water from entering adjacent wetlands and waters. The silt fence shall remain in place until the fill side slope has been stabilized against erosion.
10. All exposed slopes, fills and disturbed areas shall be given sufficient protection by appropriate means, such as landscaping or planting and maintaining vegetative cover to prevent subsequent erosion. All disturbed soil areas (exposed soils) shall be revegetated with species native to Alaska (preferably native to the area), as soon as

practicable, but no later than one year upon completion of earthwork operations. Revegetation will be considered successful if cover is at least half of what is characteristic for existing natural vegetation in the area at the end of the growing season one year after earthwork operations are complete. If revegetation efforts are not successful, remedial measures such as supplemental plantings shall be undertaken until such time as the revegetation effort is successful. Natural revegetation is acceptable if the site will revegetate itself within the next growing season, and appropriate erosion control measures are installed, are functioning, and are maintained. If natural revegetation is not successful two years after completion of earthwork operations, remedial measures such as addition of soil amendments, fertilization and/or supplemental planting shall be undertaken to ensure revegetation is successful.

11. Prior to initiation of construction, the permitted project footprint and any applicable waterbody setbacks, wetland buffers, and/or other avoidance areas shall be clearly delineated, using stakes, flags fencing, or other similar measures. No equipment used for activities permitted under this GP shall be operated, stored, or serviced, and no mechanized land clearing or discharge of fill material may occur, even temporarily, in wetlands or other waters beyond the project footprint or within avoidance areas.
12. No borrow material may be obtained within 330 feet of an eagle nest. This does not absolve the applicant from responsibilities to protect bald eagles under provisions of the Bald Eagle Protection Act.
13. The activity shall not jeopardize the continued existence of a threatened or endangered species, as identified under the Endangered Species Act, or endanger the critical habitat of such species.
14. No borrow material may be obtained from a HIGH value wetland for activities covered under this GP.
15. This GP does not apply to projects whose primary purpose is the disposal of excess material, such as from road projects.
16. Any work authorized by this GP must have an expected start date prior to the expiration date of this GP. Work must be completed within one year of the expected start date. For any partially completed work, the permittee shall restore the site to pre-project conditions or apply for an individual permit from the Corps of Engineers.
17. This GP may not be used in association with a Nationwide Permit or an Individual Permit.
18. The permittee must maintain the activity authorized by this GP in good condition and in conformance with the terms and conditions of this GP. The permittee is not relieved of this requirement if the permittee abandons the permitted activity, although the permittee may make a good faith transfer to a third party. Should the permittee wish to cease to maintain the authorized activity or should the permittee desire to abandon it without a good faith transfer, the permittee must obtain a modification of this permit from the Corps of Engineers, which may require restoration of the area.

19. All activities done under this GP (including the use of new borrow sites) shall not take place in or adversely affect any existing archeological sites listed or eligible for listing in the National Register of Historic Places or any archeological sites found to be listed or eligible for listing on the National Register of Historic Places subsequent to the issuance of this GP. If the permittee discovers any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, the permittee must immediately notify this office of what has been 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.
20. Each authorization under this GP shall be recorded with the State Recorder's Office. During any transfer of property associated with the authorization, the potential buyer shall be informed of the GP requirements as a result of a title search.
21. The permittee must also comply with any conditions specified as part of the water quality certification, which is part of this GP. See attached certification.
22. The permittee must allow representatives from the Corps of Engineers 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 this GP.
23. This GP shall not apply to any activity or uses which would involve the storage or use of hazardous materials or substances as part of their principal purpose. These materials are defined in the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response and Liability Act (CERCLA).

V. FURTHER INFORMATION

1. Limits of this authorization.
 - a. This GP or authorizations obtained under this GP do not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This GP or authorizations obtained under this GP it do not grant any property rights or exclusive privileges.
 - c. This GP or authorizations under this GP do not authorize any injury to the property or rights of others.
 - d. This GP or authorizations obtained under this GP do not authorize interference with any existing or proposed Federal project.
2. Limits of Federal Liability. In issuing this GP or authorizations obtained under this GP, the Federal Government does not assume any liability for the following:
 - a. Damages to an authorized project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

- b. Damages to an authorized 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 GP.
- d. Design or construction deficiencies associated with the authorized work.
- e. Damage claims associated with any future modification, suspension, or revocation of this General Permit or authorizations obtained under this GP.

3. Reevaluation of GP decision or of authorizations obtained under this GP. This office may reevaluate its decision on this GP or any authorizations made under this GP by either this office or the City of Homer at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. The permittee or the City of Homer fails to comply with the terms and conditions of this GP.
- b. The information provided by the permittee in support of application for authorization under this GP proves to have been false, incomplete, or inaccurate.
- 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 the permittee to comply with the terms and conditions of the GP and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if the permittee fails 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 the permittee for the cost.

This GP will expire three years from the effective date, unless reauthorized earlier as the result of a new study.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Date: 1/20/2005



William A. Keller
 South Section
 Regulatory Branch
 FOR: District Engineer
 U.S. Army Corps of Engineers

If issued an authorization under this General Permit, I agree to abide by all the requirements of General Permit 88-6P and any conditions and specifications found therein.

Signature of Applicant or Applicants agent:

Date: _____

INFORMATION TO BE ADDED BY THE CITY OF HOMER:

Wetlands Map Number(s) & Wetlands Number(s): _____

NWI class(es) of wetlands to be filled: _____

Does the proposal meet the criteria and conditions of the General Permit?

YES: The applicant was issued an opinion of compliance on: _____

Signature of City of Homer official that issued opinion of compliance:

A COPY OF THE GENERAL PERMIT SHALL BE ATTACHED AND PROVIDED TO THE APPLICANT AS A PART OF THIS AUTHORIZATION.

NO: The application was returned to the applicant with a Corps of Engineers permit application on: _____

TO BE COMPLETED BY OFFICIALS FOR THE CITY OF HOMER CONDUCTING COMPLIANCE INSPECTIONS AND SUBMITTED TO THE CORPS OF ENGINEERS

Was this project constructed/completed?

YES: Date of construction _____, OR

Date of inspection _____

NO:

Number of acres filled: _____ Wetland class: _____

Amount of fill placed: _____

Number of acres filled: _____ Wetland class: _____

Amount of fill placed: _____

If yes, to your knowledge was the project constructed in compliance with the General Permit?

YES:

NO: Explain. _____

Additional Information: _____

Date: _____ Reviewing Official: _____