



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, ALASKA  
JUNEAU REGULATORY FIELD OFFICE  
8800 GLACIER HIGHWAY, SUITE 106  
JUNEAU, ALASKA 99801-8079

February 23, 2010

Regulatory Division  
POA-2000-495-M3

John Stone  
Port Director  
Docks and Harbors Department  
City and Borough of Juneau  
155 South Seward Street  
Juneau, Alaska 99801

Dear Mr. Stone:

This is in regard to the application for a Department of the Army (DA) permit; file number POA-2000-495-M3, Gastineau Channel, by the City and Borough of Juneau. Enclosed is a copy of correspondence received by this office from the U.S. Environmental Protection Agency dated February 5, 2010, in response to the extended Public Notice issued on January 12, 2010.

It is the policy of the DA to provide an applicant the opportunity to furnish a proposed resolution or rebuttal to all objections and other substantive comments before a final decision is made on a proposed project. In this regard, I would appreciate receiving any comments that you may have on this issue.

You may voluntarily elect to contact the agency representative in an attempt to resolve the issues but are not required to do so, since the DA alone is responsible for making the final decision on the application. However, you should be aware that all recommendations on projects proposed to be authorized by permit must be given full consideration in making our public interest review determination, as required by law.

Some of the concerns expressed in this correspondence appear to be substantive. In order to complete the public interest review these concerns must be addressed. Please give your immediate attention to this matter in order to expedite the evaluation process of your permit application. Please provide your response within 30 days of the date of this letter. Failure to do so could result in the denial of your permit unless there are substantive mitigating factors to preclude such a response.

Please contact me via email at [heidi.x.firstencel@usace.army.mil](mailto:heidi.x.firstencel@usace.army.mil), by mail at the address above, or by phone at (907)790-4490, if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heidi Firstencel", is written over a horizontal line.

Heidi Firstencel  
Supervisor, Juneau Field Office

Enclosure



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 10**  
**ALASKA OPERATIONS OFFICE**  
Room 537, Federal Building  
222 W. 7th Avenue, #19  
Anchorage, AK 99513-7588

February 5, 2010

Colonel Reinhard W. Koenig  
District Engineer, Alaska District  
US Army Corps of Engineers  
PO Box 6898  
Elmendorf AFB, AK 99506-0898

Subject: EPA Comments on Public Notice of Application for Permit Reference Number:  
~No. POA-2000-495-M3 Applicant: City and Borough of Juneau  
Location: Douglas Harbor, Juneau, Alaska

Attention: Heidi Firstencel -Project Manager

Dear Colonel Koenig:

Thank you for extending the expiration date of the US Army Corps of Engineers Alaska District "Public Notice of Application for Permit," Reference Number: POA-2000-495-M3. The U.S. Environmental Protection Agency (EPA) has reviewed the public notice for the proposed discharge of dredged and fill material into Gastineau Channel, Juneau, Alaska. The recommendations herein have been prepared under the authority of and in accordance with Section 404 of the Clean Water Act (CWA) and its implementing regulations under 40 CFR Part 230, "Guidelines for Specification of Disposal Sites for Dredged or Fill Material." Pursuant to Part IV, Paragraph 3(a) of the August 11, 1992, Memorandum of Agreement (MOA) between our agencies relative to Section 404(q) of the CWA, we believe the proposed project may result in substantial and unacceptable impacts on aquatic resources of national importance. The following is a summary of EPA's preliminary findings with respect to the proposed discharge.

The applicant is the City and Borough of Juneau (CBJ), and the project location is the Douglas Small Boat Harbor in Juneau, Alaska. As stated in the public notice, "[t]he applicant's stated purpose is to renovate the existing Douglas Harbor in order to meet changing moorage demand in Juneau." CBJ's proposal includes dredging approximately 30,000 cubic yards of material from the harbor. The proposed dredged material disposal site is in Gastineau Channel, and the proposed dredged material disposal method is unconfined open water disposal via barge.

### **Jurisdiction**

The Public Notice states that "...the Alaska District Corps of Engineers has made a preliminary determination that the proposed activity would in fact be subject to the authority of the MPRSA [Marine Protection, Research, and Sanctuaries Act]..." See Public Notice, dated December 8, 2009, page 5. EPA does not concur with the Corps' preliminary determination for the following reasons:

1. The discharge of dredged material into ocean waters (i.e. territorial sea, contiguous zone, and the oceans as defined in section 502 of the CWA (40 CFR 220.1 and 220.2)) is governed by the MPRSA; whereas the Clean Water Act (CWA) governs the discharge of dredged material into navigable waters which lie inside the baseline from which the territorial sea is measured. [40 CFR 230.2(b)]
2. The baseline of the territorial sea is determined by the Baseline Committee, the body that determines the federal government's position with respect to baselines and related matters. It is chaired by the US Department of State and includes a wide range of federal agencies. The Baseline Committee has determined that Gastineau Channel is a juridical bay, and thus, internal waters. See letters from the US Departments of State and Commerce, respectively, to the Corps of Engineers, dated January 6, 2010.
3. EPA, as a member of the Baseline Committee, concurs with the position of the US Departments of State and Commerce in this matter.
4. Therefore, it is EPA's position that the proposed discharge of dredged material into Gastineau Channel is governed by the CWA, not the MPRSA.

### **Mercury Bioaccumulation**

We have reviewed the proposed project thoroughly, and in the opinion of EPA, the project may result in substantial and unacceptable impacts to aquatic resources of national importance. Gastineau Channel supports numerous fish, shellfish and wildlife resources including crab, halibut, salmon, shrimp, seals, sea lions, whales, waterfowl, seabirds, shorebirds and bald eagles. It also supports several important commercial, sport and personal use fisheries and hatcheries.

EPA is concerned about the potential for mercury bioaccumulation in fish and shellfish, and in humans and wildlife that eat them. We are especially concerned that the lower layer of the proposed dredged material may be harmful to aquatic life, aquatic-dependent wildlife and human health. Therefore, we are initiating the dispute resolution process pursuant to Part IV, Paragraph 3(a) of the MOA (see <http://www.epa.gov/owow/wetlands/regs/dispmoa.html>).

**Conclusions**

EPA recommends that the Department of the Army deny a permit for the project as proposed in the public notice because the project may result in substantial and unacceptable impacts on aquatic resources of national importance. Please note that in so doing, EPA does not object to the applicant's stated purpose and need for this project. Nor do we object to the proposed discharge of 14,100 cubic yards of dredged material in the upper layer of Dredged Material Management Units (DMMU) 1, 2, 4A and 4B. However, the 15,400 cubic yards of proposed dredged material in the lower layer may be unsuitable for unconfined open water disposal because it may cause or contribute to significant degradation of waters of the United States [see 40 CFR 230.10(c)].

We look forward to working cooperatively with the Corps and the applicant to resolve the above issues related to mercury in a timely manner. To that end, EPA will provide a detailed letter within 25 days after the end of the extended comment period, consistent with Part IV, Paragraph 3(b) of the MOA. If you want to discuss this letter, please call me at (907) 271-6555, or have your staff call Chris Meade at (907) 586-7622.

Sincerely,



Marcia Combes, Director  
Alaska Operations Office

cc: John Stone, CBJ  
Chiska Derr, NMFS  
Deb Rudis, FWS  
William Ashton, ADEC