



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
P.O. BOX 6898
ELMENDORF AFB, ALASKA 99506-6898

MAY 12 2004

Regulatory Branch
South Section
POA-2004-513-9

Ms. Kristen Hansen
DOWL Engineers
4040 B Street
Anchorage, Alaska 99503-5907

Dear Ms. Hansen:

Your letter soliciting comments and information on a proposal to provide vehicle and pedestrian access for the Creekside Town Center in Anchorage, Alaska on behalf of the Municipality of Anchorage (MOA) dated March 30, 2004, has been received. The project has been assigned number POA-2004-513-9, Chester Creek, which should be referred to in all future correspondence with this office.

Based on our review of the information you furnished and to our office, we concur that your proposed project could involve work in or the placement of fill into waters of the United States (U.S.) under our regulatory jurisdiction (see enclosure titled, "BASIS FOR JURISDICTIONAL DETERMINATION"). As noted on the form identifying the basis of jurisdiction, the most evident nexus is with Chester Creek, a tributary to Cook Inlet, a navigable water body. Chester Creek is subject to regulation pursuant to Section 404 of the Clean Water Act; it is not considered a navigable water body subject to regulation under Section 10 of the Rivers and Harbors Act.

This approved jurisdictional determination is valid for a period of five (5) years from the date of this letter, unless new information supporting a revision is provided to this office before the expiration date. Also, enclosed is a Notification of Administrative Appeals Options and Process and Request for Appeal form regarding this Department of the Army Approved Jurisdictional Determination.

It has been determined that your proposed project lies within an area that falls under the jurisdiction of the Alaska Coastal Management Plan (ACMP). Before processing your application could begin, you must sign and date the two enclosed Certifications of Consistency with the ACMP and complete the attached Coastal Project Questionnaires. Send one certification and completed Questionnaire to the Alaska Department of Natural Resources (ADNR), Office of Project Management and Permitting, 550 West 7th Avenue, Suite 1660, Anchorage, Alaska 99501-3510, telephone (907) 269-7470; and send one to this office at the letterhead address. The Corps of Engineers cannot issue a permit for the referenced work without ADNR approval. Including a Questionnaire with your application for a U.S. Army Corps of Engineers permit will expedite processing of your permit application.

The Corps of Engineers is authorized to issue permits at the District level in those cases in which all substantive objections have been resolved to the satisfaction of the District Engineer provided other portions of our evaluation are favorable. Periodically, letters from reviewing agencies or interested parties may be forwarded to you for your information or appropriate action. Since unresolved objections to your proposed work could result in delay or denial of the requested permit, it is suggested that you respond as soon as possible to avoid processing delay.

I am forwarding a copy of this correspondence to the Office of Project Management and Permitting, ADNR, 550 West 7th Avenue, Suite 1660, Anchorage, Alaska 99501-3510.

Also, a DA permit can be issued for your work only after you have obtained a Certificate of Reasonable Assurance, or waiver of certification, as required by Section 401(a)(1) of the Clean Water Act. This certification or waiver thereof is issued by the Alaska Department of Environmental Conservation (ADEC). For your convenience, we will forward a copy of your application to ADEC, which they accept as an application for a Certificate of Reasonable Assurance. There should be no delay in processing your application as the review processes of ADEC and the Corps of Engineers run concurrently. If you have any questions about ADEC's certification process, please contact them at WQM/401 Certification, 555 Cordova Street, Anchorage, Alaska 99501-2617, or by telephone at (907) 269-7564.

Please note that compliance with the Environmental Protection Agency's 404 (b)(1) guidelines requires that the proposed discharge of dredged or fill material contain all appropriate and practicable steps to minimize potential impacts of the discharge on the aquatic ecosystem, and represents the least environmentally damaging practicable alternative. If the proposed activity does not require access or proximity to or siting within a "special aquatic site" (i.e., wetlands, mudflats, etc.), less damaging practicable alternatives that do not involve a "special aquatic site" are presumed to be available, unless clearly demonstrated otherwise by the permit applicant. Therefore, we request that you address why such alternatives as other sites or designs, particularly upland sites, are not practicable for all or portions of this project.

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

Practicable alternatives include, but are not limited to:

- a. activities which do not involve a discharge of dredged or fill material into waters (including wetlands) of the U.S.; and
- b. discharges of dredged or fill material at other locations in waters of the U.S.

Please provide the requested information on practicable alternatives when you apply. This information should include the availability of other sites and the use of other project designs which would reduce project impacts on the aquatic ecosystem. We should have the requested information before making a final decision on your permit application. Failure to provide required information by the close of the comment period could result in withdrawal of the application (closure of the file), a final decision without the necessary (requested) input, or permit denial due to lack of sufficient information.

Thank you for the opportunity to respond to your scoping request. We will re-open your file at such time as you submit your application to construct the vehicle and pedestrian access to the Creekside Town Center in the event that the work involves the placement of fill into waters of the U.S. under our regulatory jurisdiction. You may contact me at (907) 753-2724, toll free from within Alaska at (800) 478-2712, E-MAIL at Maureen.mccrea@usace.army.mil or by mail at the letterhead address, ATTN: CEPOA-CO-S, if you have questions. For additional information about our Regulatory Program, visit our web site at www.poa.usace.army.mil/reg.

Sincerely,



Maureen McCrea
Project Manager

Enclosures

BASIS FOR JURISDICTIONAL DETERMINATION

Applicant: Municipality of Anchorage File #: POA-2004-513-9

The U.S. Army Corps of Engineers, Alaska District, Regulatory Branch has evaluated your project site to determine the presence or absence waters of the United States, including wetlands, which are subject to regulatory jurisdiction under Section 404 of the Clean Water Act and/or Section 9 and/or Section 10 of the Rivers and Harbors Act of 1899.

1. DETERMINATION:

A. This site has jurisdictional waters of the United States, which are defined in 33 CFR 328.3. Your site has:

(1) A waterway which is currently used, or was used in the past, or may be susceptible to use in interstate or foreign commerce, including all water which is subject to the ebb and flow of the tide (navigable water);

(2) An interstate water, including interstate wetlands;

(3) A water such as an intrastate lake, river, stream (including intermittent streams), mudflat, sandflat, wetland, slough, prairie pothole, wet meadow, playa lake, or a natural pond, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

- (a) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or,
- (b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,
- (c) Which are used or could be used for industrial purpose by industries in interstate commerce; or,
- (d) Other;

(4) An impoundment of water otherwise defined as a water of the United States under the definition;

(5) A tributary to a water identified in paragraphs (A)(1) through (4) above;
(1) , (2) , (3) , and (4) . <check the number as appropriate>

(6) A territorial sea;

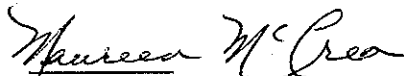
(7) A wetland adjacent¹ to waters (other than waters that are themselves wetlands) identified in paragraphs (A) (1) through (6) above: (1) , (2) , (3) , (4) , (5) , (6) ; <check the number as appropriate>

B. Limits of jurisdiction: Section 10: pick list Limits: pick list

Limits of jurisdiction: Section 404: non-tidal water Limits: ordinary high water mark

2. **SOME INDICATORS SUPPORTING THE DETERMINATION:** indicated as wetland on National Wetland Inventory map; aerial photography interpretation; wetland hydrology; soils listed as hydric on soils map; hydric soils, as determined by field inspection; hydrophytic plant community; adjacency to navigable or interstate waters; linkage to interstate or foreign commerce; other: tributary to a navigable water.

3. **Rationale:** Chester Creek is a tributary to Cook Inlet, a water body that is navigable in fact.


Maureen McCrea
Regulatory Specialist
South Section

5/11/04
Date

¹ Adjacency is defined in 33 CFR 328.3 (c) as "bordering, contiguous, or neighboring," with the further clarification that "[w]etlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like, are 'adjacent wetlands'."

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Municipality of Anchorage	File Number: POA-2004-513-9	Date: MAY 12 2004
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/ceewo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or, (c) not modify the permit, having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer. This form must be received by the Division Engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer. This form must be received by the Division Engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION (JD): You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer. This form must be received by the Division Engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the Preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.