



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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OFFICE OF THE REGIONAL
ADMINISTRATOR

APR 23 2019

Colonel Phillip J. Borders
Alaska District
U.S. Army Corps of Engineers
P.O. Box 6898
JBER, Alaska 99506-0898

Re: Department of Army Draft Permit POA-2015-25, Nanushuk Development Project

Dear Colonel Borders:

Thank you for taking the time to discuss the Notice of Intent to Proceed and draft Department of the Army permit for the proposed Nanushuk Development Project, Department of the Army Permit POA-2015-25, that we received on April 8, 2019. I appreciate our productive meeting in Seattle earlier this month and the recent discussions of our headquarters' counterparts as well. Consistent with those discussions, and to allow an additional few days for the District to respond, I am requesting review of this proposed permit by the Assistant Administrator of EPA's Office of Water under Part IV, Paragraph 3(d)(2), and Part III, Paragraph 2, of the 1992 Clean Water Act Section 404(q) Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army.

The EPA appreciates that the project has been refined to result in a reduction in aquatic resource impacts and to address some of the EPA's concerns identified in our 2017 3(a) and 3(b) letters and comments on the Draft Environmental Impact Statement. Specifically, we appreciate the inclusion of key avoidance and minimization components. The most notable changes include: reduction of all road widths to 32 feet; choosing Alternative 5 road route alignment; relocating infrastructure sites; and changes to proposed road side slopes from 3:1 to 2:1. We also concur that compensatory mitigation should be required for this project to address remaining, unavoidable impacts to aquatic resources. Given the lack of standard valuations for crediting out of kind mitigation in these circumstances, we recognize that the approach taken in this draft permit may not be precedential. Nonetheless, the clarification of a number of factual issues related to those compensatory mitigation requirements remains a final outstanding concern, as described in the enclosed comments.

We recognize the desire for timely decision-making on this permit and therefore, consistent with the 2018 Alaska Mitigation MOA and our discussions in Seattle, would like to continue our collaborative efforts to address the challenges associated with assessing and establishing a common "currency" for appropriate and practicable out-of-kind compensatory mitigation for large-scale projects in Alaska. The EPA understands and continues to support Alaska's desire to develop its energy sources in a responsible way that addresses the needs of Alaskans while also safeguarding its exceptional natural resources.

Please contact David Allnutt, Director, Laboratory Sciences and Applied Sciences Division, at (206) 553-2581 for further information, and we look forward to making progress on these issues during my tenure as Regional Administrator here in Region 10.

Sincerely,



Chris Hladick
Regional Administrator

Enclosure

Enclosure

Mitigation: Nanushuk Development Project, Department of the Army Permit POA-2015-25

The EPA remains concerned that the April 8 draft permit and the record supporting it contain unclear and confusing information about the nature, extent, and expected benefits of the applicant-proposed mitigation. Special Condition No. 22 states that “OSA has voluntarily committed to conducting a project to improve village wastewater treatment facilities in the Native Village of Nuiqsut. Specific plans shall be developed and submitted to USACE for approval prior to Project construction.” The EPA’s concerns include the following:

- Special Condition No. 22 does not specify what OSA is required to do under this condition, nor is it clear what “voluntarily committed” means in this context.
- It is not clear that Special Condition No. 22 requires implementation of any proposed wastewater treatment improvements. As currently drafted, the permit only appears to require that plans be “developed and submitted.”
- It is not clear whether any improvements to *wastewater treatment facilities* are expected. The MFR refers only to a project “connecting an additional 10% of household[s] to the existing sewage line.” MFR at 15.
- The MFR does not identify anticipated water quality improvements that would result from this project and appears to include contradictory information, stating alternately that:
 - “conducting this project would not result in any improvements to water quality or any uplift to WOTUS” and
 - “the project would improve sanitation and water quality conditions in aquatic resources surrounding the community” MFR at 15.
- The criteria used to screen out other available projects and select wastewater treatment improvements have not been disclosed.
- Special Condition No. 22 contains similar language to and could be confused with the “Non Traditional Option – line item 15” in the table discussed by agency staff on March 7, which called for improving treatment levels or outfall mixing zone to reduce nitrogen inputs, etc.

Based on these concerns, the EPA is seeking clarity on the scope, requirements, and benefits of Special Condition No. 22 to ensure consistency with the CWA Section 404(b)(1) Guidelines and 2018 Alaska Mitigation MOA.

In addition, the MFR states that the Corps considered 88 identified potential mitigation opportunities since the last discussion between EPA and Corps staff on March 7, 2019. Of these opportunities, all but two were apparently deemed impracticable, but neither these determinations nor the rationale or criteria used have been provided to the EPA. As such, the EPA cannot fully evaluate whether the proposed project complies with the Section 404(b)(1) Guidelines. The MFR goes on to conclude that “there are no other projects available that would result in appropriate functional uplift to the Colville River Watershed, its Delta and its adjacent wetlands” MFR at 15. The EPA cannot concur with this conclusion based on the information provided.

