



City of Gustavus, Alaska
PO Box 1
Gustavus, Alaska 99826

Phone: 907-697-2451
Fax: 907-697-2136
Email: treasurer@gustavus-ak.gov

Project: RFQ FY25-01(ADDENDUM #1)
Drainage Ditch Relocation
Request for Quotation

COVER SHEET

Important Dates:

Issue Date: June 13, 2024

Bid Submittal Due: July 3, 2024

Deliver to: Gustavus City Hall
By: 1:00 PM

Bid Opening: July 3, 2024

Location: Gustavus City Hall
Time: 1:00 PM

Subject: Addendum #1 to RFQ FY24-05

Date: June 26, 2024

Due to questions and after further consideration, we are including those questions and responses below to provide clarifying information to RFQ FY25-01 previously announced on June 13, 2024. Because of this change, we are extending the bid submittal due date by one day until July 3, 2024, at 1:00 PM and the Bid Opening will commence directly after that.

This date change and answers to questions will be included in a revised RFQ FY25-01 that will be issued to the successful bidder and referred to in future correspondence regarding the award of the contract.

Questions asked with answers following:

- Has there been effort to locate utilities?

Locating utilities has been the contractor's responsibility for past projects, and that should be expected for this project. However, prospective bidders can check with Ian Barrier at the DRC to see if any existing DRC area maps might provide additional information.

- Is the hydro seeding to include seed? All I see is mulch. The native sand also needs a soil amendment. The permit language is vague, mentions something about no invasives but not much more. We have never seen a hydro seeding task that didn't include a very specific seed specification especially near DOT right of way.

Only the mulch/fibrous material is available at the DRC. Please check with Ian Barrier at the DRC to view the product and amount available. The seed and any other materials needs to be included in the bid. We didn't find any seed specs on the DOT website or anywhere else on the state web pages, so what seed species that have been used in Gustavus in the past should be fine.

- Will the proposed route be flagged by the owner and approved by the engineer prior to construction? The route is in fairly close proximity to the state right of way. I see no mention of a requirement for a PLS.
- There are 3 survey monuments (not 1) within the work area. Are they clear of the proposed route?

Marking a boundary line should be ok if there is line of sight between the survey monuments. If not, then we will have to get a surveyor.

- There is a large area depicted as an existing horseshoe bend toward the beach end of the project on the plans that is more of a large hole that is roughly the elevation of the bottom of the proposed new drainage. We anticipate this would possibly fill during certain tides if the new ditch is routed through it. Is that the intent and if so, is DOT good with a pool right next to their road embankment during large tides?

A 17+ foot tide last winter was observed that didn't get to the DRC west boundary. Sea water flooding shouldn't be an issue.



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Gustavus, Alaska 99826
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Project: RFQ FY25-01
DRC Drainage Ditch Relocation
Request for Quotation

COVER SHEET

Important Dates:

Issue Date: June 13, 2024

Bid Submittal Due: July 2, 2024

Deliver to: Gustavus City Hall
By: 1:00 PM

Bid Opening: July 2, 2024

Location: Gustavus City Hall
Time: 1:00 PM

Bid submissions are being accepted for the relocation of the drainage ditch on the east side of the DRC property. Bidders are asked to provide a quote to furnish the equipment, material and labor to dig a new ditch within the 50 foot wide DRC buffer zone along the eastern DRC property line and backfill the existing ditch. Details are described in the General Specifications and Scope of Work sections, and the Appendices.

The ditch relocation will make additional space available for the upcoming bale fill expansion project.

The water in the ditch below the project area is habitat for rearing coho salmon as identified in May by the Alaska Department of Fish & Game area Fish Habitat Biologist. The project will be conducted under the terms of the Fish Habitat Permit (Appendix 1).

The project places fill material into Waters of the United States. The work will be conducted under the terms of the attached US Army Corps of Engineers Nationwide Permit issued for this project (Appendix 2).

The terms and conditions in this document shall become part of any contract resulting from this Request for Quotation. Your bid must be received at the location and by the date and time shown above. Bids shall be submitted on the form furnished and must include original signatures.

THE PERIOD OF PERFORMANCE for this work is from the date of award to September 30, 2024 unless otherwise agreed to with the City Project Manager. Throughout the period, the contractor is responsible for keeping and submitting monthly work logs and billing records to the City Treasurer.

General Specifications

The City plans to initiate work on the DRC drainage ditch relocation in 2024 and requests proposals to complete the work. The proposed realignment is part of an incremental expansion of the landfill that is expected to provide about twenty years of landfill capacity.

Because the ditch flows into the Salmon River, it is Waters of the United States and the US Army Corps of Engineers has jurisdiction. Refer to the US Army Corps of Engineers Nationwide Permit for this project to deposit fill in Waters of the United States (Appendix 2). The design plan and section drawings are on pages 4 & 5 (Figures 1 & 2) of the permit.

The ADF&G Fish Habitat Biologist surveyed the water in the ditch downstream from the project area in May and found rearing coho salmon. The Fish Habitat Permit is issued based on the ditch relocation design submitted in February (Appendix 1).

During the February review the Biologist requested that the depth, width, shape and gradient of the new channel match that of the bypassed section, and that some bends be included in the channel (Figure 1) since there is a possibility that fish could inhabit this section of the ditch in the future. The drawing showing a typical cross section view of the existing channel (Figure 2), taken from the site topography, compares closely to the proposed new channel dimensions for the channel depth, width and slope of the banks (also Figure 2). In the plan view of the ditch relocation (Figure 1) there are two sweeping bends in the new channel that stay within the 50 ft. wide buffer zone. The new channel gradient is approximately the same as the old channel. The meandering thalweg in the existing channel developed over time and created small scour pools and cut banks, and slightly varies the depth and flow characteristics which benefits aquatic habitat. A similar one to two foot wide meandering thalweg must be established in the bottom of the new channel.

Scope of Work

The work must be done in compliance with the US Army Corps of Engineers Nationwide Permit and the ADF&G Fish Habitat Permit issued for this project.

Soil excavated from the new ditch will be used to fill the old ditch. The sequence for excavating and filling isn't specified in this RFQ and will be left to the contractor. The new channel length is about 320 ft. and drops about 2 ft. over its length. The quantity of soil removed from the new excavation is approximately 1268 cu. yds. and the fill requirement for the existing ditch is 1322 cu. yds. The difference will be made up by contouring the fill at both ends of the filled in section of the ditch.

Erosion control best practices must be used by the contractor to prevent sediment from reaching the coho salmon rearing area downstream from the project area. Refer

to the Corps permit condition 12. *Soil Erosion and Sediment Controls*. The erosion control plan must be approved by the Project Manager.

The one to two foot wide meandering thalweg will be encouraged to establish itself by minor contouring done in the bottom of the new channel similar to the watercourse in the existing ditch bottom. A few logs can be added to create current breaks.

The banks and bottom of the new ditch will be hydroseeded to control erosion. The topsoil and vegetation excavated from the new ditch can be put on top of the backfilled ditch to encourage revegetation, or it can be hydroseeded.

End General Specifications and Scope of Work

Contractor Bid Submission Form

Construct the *(Project Name)* as described in General Specifications and Scope of Work; *(More details about the work if appropriate)*

In providing a signature on this cover sheet, the bidder agrees to all Terms and Conditions of this RFQ.

Date of Bid _____

Contractor Business Name _____

Business License # _____ Contractor's License Number # _____

Insurance Company _____ Policy Date _____ Provided ☐

Business Name _____

Mailing Address _____ Physical Location _____

Cell or Business Phone # _____ Email _____

Project Element Quotes:

DRC Drainage Ditch Relocation: Total Bid \$ _____

Subcontractor(s) Name(s) _____

By _____

Print Name

Signature

Title _____

GENERAL PROVISIONS

INSTRUCTIONS TO BIDDER

1. Bidder must submit quotes for all bid schedule items listed.
2. Bid Schedule sheets must be manually signed (original signature).
3. Erasure or other changes made to the Bid Schedule sheets must be initialed by the person signing the bid. Note: "White Out" or other liquid correction methods must be initialed.
4. The quotes must be sealed in an envelope with RFQ number, opening date, and contractor's name written on the outside of the envelope.
5. Any response not meeting the requirements of the bidding documents shall be considered non-responsive.
6. Offers made in accordance with the bidding documents must be good and firm for a period of ninety days from the date of bid opening unless otherwise noted.
7. Bids will be received at the time and place stated in the bidding documents. It is the sole responsibility of the bidder to see that the bid is submitted on time. Any bid received after the scheduled opening time will not be considered, but will be held unopened. No responsibility will be attached to any officer for the premature opening of or failure to open a bid not properly addressed and identified.
8. The City of Gustavus, hereinafter "City," may accept or reject any or all bids for good cause shown, to waive minor deviations from the specifications, and to waive any informality in bids received, when such acceptance, rejection, or waiver is in the best interest of the City. Informalities in bids are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible, and waiver of the informality does not grant the bidder a competitive advantage.
9. The City may cancel the RFQ if such cancellation is in the best interest of the City.
10. It is the responsibility of the bidder to obtain a current copy of all bid documents from the City Treasurer.
11. If any Addenda are issued pertaining to the bidding documents and subject Addenda are not acknowledged, the bid will be considered non-responsive.
12. Faxed transmittals will not be accepted unless specifically noted on the cover sheet and agreed to by the City Project Manager.

13. Each bid shall be made on the form provided by the City or copy thereof and shall be signed by the bidder with signature in full.

14. After depositing a bid, a bidder may withdraw, modify, or correct his bid, providing the City receives the request for such withdrawal, modification, or correction before the time set for opening bids. The original bid, as modified by such written communication will be considered as the bid. No bidder will be permitted to withdraw his bid after the time set for opening bids.

15. The Contractor shall perform the duties specified in this solicitation. The Contractor understands that the City makes no representation that it will look exclusively to the Contractor for the type of goods or services requested. The Contractor will perform the duties under this agreement as an independent contract. The City assumes no responsibility for any interpretation or representations made by any of its officers or agents unless such interpretations or representations are made by Addenda.

METHOD OF AWARD

Award will be made to the lowest responsive, responsible bidder meeting all the requirements. In determining whether the lowest bidder is "responsible" the City Council shall consider:

- a. The price;
- b. Current General Contractor license and Alaska business license;
- c. Local bidder (proposer) preference;
- c. The experience, capacity, and skill of the bidder to perform the contract within the time and amount desired;
- d. The potential bidder's reputation, honesty and integrity shown in the commission of previous City contracts;
- e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract and the City;
- f. The sufficiency of the financial resources and ability of the bidder to perform the contract.

Local Bidder (Proposer) Preference: In accordance with City of Gustavus Code 4.17.190, a qualified responsible bidder who maintains an office within the City of Gustavus may be awarded the contract in preference if their bid does not exceed the lowest responsible bid by a non-local bidder by more than five percent.

When the award is given to other than the lowest bidder, a full and complete written statement of reasons will be delivered to the unsuccessful low bidder or bidders and filed with the other papers relating to the transaction.

The City Council may reject the bid of a bidder who is in arrears on taxes, permits, special assessments and/or any other monies that may be due the City or who failed to perform on a previous contract with the City.

PURCHASE ORDER/CONTRACT

It is the intent of the City to use a purchase order and the bidding documents to establish the contractual relationship between the City and the lowest responsive, responsible bidder. The following conditions shall apply:

- a. The unilateral right of the City to order, in writing, temporary stopping of work or delaying performance that does not alter the scope of the contract;
- b. Liquidated damages;
- c. Termination of the contract for default;
- d. Termination of the contract in whole or in part for the convenience of the City.

CONTRACTOR LICENSE

Contractor shall hold a current license as a General Contractor in the State of Alaska.

SUBCONTRACTING

Subcontracting is permitted when authorized in writing by the City Project Manager. In the event that subcontracting is authorized, the general contractor is responsible to the City to verify insurance on all subcontractors and furnish copies of same to the City. All subcontractors must carry and show proof of the minimum limits of liability insurance.

INSURANCE

The contractor must meet and have in place the insurance requirements listed below at all times during the period set out above.

INDEMNIFY AND HOLD HARMLESS

The contractor shall defend and indemnify the City, its officers, agents, and employees, against any claims, loss, or damages arising from injury to person(s), damage to property, or economic loss, arising out of, in whole or in part, the bidder's performance or non-performance of its duties under this agreement and any defects in the goods and services provided by the bidder. This duty to defend and indemnify shall include responsibility for all damages, costs, and attorney fees. This obligation shall be continuing in nature and extend beyond the term of this agreement for one year.

PUBLIC SAFETY

The contractor is responsible for the general safety and welfare of the public within the area where the work is conducted, and must provide reasonable measures to prevent the public from encountering hazardous or dangerous situations during work activities. The Contractor and Project Manager will consult with one another about specific public safety issues.

CHANGE ORDERS

Change orders approved by the Project Manager and Mayor or Mayor's Designee are required for work outside the project Scope of Work that results in additional cost to the City.

BID AWARD PROCESS

The successful bidder will be notified promptly in writing with a “Notice of Apparent Low Bidder” letter.

After outstanding issues (if any) are resolved a “Notice of Intent to Award” letter will be issued and the contract award will be placed on the agenda for the next City Council General Meeting.

After the bid is accepted and approved by the City Council, the bidder will be issued a “Notice of Award” letter.

A purchase order will be issued by the City following the Notice of Award. Once signed by both parties, the purchase order and RFQ combined will establish the contractual relationship between the City and the contractor.

Any outstanding issues remaining must be settled before a “Notice to Proceed” letter is issued by the City to the contractor. Upon receipt of the letter the contractor is expected to begin making arrangements to start work on the project.

END OF GENERAL PROVISIONS

SUPPLEMENTAL CONDITIONS

1. Some of the elements of the bid schedule may be subject to the provisions of Alaska Statutes Title 36. AS Title 36 provides for the payment of prevailing rates of pay on public construction or public works as published in the current *State of Alaska Department of Labor Wage and Hour Administration Pamphlet No. 600*, and requires weekly submission of certified payrolls. Sec. 36.05.005. Applicability: This chapter applies only to a public construction contract that exceeds \$25,000.

Public construction or public works means the on-site field surveying, erection, rehabilitation, alteration, extensions or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board.

It is the bidder's responsibility to study the elements of bid schedule and determine the applicability of provisions of AS Title 36. If you have questions regarding the applicability of Alaska Statute to the work to be performed, please contact the Department of Labor, Wage and Hour Administration, 1111 W 8th St, Juneau, AK, or call (907) 465-4842.

2. Bidders are encouraged to visit the premises to ascertain pertinent conditions, such as the area, location, accessibility, and general character of the premises. Bidders assume the risk that actual site conditions differ from the proposed contract documents or from those ordinarily encountered.

3. The Contractor shall supply knowledgeable and competent crafts persons, with tools and equipment, capable of doing the required work.

4. The City reserves the right to increase or decrease quantities to the limits of the available funding.

5. All work required under the Contract shall be completed in a timely manner. Failure to complete work in a timely manner shall be grounds for termination of this Contract. In case of default by the contractor, for any reason whatsoever, the City may procure the goods or services from another source and hold the contractor responsible for any resulting increase in cost or other remedies under law or equity.

6. Debarment or Suspension: The Gustavus City Council may debar (for a period of not more than three years) or suspend (for a period of not more than three months) a person for cause from consideration for award of contracts. The causes for debarment include but are not limited to:

- a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract, or

b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for debarment.

7. Contractor shall be responsible for any damage sustained by any and all parties affected by utility outages caused by Contractor unless it is determined said utilities do not meet PUC Standard installations i.e. bury depth, or setback requirements. The Contractor shall make all necessary efforts to prevent damage, i.e. the location of electrical or telephone wire, and shall make all necessary efforts to promptly repair and restore facilities or equipment damaged as a result of such outages.

8. All Contractors submitting a bid for this contract shall have and keep in effect an Alaska Business License, a City of Gustavus Business Permit, and an Alaska Contractors License. The Contractor shall be responsible for any additional licenses and/or permits required in the locality of the work. The City is responsible for all special permits such as ADF&G and Army Corp of Engineers permitting. The Contractor shall further be responsible for current licenses for all subcontractors and suppliers, if allowed, as required by law, during the term of the Contract and provide proof thereof upon request. If proof of required licensure is not submitted to the City Treasurer within 10 days of bid closure, then bidder shall be determined to be non-responsive.

9. The City Project Manager will be the City's representative and work under the direction of the Mayor and City Administrator with authority to approve work under this contract.

10. Other Goods and Services:

a. In addition to specifications included in this RFQ, other work relating to this project may be required to fulfill the scope of the agreement, and may be proposed by the Contractor or requested by the City Project Manager.

b. At the City Project Manager's discretion, the Contractor may be requested to provide a written quotation prior to the work and in such case shall proceed only upon written (or e-mailed) notice by the City Project Manager. The City Project Manager shall have the right to reject any such quotation and to independently contract with another party to perform the requested work.

c. After completion of the work, the Contractor shall provide to the City Project Manager all material invoices and receipts and a log of equipment and/or labor time for payment.

11. Billing and Payment: The contractor may submit billing at the end of the month for work completed during the month. The approved billing shall be paid within 30 days.

12. Convenience Termination: This contract may be terminated by: (A) mutual consent of the parties, (B) for the convenience of the City, provided that the City notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination. (C) For cause, by either party where the other party fails in any material way to perform its obligations under this contract; provided, however, that as a condition of the exercise of its right of termination under this paragraph the terminating party shall notify the other party of its intent to terminate this contract and state with reasonable specificity the grounds therefore, and the defaulting party shall have filed within 30 days of receiving the notice to cure the default. (D) Termination pursuant to this section shall not affect the parties' continuing obligations under this contract and all other portions shall continue to be in full force and effect. The City shall pay the Contractor for all satisfactory work performed before notice of termination.

END OF SUPPLEMENTAL CONDITIONS

INSURANCE REQUIREMENTS

During the term of the contract, the Contractor shall obtain and maintain in force the insurance coverage specified in this section with an insurance company rated “Excellent” or “Superior” by A. M. Best Company or as specifically approved by the City Council.

Limits: The Contractor shall obtain insurance for not less than the following limits:

- Commercial general liability: coverage written on an occurrence basis with limits of not less than \$1,000,000 per occurrence;
- Comprehensive automobile liability: \$1,000,000 combined single limit;
- Workers’ compensation: \$100,000 each accident, \$500,000 disease--policy limit, and \$100,000 disease--each employee.

Automobile Liability Insurance: All autos, or all owned, non-owned, and hired automobiles must be insured when the Contractor is using them to do work under this Agreement. If the Contractor submits insurance covering only scheduled autos, then the Contractor must assure that any additional vehicles are insured before using them in the work under this contract.

Workers’ Compensation: Any employee of the Contractor must be covered by workers’ compensation insurance during the term of the Agreement. This policy must be endorsed with a waiver of subrogation in favor of the City. The Contractor is not required to provide a certificate of workers’ compensation insurance if the Contractor certifies in a manner acceptable to the City that the Contractor has no employees subject to the Act. The Contractor is not required to provide a certificate of workers’ compensation covering certain employees under the following circumstances:
Corporations - If the executive officer claims an exemption, then the Contractor must provide a certificate of waiver for that officer from the Alaska Department of Labor;
Sole Proprietors – The Contractor must sign a workers’ compensation release on a form provided by the City; Partnerships - Every partner must sign a workers’ compensation release on a form provided by the City.

Alternate Coverage: A combination of primary and excess/umbrella policies may be used to fulfill the insurance requirements of this section.

Additional Insured: During the contract term, the Contractor shall add and maintain the City as an additional insured in the Contractor’s commercial general liability policy. This policy will provide primary coverage for the City, and it will provide that the policy treats each additional insured as though the insurer had issued separate policies.

Certificate of Insurance: Prior to commencing any work under this Agreement, the Contractor will provide a certificate of insurance in a form acceptable to the City showing that the Contractor has the required insurance coverage.

Cancellation: The Contractor must assure that the City receives notice if the Contractor's insurance is going to be canceled, not renewed, or changed. The certificate of insurance must say that the insurer will notify the City at least 30 days before the insurer cancels, refuses to renew, or materially changes the coverage.

Increased Coverage: If during the Agreement term the City requires higher limits of insurance than those listed in this section, and if the insurer increases the premium as a result of the higher limits of insurance, then the City will pay the Contractor the difference between the new and old premiums.

Subcontracting: The Contractor is responsible to the City to verify insurance on all subcontractors and furnish copies of it to the City upon request. All subcontractors must carry and show proof of the minimum limits of liability indicated above.

END OF INSURANCE REQUIREMENTS



FISH HABITAT PERMIT FH24-I-0075

ISSUED: June 4, 2024
EXPIRES: December 31, 2028

City of Gustavus
ATTN: Kathy Leary
Box 1
Gustavus, AK 99826

RE: Stream Reroute
Uncataloged Stream
Section 18, T 40S, R 59E, CRM (Juneau B-6)
Location: 58.4028 N, 135.7274 W (WGS 84)

Dear Kathy Leary:

Pursuant to the Fishway Act at AS 16.05.841, the Alaska Department of Fish and Game (ADF&G) Habitat Section reviewed your proposal to reroute a 350 ft reach of an uncataloged tributary to the Salmon River.

Project Description

During low flow, ideally when the channel is dry, you will reroute a 350 ft long section of the uncataloged stream from the roadway culvert to the bend where it turns west. You will construct the new 320 ft channel with two long bends and a cross section that matches the downstream channel, including a 1-2 ft wide low flow thalweg. You will use dredged material to fill the original channel.

Fishway Act

The uncataloged stream supports coho salmon.

In accordance with AS 16.05.841, your project is approved subject to the project description and permit terms.

You must maintain the integrity of the structure in accordance with the terms of this permit so that free fish passage is assured. You must restore any obstruction to free fish passage to the satisfaction of the Habitat Section.

Permit Terms

This letter constitutes a permit issued under the authority of AS 16.05.841 and must be retained on site during project activities. Please be advised that this determination applies only to Habitat Section regulated activities; other agencies also may have jurisdiction under their respective authorities. This determination does not relieve you of your responsibility to secure other state, federal, or local permits. You are still required to comply with all other applicable laws.

You are responsible for the actions of contractors, agents, or other persons who perform work to accomplish the approved project. Prior to engaging in any activity that significantly deviates from the approved plan, you shall notify the Habitat Section and obtain written approval in the form of a permit amendment. Any action that increases the project's overall scope or that negates, alters, or minimizes the intent or effectiveness of any provision contained in this permit will be deemed a significant deviation from the approved plan. The final determination as to the significance of any deviation and the need for a permit amendment is a Habitat Section responsibility. Therefore, it is recommended the Habitat Section be consulted immediately when a deviation from the approved plan is being considered.

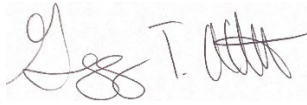
You shall give an authorized representative of the state free and unobstructed access to the permit site, at safe and reasonable times, for the purpose of inspecting or monitoring compliance with any provision of this permit. You shall furnish whatever assistance and information the authorized representative reasonably requires for monitoring and inspection purposes.

In addition to the penalties provided by law, this permit may be terminated or revoked for failure to comply with its provisions or failure to comply with applicable statutes and regulations. You shall mitigate any adverse effect upon fish or wildlife, their habitats, or any restriction or interference with public use that the commissioner determines was a direct result of your failure to comply with this permit or any applicable law.

You shall indemnify, save harmless, and defend the department, its agents, and its employees from any and all claims, actions, or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from permitted activities or your performance under this permit. However, this provision has no effect if, and only if, the sole proximate cause of the injury is the department's negligence.

Please direct questions about this permit to Habitat Biologist Greg Albrecht at (907) 465-6384 or greg.albrecht@alaska.gov.

Sincerely,
Doug Vincent-Lang
Commissioner

A handwritten signature in black ink, appearing to read "Doug T. Vincent-Lang", with a stylized flourish at the end.

By: Kate Kanouse
Regional Supervisor

Email cc:

Al Ott, ADF&G Habitat, Fairbanks
ADF&G Habitat Staff, Douglas
Dan Teske, ADF&G SF, Douglas
Scott Forbes, ADF&G CF, Douglas
Carl Koch, ADF&G WC, Douglas
Mike Salyer, USACE, Soldotna
Andy Stevens, USFWS, Anchorage
Habitat Conservation Division, NMFS, Juneau
Trp. Derek Norris, DPS/AWT, Hoonah



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
P.O. BOX 22270
JUNEAU, AK 99802-2270

May 3, 2024

Regulatory Division
POA-2024-00121

City of Gustavus
Attention: Ms. Kathy Leary
Post Office Box 1
Gustavus, Alaska 99826

Dear Ms. Leary:

This is in response to your March 12, 2024, application for a Department of the Army (DA) permit to discharge 1,268 cubic yards of sand fill material into 0.25 acres of Waters of the United States to relocate 350 linear feet of drainage ditch. It has been assigned file number POA-2024-00121, Salmon River, which should be referred to in all future correspondence with this office. The project site is located within Section 18, T. 40 S., R.59E., Copper River Meridian; USGS Quad Map JUNB6; Latitude 58.4033° N., Longitude -135.7275° W.; Harbor Road, in Gustavus, Alaska.

DA authorization is necessary because your project will involve placement of structures and fill material into waters of the U.S. under our regulatory jurisdiction.

Based upon the information and plans you provided, we hereby verify that the work described above, which will be performed in accordance with the enclosed plan 2 sheets, dated February 28, 2024, 1 sheet, dated 11/30/2021, and 2 sheets, dated 11/24/2017, is authorized by Nationwide Permit (NWP) No. 46, Discharges in Ditches. Enclosed is a copy of the NWP No. 46, as well as the Regional and General Conditions. These documents are also available on our website at www.poa.usace.army.mil/Missions/Regulatory/Types-of-Permits/. Regional Conditions D, E, and F apply to your project: You must comply with all terms and conditions associated with NWP No. 46.

Further, please note General Condition 30 requires that you submit a signed certification to us once any work and required mitigation are completed. Enclosed is the form for you to complete and return to our office.

Unless this NWP is modified or revoked, it expires on March 14, 2026. If you commence or are under contract to commence this activity before the date that the NWPs are modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWPs to complete the activity under the present terms and conditions of these nationwide permits. It is incumbent upon you to remain informed of the changes to the NWPs.

Nothing in this letter excuses you from compliance with other Federal, state, or local statutes, ordinances, or regulations.

Please contact Delana Wilks via email at Delana.P.Wilks@usace.army.mil, by mail at the address above, by phone at (907) 201-5021 if you have questions. For more information about the Regulatory Program, please visit our website at www.poa.usace.army.mil/Missions/Regulatory.

Sincerely,

A handwritten signature in black ink, appearing to read "Randal P. Vigil". The signature is fluid and cursive, with the first name "Randal" being the most prominent part.

Randal P. Vigil
Chief, Southeast Section

Enclosures

ENCLOSURE



**US Army Corps of Engineers
Alaska District**

Permit Number: POA-2024-00121

Name of Permittee: City of Gustavus

Date of Issuance: May 3, 2024

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to Ms. Delana Wilks at CEPOA-RD-Kenai@usace.army.mil, or the following address:

U.S. Army Corps of Engineers
Alaska District
Regulatory Division
P.O. Box 22270
Juneau, AK 99802-2270

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above-referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date


Drainage Ditch Relocation Project	
City of Gustavus – Disposal & Recycling Center	
Sec 18 T40S R59E Copper River Meridian Lat N 58 deg 24 min 12 sec Long E 135 deg 43 min 39 sec	
Neval Engineering John F. Barry PE PO Box 25, Gustavus, AK 99826 (907) 697-3025 nevalmining@gmail.com	February 28, 2024
This document prints to scale on Letter sized paper. All dimensions are in feet.	Scale 1 inch = 100 feet 
Tract A, ASLS No. 2005-50, Juneau Plat 2009-25. Topography from Vista Geoenvironmental Overall Site Plan, November 2017	

Figure 1

Plan View

POA-2024-00121

Salmon River

Sheet 1 of 5

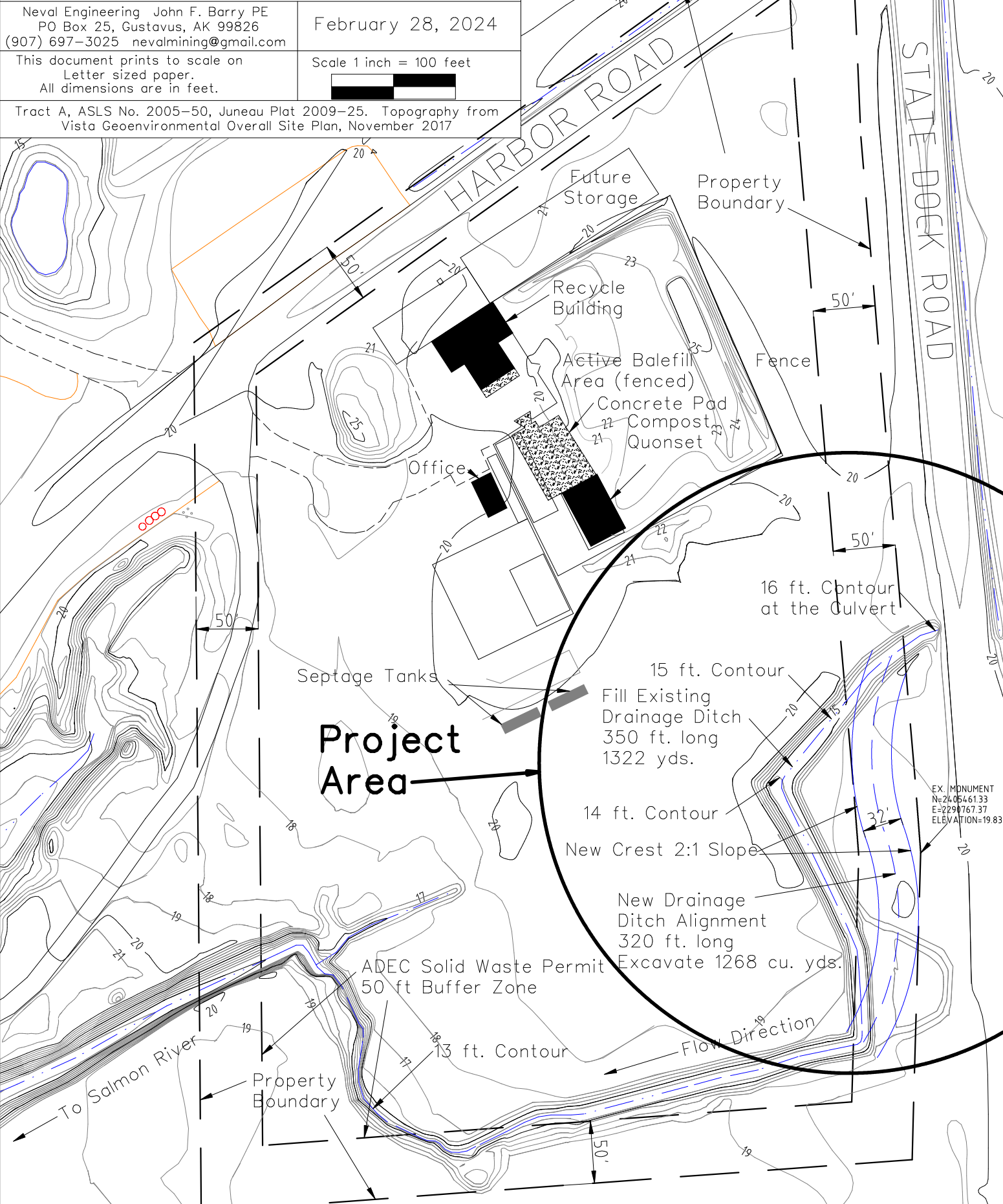
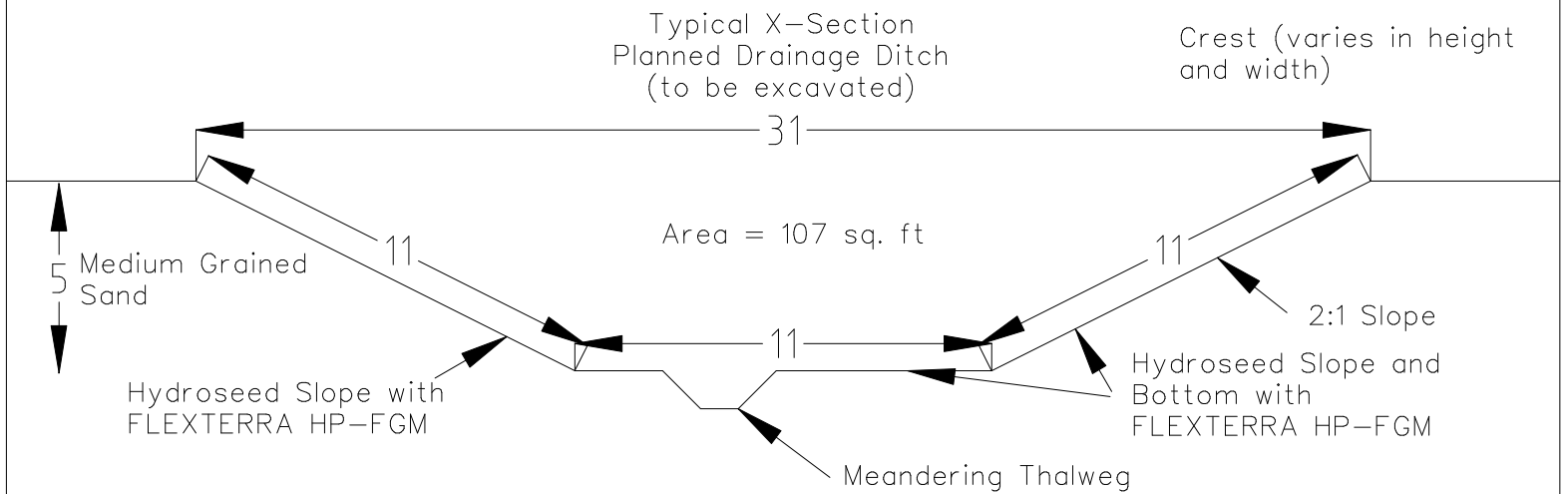
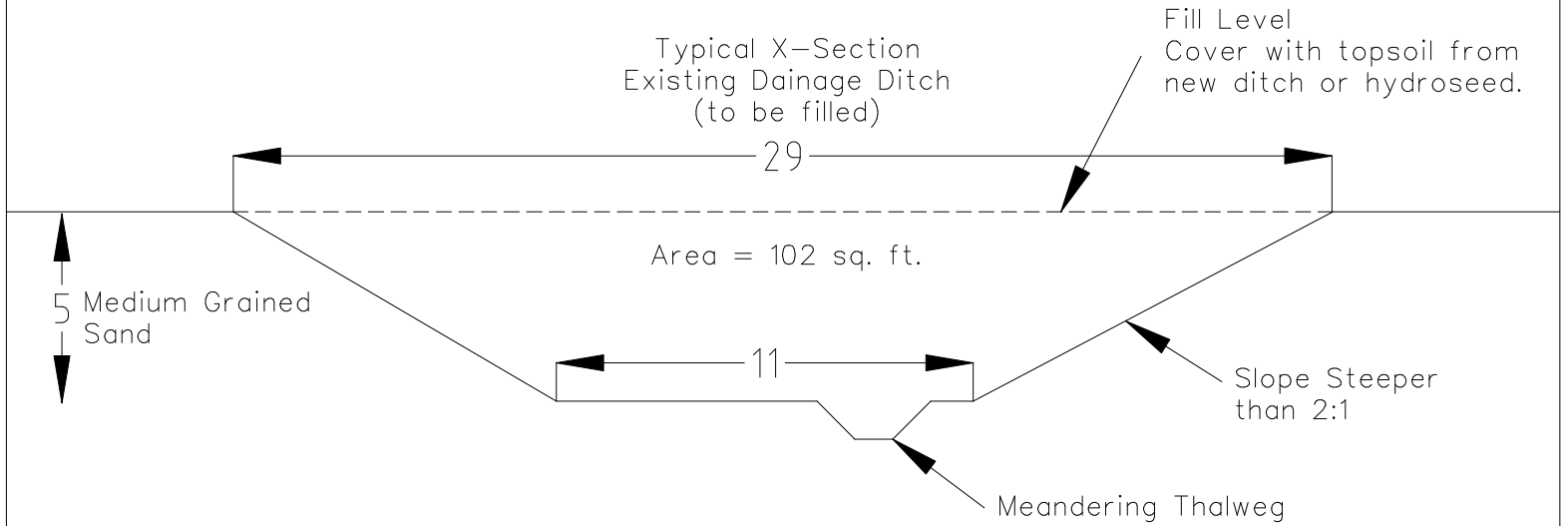


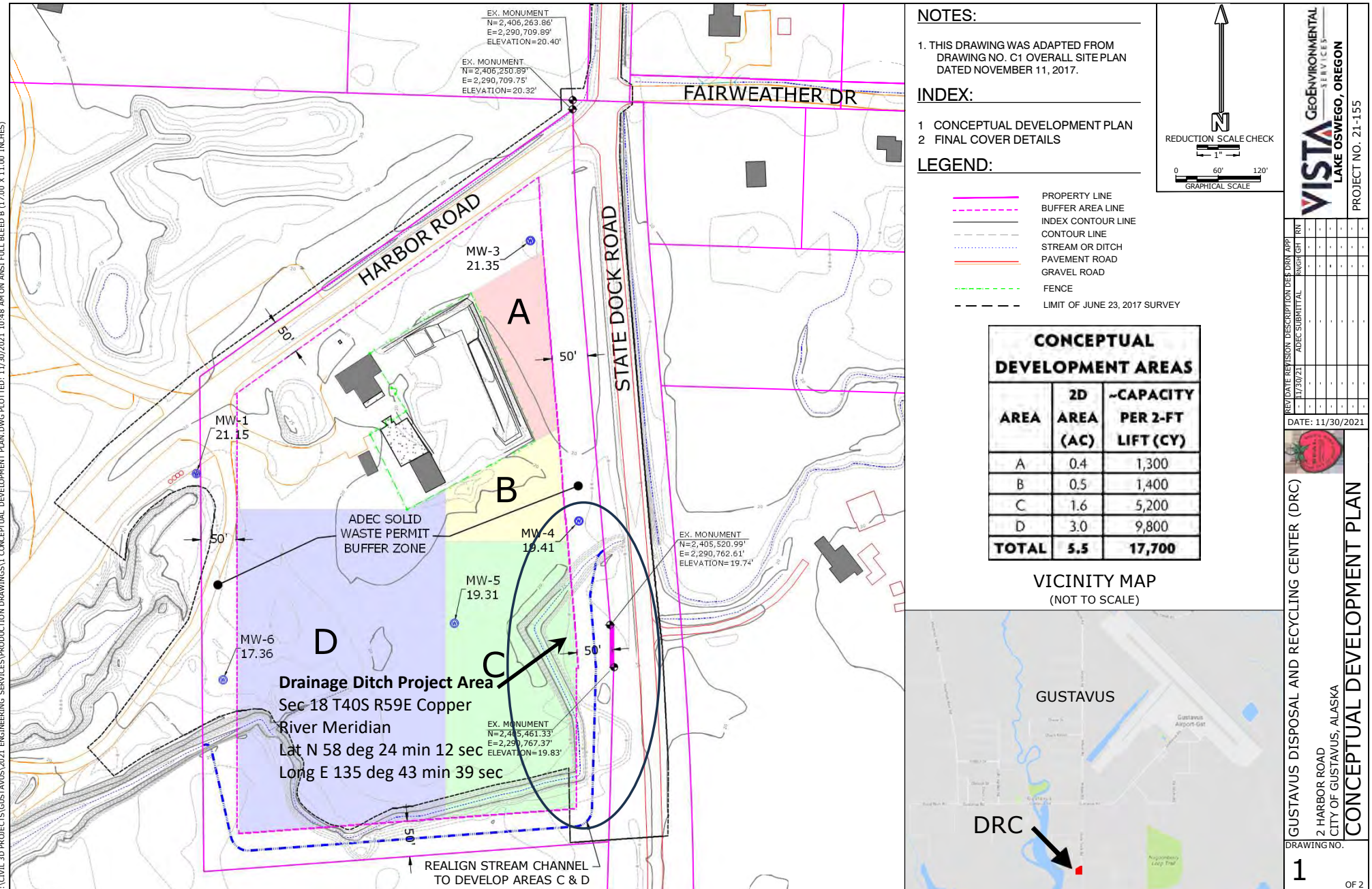
Figure 2 Typical Cross Sections

POA-2024-00121
Salmon River
Sheet 2 of 5

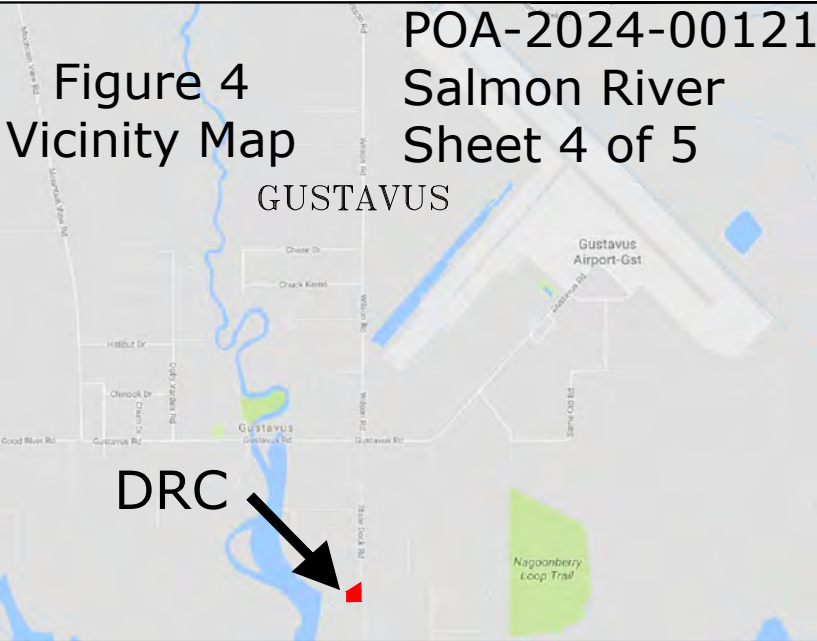


Dainage Ditch Relocation Project	
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Neval Engineering John F. Barry PE PO Box 25, Gustavus, AK 99826 (907) 697-3025 nevalmining@gmail.com	February 28, 2024
This drawing prints to scale on Letter size paper All dimensions are in feet	Scale 1 inch = 5 feet

POA-2024-00121
Salmon River
Sheet 3 of 5



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INDEX:

- C1 OVERALL SITE PLAN
C2 OPERATIONS AREA
C3 SECTIONS

LEGEND:

- PROPERTY LINE
BUFFER AREA LINE
INDEX CONTOUR LINE
CONTOUR LINE
DITCH
PAVEMENT ROAD
GRAVEL ROAD
FENCE
LIMIT OF JUNE 23, 2017 SURVEY

MONITORING WELLS:

MW	NORTHING	EASTING	TOP OF PIPE ELEVATION
MW-1	2290176.70	2405734.87	21.15
MW-2	2290471.31	2405954.41	19.96
MW-3	2290650.04	2406064.79	21.35
MW-4	2290718.56	2405667.89	19.41
MW-5	2290541.80	2405523.07	19.31
MW-6	2290214.40	2405443.01	17.37

NOTES:

- GUSTAVUS DISPOSAL AND RECYCLING CENTER IS LOCATED AT LOT 6 SECTION 18, T. 40 S., R. 59 E., C.R.M., ALASKA.
- BASIS FOR HORIZONTAL AND VERTICAL CONTROL IS A GPS TBM "BASE 1" USING NGS OPUS TO PROVIDE NAD 83, ASP ZONE 1 STATE COORDINATES. THE GEOID ELEVATION OF "BASE 1" IS 29.81 FT.
- TOPOGRAPHIC INFORMATION SHOWN REPRESENTS DATA FROM AN AERIAL TOPOGRAPHIC SURVEY PERFORMED ON MAY 2012 AND TERRESTRIAL SURVEY DATA COLLECTED WITHIN THE LIMITS SHOWN, BY VISTA GEOENVIRONMENTAL SERVICES ON JUNE 22 AND 23, 2017.

VISTA GEOENVIRONMENTAL SERVICES

489 N 8TH STREET - SUITE 201
HOOD RIVER, OREGON 97031
(541) 386-6480

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DATE: 11/24/2017

TOPOGRAPHIC SURVEY
GUSTAVUS DISPOSAL AND RECYCLING CENTER (DRC)
2 HARBOR ROAD
CITY OF GUSTAVUS, ALASKA

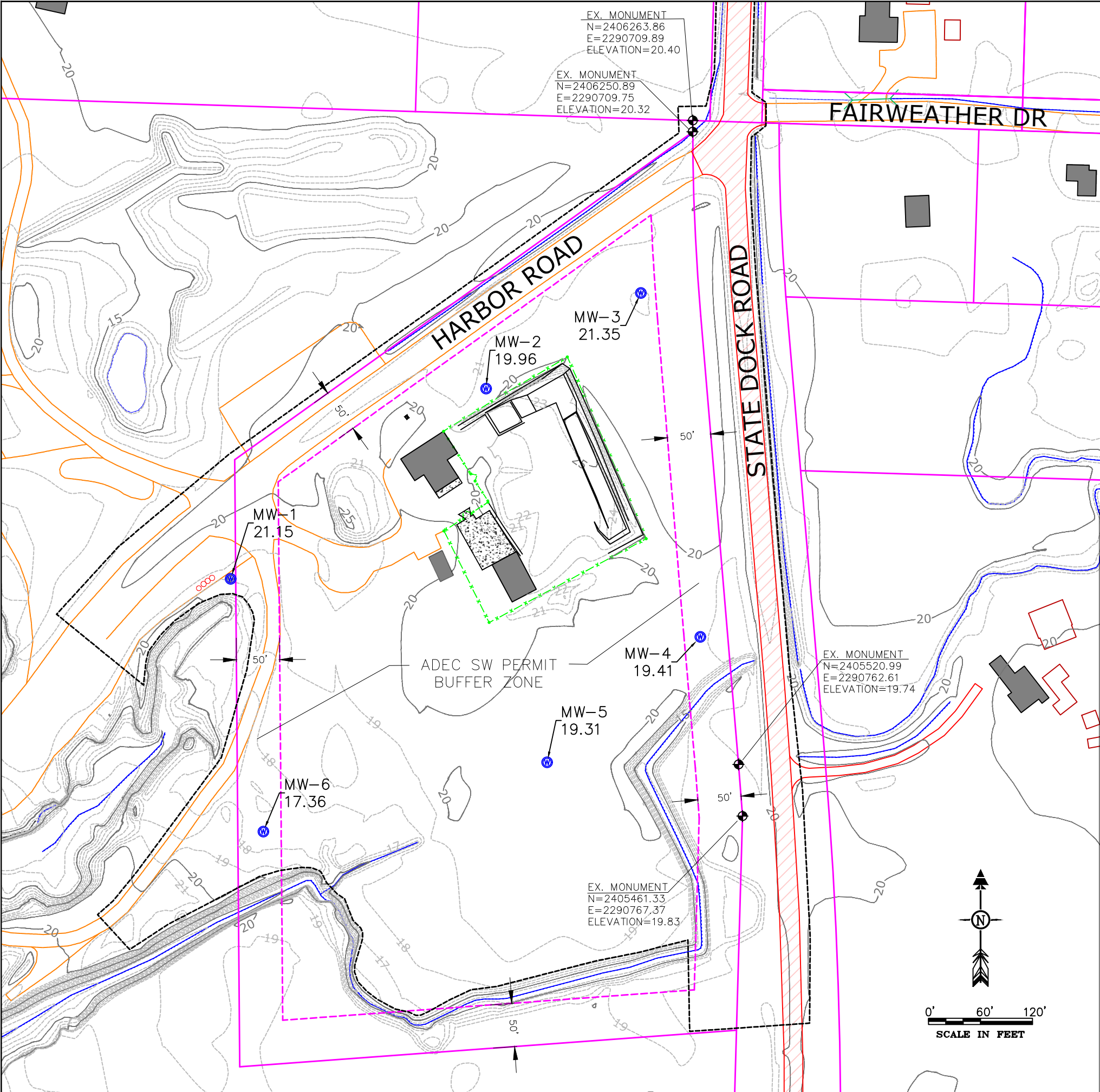
OVERALL SITE PLAN

DRAWING NO. C1

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OF 1

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POA-2024-00121
Salmon River
Sheet 5 of 5

Figure 5
Vicinity Map

DRC

VICINITY MAP
NOT TO SCALE

INDEX:

C1

C2

C3

OVERALL SITE PLAN

OPERATIONS AREA

SECTIONS

LEGEND:

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PROPERTY LINE

BUFFER AREA LINE

INDEX CONTOUR LINE

CONTOUR LINE

DITCH

PAVEMENT ROAD

GRAVEL ROAD

FENCE

LIMIT OF JUNE 23, 2017 SURVEY

MONITORING WELLS:

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TOPOGRAPHIC SURVEY
GUSTAVUS DISPOSAL AND RECYCLING CENTER (DRC)
2 HARBOR ROAD
CITY OF GUSTAVUS, ALASKA

OVERALL SITE PLAN

DRAWING NO.
C1

OF 3

VISTA GEOENVIRONMENTAL SERVICES

489 N 8TH STREET - SUITE 201
HOOD RIVER, OREGON 97031
(541) 386-6480

17-139

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46. Discharges in Ditches

Discharges of dredged or fill material into non-tidal ditches that are (1) constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) determined to be waters of the United States. The discharge of dredged or fill material must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

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Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. *Navigation.* (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) 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 or her 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.

2. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. *Spawning Areas.* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. *Migratory Bird Breeding Areas.* Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

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5. *Shellfish Beds.* No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. *Suitable Material.* No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. *Water Supply Intakes.* No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows.* To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. *Fills Within 100-Year Floodplains.* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. *Equipment.* Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. *Removal of Temporary Structures and Fills.* Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The affected areas must be revegetated, as appropriate.

2021 Nationwide Permit General Conditions

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

2021 Nationwide Permit General Conditions

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (*e.g.*, an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The

2021 Nationwide Permit General Conditions

word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. *Migratory Birds and Bald and Golden Eagles.* The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. *Historic Properties.* (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If preconstruction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance

2021 Nationwide Permit General Conditions

with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the preconstruction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

2021 Nationwide Permit General Conditions

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/ THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. *Discovery of Previously Unknown Remains and Artifacts.* Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

2021 Nationwide Permit General Conditions

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.*, on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require preconstruction notification, the district engineer may determine on a case-by case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100 acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100 acre or less that require preconstruction notification, the district engineer may determine on a case-by case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the

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stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (*e.g.*, riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

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(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (*e.g.*, resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. *Safety of Impoundment Structures.* To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. *Water Quality.* (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived

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(see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires preconstruction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3 acre.

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(b) If one or more of the NWP's used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWP's cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2 acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. *Transfer of Nationwide Permit Verifications.* If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

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

(Transferee)

(Date)

30. *Compliance Certification.* Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

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(c) The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. *Activities Affecting Structures or Works Built by the United States.* If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. *Pre-Construction Notification.* (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the

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permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. (ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs. (iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project

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site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

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(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat

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conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction notifications to expedite agency coordination.

ALASKA DISTRICT REGIONAL CONDITIONS
for the
2021 NATIONWIDE PERMITS (NWP)

The Alaska District Regulatory Office has issued the following Regional Conditions to ensure that activities authorized by NWPs in the Alaska District cause no more than minimal adverse environmental effects, individually and cumulatively. Before the Alaska District will verify an activity under one or more NWPs, the proposed activity must comply with the NWP terms and all applicable General and Regional Conditions.

APPLICABILITY: The following apply throughout the state of Alaska.

RESTRICTIONS:

Regional Condition A – Revoked Permits: The following NWPs are revoked within Alaska:

- 2. Structures in Artificial Canals
- 24. Indian Tribe or State Administered Section 404 Programs
- 30. Moist Soil Management for Wildlife
- 34. Cranberry Production Activities

Regional Condition B – Additional Pre-Construction Notification (PCN) Requirements

- 1. NWP 13, Bank Stabilization: In addition to the PCN requirements specified by NWP 13, a PCN is required for proposed bank stabilization projects in fresh water when the proposed methods and techniques are not included in the Streambank Revegetation and Protection: A Guide for Alaska Revised 2005 (Walter, Hughes and Moore, April 2005) (Guide) or its future revisions. The Guide is available at: <http://www.adfg.alaska.gov/index.cfm?adfg=streambankprotection.main>.
- 2. A PCN is required for projects that qualify for NWPs 12, 57 (C), and 58 (D) within the Municipality of Anchorage.
- 3. NWP 48: A PCN is required for impacts to greater than 1/2 acre of special aquatic sites (wetlands, mudflats, vegetated shallows, coral reefs, etc.).
- 4. NWP 12, 57 (C), 58 (D). In addition to other triggers for the PCN, a PCN is required for projects located within permafrost soils identified using the appropriate soil survey or other appropriate data.

REGIONAL CONDITION C - Activities Involving Trenching

Trenches may not be constructed or backfilled in such a manner as to drain waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a French drain effect). Ditch plugs or other methods shall be used to prevent this situation.

Except for material placed as minor trench over-fill or surcharge necessary to offset subsidence or compaction, all excess materials shall be removed to a non waters of the U.S. location. The backfilled trench shall achieve the pre-construction elevation, within a year of disturbance unless climatic conditions warrant additional time. The additional time must be approved by the Corps.

Excavated material temporarily sidecast into wetlands shall be underlain with geotextile, ice pads, or similar material, to allow for removal of the temporary material to the maximum extent practicable.

REGIONAL CONDITION D - Site Revegetation for Projects with Ground Disturbing Activities

Re-vegetation of all disturbed areas within the project site shall begin as soon as site conditions allow and in the same growing season as the disturbance, unless climatic conditions warrant additional time. Topsoil (the outermost layer of soil, usually the top 2 – 8 inches) removed from the

construction area shall be separated and used for site rehabilitation. When backfilling, topsoil shall be placed as the top layer to provide a seed bed for regrowth. If topsoil is not available from the project site, local native soil material obtained from an approved site may be used. Species used for seeding and planting shall be certified seed sources free of invasive species and follow this order of preference: 1) species native to the site; 2) species native to the region; 3) species native to the state.

REGIONAL CONDITION E - Delineation of Project Footprint

Prior to commencement of construction activities within waters of the U.S., the permittee shall clearly identify the permitted limits of disturbance at the project site with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.). The permittee shall properly maintain such identification until construction is complete and the soils have been stabilized. The permittee is prohibited from conducting any unauthorized Corps-regulated activity outside of the permitted limits of disturbance (as shown on the permit drawings).

REGIONAL CONDITION F - Maintenance of Hydrology Patterns

Natural drainage patterns shall be maintained using appropriate methods. Excessive ponding or drying adjacent to fill areas shall indicate non-compliance with this condition.

REGIONAL CONDITIONS G, H, I AND J APPLY TO SPECIFIC NWPs

REGIONAL CONDITION G - NWP 40 Agricultural Activities

The following activities are not authorized by NWP 40: a. Installation, placement, or construction of drain tiles, ditches, or levees; and b. Mechanized land clearing or land leveling in wetlands within 300 feet of an anadromous water (anadromous water is defined by the state of AK see <https://www.adfg.alaska.gov/sf/SARR/AWC/index.cfm?ADFG=main.interactive>).

REGIONAL CONDITION H - NWP 44 Mining Activities

Placer mining activities are excluded from coverage by NWP 44 (Mining Activities). Placer mining may be authorized by Regional General Permit POA-2014-00055-M1. In Alaska, NWP 44 may only authorize the following activities:

1. Hard rock mining within waters jurisdictional under only Section 404 of the Clean Water Act, not including trenching, drilling, or access road construction.
2. Temporary stockpiling of sand and gravel in waters of the U.S., limited to seasonally dewatered unvegetated sand/gravel bars. Stockpiles shall be completely removed and the area restored to pre-project contours within one year, in advance of seasonal ordinary high water events, or prior to equipment being removed from site, whichever occurs first.

REGIONAL CONDITION I – NWP 48, 55 (A), and 56 (B):

When an Aquatic Farm Lease is required from the Alaska Department of Natural Resources (ADNR) for a new or modified aquatic farm, the applicant must obtain and submit a copy of the ADNR preliminary decision with a Preconstruction Notification to the USACE.

REGIONAL CONDITION J — NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52:

The proposed NWP activity must not cause:

- 1) the loss of anadromous streambed, and/or
 - 2) the discharge of dredged or fill material into waterbodies, including wetlands, adjacent to and/or upstream of an anadromous waterbody;
- unless the district engineer issues a waiver by making a written determination concluding that these discharges will result in no more than minimal individual and cumulative adverse environmental effects.