



MEMORANDUM STATE OF ALASKA

Department of Natural Resources Division of Mining, Land and Water

Southeast Regional Land Office

DATE: October 20, 2017

TO: LAS 31772 – City and Borough of Juneau

FROM: Adam Moser, NRS III

RE: Special Land Use Permit Adjudication Summary

I. Requested Action

Juneau City and Borough submitted an application to the Division of Mining Land and Water (DMLW) for a Land Use Permit requesting authorization to deposit up to 30,375 cubic yards of dredged material on state-owned submerged land in Auke Bay. The dredged material will be removed from Statter Harbor, during the Statter Harbor expansion project. The U.S. Army Corps of Engineers has permitted the disposal. Disposal activities will be conducted over 30-45 days. It is estimated that two barge loads of material will be transported and deposited per day, approximately four hours apart. The requested deposit site is approximately 63 acres in size.

DMLW is proposing the following

To issue a special land use permit pursuant to 11 AAC 58.210 to authorize the placement of the City and Borough of Juneau's dredged spoils from Statter Harbor on state submerged land in Auke Bay for an indefinite term. The permit shall require that CBJ maintain ownership of the deposited spoils and responsibility for removing or managing the spoils if it is determined at any future time to be required by the State or Federal government.

II. Statutory Authority

AS 38.05.850, AS 38.05.075, and 11 AAC 58.210

III. Decision Scope

The scope of administrative review for this authorization is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized, (2) applicable statutes and regulations, and (3) the facts pertaining to the land or resources.

IV. Location Information

Geographic Location:

Auke Bay, Juneau

Legal Description:

Sec 27. T. 40 S., R. 65 E., CRM

Latitude: 58.373° N **Longitude:** 134.665° W

V. Land Status Information

The state received title to tide and submerged lands existing at the time of statehood under the Alaska Statehood Act, the Submerged Lands Act, and the Equal Footing Doctrine.

Other Land Information

Municipality: City and Borough of Juneau

Zoning: N/A

Regional Corporation: Sealaska

Village Corporation: Goldbelt, Inc.

School Trust Land: None

Special Use Areas: None

Game Management Units: Refuge, Sanctuary, Critical Habitat

Other Land Information Narrative:

The proposed site is subject to the Juneau State Land Plan (1993), and is located within Unit 3E, and subunit 3e51. The area plan guides the management and use of state owned tide, submerged, and uplands. The proposed site is designated as fish & wildlife habitat (Ha) and fish & wildlife harvest (Hv). These designations result in a single classification of wildlife habitat land.

The JSLP mitigation guidelines for authorizations impacting wildlife habitat land states that:

When authorizing the use or development of state lands, the Departments of Natural Resources and Fish and Game will recognize the requirements of the activity or development and the benefits it may have to habitat when determining stipulations or measures needed to protect fish, wildlife, or their habitats. The costs of mitigation relative to the benefits to be gained will be considered in the implementation of this policy.

All land use activities will be conducted with appropriate planning and implementation to avoid or minimize significant adverse impacts on fish, wildlife, or their habitats. The departments will enforce stipulations and measures, and will require the responsible party to remedy any significant damage to fish, wildlife, or their habitats that may occur as a direct result of the party's failure to comply with applicable law, regulations, or the conditions of the permit or lease.

When determining appropriate stipulations and measures, the departments will apply, in order of priority, the following steps. Mitigation requirements listed in other guidelines in this plan will also follow these steps.

- 1. Avoid anticipated, significant adverse impacts on fish, wildlife, or their habitats through design, siting, timing, or other management options.*
- 2. When significant adverse impacts cannot be avoided by design, siting, timing, or other management options, the adverse impact of the use or development will be minimized.¹*

For non-designated uses the JSLP states the following.

Within "Ha" fish and wildlife habitat areas, uses that are not designated in Chapter 3 and that result in habitat alteration through dredging, filling, significant compaction of vegetation and sediment, alteration of flow patterns,

¹ JSLP 2-4.

discharge of toxic substances, disturbance during sensitive periods, or that significantly decrease the value and productivity of the habitat area are initially considered incompatible with the plan's management intent and the "Ha" Fish and Wildlife Habitat designation.

However, non-designated uses that cause significant adverse impacts to a "Ha" habitat areas as described above, may be allowed if:

- a) ADFG determines through new information or more detailed analysis that the area is not "Ha" as defined in the plan; or*
- b) if the project receives a final consistency determination under the ACMP and significant adverse impacts are mitigated under Guideline A and or stipulations developed for the ACMP determination.*

Land Status Information Summary

Despite the proposed activity being a non-designated use, this activity is allowed in this area based on the mitigation measures prescribed by ADF&G in accordance with the JSLP's mitigation guidelines. ADF&G worked with the Applicant to find a site where the placement of spoils would have the least impact on king crab habit. Additionally, ADF&G prescribed a time window in which fewer king crab will be impacted by the activity. While there is no longer an ACMP consistency determination, the equivalent was reached through the coordinated site selection and timing determinations made by ADF&G, and the U.S. Army Corps of Engineers (U.S. ACOE) permitting process for the selected site.

VI. Background

The Applicant applied for a Land Use Permit on June 14, 2017 to place dredged spoils on state submerged land in Auke Bay. Prior to applying with DMLW, the Applicant undertook significant preparation and planning for the requested action. In September 2016, the U.S. ACOE approved a sampling plan for a dredge material characterization study of the subject dredged spoils. The Applicant completed the characterization study in December 2016. The U.S. ACOE reviewed the study and determined that the subject sediment was appropriate for in water disposal in January 2017. This determination was confirmed by the Alaska Department of Environmental Conservation when it issued its 401 Certification for the proposed disposal under Section 401 of the Federal Clean Water Act in September 2017.

The Applicant is waiting to receive a 404 permit from the U.S. ACOE to place fill material in waters of the U.S. (POA-2008-782-M4).

VII. Project Review and Agency Notice/Public Notice

Agency Review Summary

A 30-day review period was conducted from September 15 to October 16, 2017. The following organizations were included in this review: Alaska Department of Fish and Game (ADF&G) and the Alaska Department of Environmental Conservation (DEC).

Agency Review Comments

Alaska Department of Fish and Game

Summary: The CBJ's agent, PND Engineers, worked with Alaska Department of Fish and Game (ADF&G) staff to select a dredge spoil disposal site to minimize impacts to king crab while also considering the safety of contractors working during winter. While king crab may still be present at the public noticed site, they will not be present in the numbers ADF&G documented at the site the CBJ originally proposed.

The CBJ's proposal, as described in the public notice, includes measures to minimize impacts to the resources for which ADF&G is responsible while it also will improve conditions for Statter Harbor crab and salmon fishermen. Therefore, we do not object to the project as proposed.

Public Notice Summary

Online public review was also given through the State of Alaska's Online Public Notice Website. In accordance with 11 AAC 96.030(c), notice was also provided to the owner of the adjacent uplands. No comments were received.

VIII. Environmental Risk

The Applicant's dredge material characterization report concluded that:

Contaminants of concern were either not detected or detected at concentrations below the Dredge Material Management Plan Screening Levels for each Dredge Material Management Unit and Z-sample tested. Test results for Diesel and Residual Range Organics were below clean up levels per Alaska Department of Environmental Conservation.²

The Applicant's sampling data and the related conclusions provided in the dredge material characterization report, as accepted by the U.S. ACOE, and by DEC through the issuance of a 401 Certification, indicate that there should be minimal risk to the environment from the disposal of the dredged material on state land. Some king crab and crab habitat will likely be impacted by the proposed activity. However, ADF&G has worked with the Applicant to mitigate these impacts through the siting and timing of the disposal.

Considering the conclusions in the characterization report and the multiple approvals required from Federal and State agencies, the probability of an environmental issue materializing from the placement of the spoils on state land is minimal. However, if an environmental issue materialized after the placement of the spoils on state land, the costs associated with the management and potential treatment of the spoils would likely be substantial. Therefore, DMLW will require that the Applicant maintain ownership and responsibility for the spoils, even after they are deposited on state land. If at any time after the spoils are deposited, there is an issue related to the subject spoils, the Applicant will be responsible for all actions required by the State or Federal Government to remedy the situation.

IX. Performance Guaranty

Performance guarantees are means to assure performance and to provide ways to pay for corrective action if the permittee fails to comply with the requirements set forth in the permit document. They are also used to protect state land from damage and to make certain that improvements are removed and that the land is returned in a usable condition upon termination of the permit.

² Statter Harbor Improvements Phase III Dredge Material Characterization Report, December 2016, p. 7.

Performance Guaranty Narrative: The proposed activity involves approximately two barge loads of dredged spoils to be deposited at the requested site over the course of 30-40 days. This short-term activity presents little risk to the State; therefore, no guaranty will be required. The issue of protecting the state during the long-term storage of the spoils will be addressed through stipulations and an indemnification clause in the permit.

X. Insurance

Insurance is a means to protect the state from liabilities incurred through the use of state property, or from damage to state property as a result of accidental or catastrophic events. This type of protection is necessary in the event of an accident or negligence that was consequentially connected to activities conducted on state land, and/or if the state is named in a lawsuit as a result of an accident or negligence.

Commercial General Liability: \$1,000,000

XI. Fees

Fee: \$1000

Relevant Fee Regulation(s): 11 AAC 58.410(b)

Fee Narrative:

The annual fee for any other use of state land is \$1000 annually.

XII. Discussion

In consideration of the mitigating measures taken in accordance with the Juneau State Land Plan, DMLW should issue a special land use permit under 11 AAC 58.210 for the proposed activity in Auke Bay and the storage of spoils for an indeterminate period at the requested site, subject to the Applicant first obtaining a 404 permit from the U.S. ACOE to place fill material in waters of the U.S. (POA-2008-782-M4), and additional stipulations in the proffered permit.

XIII. Adjudicator Recommendation

Based upon the information provided by the applicant, as well as review of relevant planning documents, statutes, and regulations related to this application, it is my recommendation to issue this Special Land Use Permit on condition that all permit stipulations are followed as described in the attached permit. The term of this permit would be from issuance to an indefinite time in the future. During the period of the permit an inspection may be conducted at the discretion of the DNR to ensure permit compliance and that the disposed spoils are not negatively impacting the State's natural resources.



Specialist, NRS III

October 20, 2017

Date

Natural Resource Manager Concurrence



Steve Winker, NRM

10-20-2017

Date