

Department of Environmental Conservation

DIVISION OF WATER

Wastewater Discharge Authorization Program

555 Cordova Street Anchorage, Alaska 99501-2617 Main: 907.269.6285

Fax: 907.334.2415 www.dec.alaska.gov/water/wwdp

March 20, 2017

City and Borough of Sitka Public Works, Attention: Mr. Dan Tadic 100 Lincoln Street Sitka, Alaska 99835

Re: City and Borough of Sitka, Multipurpose Dock

POA-2016-576, Sawmill Cove

Dear Mr. Tadic:

In accordance with Section 401 of the Federal Clean Water Act of 1977 and provisions of the Alaska Water Quality Standards, the Department of Environmental Conservation (DEC) is issuing the enclosed Certificate of Reasonable Assurance for placement of dredged and/or fill material in waters of the U.S., including wetlands and streams, associated with the construction of a multipurpose dock in Sitka, Alaska.

DEC regulations provide that any person who disagrees with this decision may request an informal review by the Division Director in accordance with 18 AAC 15.185 or an adjudicatory hearing in accordance with 18 AAC 15.195 – 18 AAC 15.340. An informal review request must be delivered to the Director, Division of Water, 555 Cordova Street, Anchorage, AK 99501, within 15 days of the permit decision. Visit http://dec.alaska.gov/commish/ReviewGuidance.htm for information on Administrative Appeals of Department decisions.

An adjudicatory hearing request must be delivered to the Commissioner of the Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, PO Box 111800, Juneau, AK 99811-1800, within 30 days of the permit decision. If a hearing is not requested within 30 days, the right to appeal is waived.

By copy of this letter we are advising the U.S. Army Corps of Engineers of our actions and enclosing a copy of the certification for their use.

Sincerely,

James Rypkema

Program Manager, Storm Water and Wetlands

Enclosure: 401 Certificate of Reasonable Assurance

cc: (with encl.)

Jamie Hyslop, USACE, Anchorage Robin Reich, Soltice Alaska Consulting, Inc. Jackie Timothy, ADF&G USFWS Field Office Juneau Mark Douglas, EPA Operations, Anchorage

STATE OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION CERTIFICATE OF REASONABLE ASSURANCE

In accordance with Section 401 of the Federal Clean Water Act (CWA) and the Alaska Water Quality Standards (18 AAC 70), a Certificate of Reasonable Assurance, is issued to City and Borough of Sitka, Public Works Department, attention: Dan Tadic, at 100 Lincoln Street, Sitka, Alaska 99835, for placement of dredged and/or fill material in waters of the U.S. including wetlands and streams in association with the removal of aged dock infrastructure and construction of a new, multipurpose dock in Sitka, Alaska.

The project will include the following work in waters of the United States:

- Discharge 1,700 cubic yards of clean rock fill material into 0.02 acres below the high tide line (HTL approximate elevation +12.7 feet above the 0.0 foot contour) and the mean high water mark (MHW +9.1 feet above the 0.0 foot contour) to construct an abutment;
- Install a 250 foot by 74 foot by 19 foot floating dock, a 12 foot by 100 foot small craft float and gangway, and a 90 foot by 25 foot transfer bridge over and below the MHW;
- Install 12 temporary 30-inch diameter steel piles, over and below the MHW, that would be removed prior to project completion;
- Permanently install 2- 48-inch vertical piles, and 4- 30-inch batter piles over and below the MHW;
- Remove up to 280 abandoned creosote treated piles together with 5 dock structures over and below the MHW as funding allows.

Sawmill Cove is a historically impaired water area due to operation of the Alaska Pulp Corporation (APC) mill in Sawmill Cove. Currently, there is a Total Maximum Daily Load (TMDL) approved by the Environmental Protection Agency (EPA) produced by DEC for residues, pulp residues, wood waste, logs, and bark, and for sediment toxicity focused on hydrogen sulfide, ammonia, and resin acids as the pollutants of concern. The City and Borough of Sitka purchased the property that the APC previously owned. A memorandum of agreement was implemented in 1999 between DEC and City and Borough of Sitka that Sitka would continue monitoring for natural recovery.

A report on the monitoring results was produced in 2005 and the most recent in 2011. A summary of the 2012 monitoring report 2011 Long Term Benthic Monitoring and Bioaccumulation Survey in Sawmill Cove states: "In summary, the City and Borough of Sitka has achieved better-than-expected results from this latest round of monitoring. Not only have the most recent monitoring results confirmed earlier indications that there are no threats to ecosystem or human health from any persistent contaminants of concern in the sediments, but the original decision of natural recovery as the preferred remedial option turned out to be a wise choice. Not only is benthic ecosystem recovery proceeding as anticipated, it is actually occurring at a much faster rate than originally predicted."

Per the Revised Memorandum of Understanding Between the State of Alaska the City and Borough of Sitka Management Plan for Sawmill Cove Industrial Park, (MOU) dated May 28, 2014, issued by DEC's Contaminated Sites Program, states that 'Dredging, expansion of moorage, and in-water construction are prohibited in the No Disturbance Zone (NDZ), except that City and Borough of Sitka may repair, maintain, or remove existing facilities using best management practices to minimize disturbances with

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approval by DEC prior to the work.' This project's site boundaries are north of the NDZ. Additionally, existing docks can be used as-is without any further regulatory action, subject only to berthing and dock expansion alternatives identified in the Decision Framework for Managing navigation in Sawmill Cove (Exhibit 7, 1999 MOU).

In water construction in the area of concern within Sawmill Cove is allowed with appropriate precautions and best management practices, incorporated through the permitting process, to minimize disturbance or re-suspension of sediments. That includes in water construction activities related to pilings, dolphins, docks, bulkheads, moorage and navigation aids. The DEC Contaminated Sites Program has reviewed this application to verify its compliance with current institutional controls (18 AAC 375) applied on the Sawmill Cove and detailed by documents cited in this permit. The Contaminated Sites Program will document this permit in their database so that the project progress can be tracked in regards to land use changes and the verification of ongoing compliance.

A state issued water quality certification is required under Section 401 because the proposed activity will be authorized by a U.S. Army Corps of Engineers permit (POA-2016-576) and a discharge of pollutants to waters of the U.S. located in the State of Alaska may result from the proposed activity. Public notice of the application for this certification was given as required by 18 AAC 15.180 in the Corps Public Notice POA-2016-576 posted from January 20, 2017 to February 21, 2017.

The proposed activity is located within Section 3, T. 56 N., R. 64 E., Copper River Meridian; Latitude 57.0436° N., Longitude -135.2290° W.; in Sitka, Alaska.

The Department of Environmental Conservation (DEC) reviewed the application and certifies that there is reasonable assurance that the proposed activity, as well as any discharge which may result, will comply with applicable provisions of Section 401 of the CWA and the Alaska Water Quality Standards, 18 AAC 70, provided that the following additional measures are adhered to.

- Reasonable precautions and controls must be used to prevent incidental and accidental
 discharge of petroleum products or other hazardous substances. Fuel storage and handling
 activities for equipment must be sited and conducted so there is no petroleum contamination of
 the ground, subsurface, or surface waterbodies.
- 2. The operator shall minimize overall damage to treated wood piling during removal. In particular, treated wood piling must not be broken off intentionally by twisting, bending or other deformation. This will help reduce the release of wood-treating compounds (e.g., creosote) and wood debris to the water column and sediments.
- 3. Upon removal from the substrate and water column, the piling shall be moved expeditiously into the containment area for processing, and disposal at an approved off-site, upland facility.
- 4. During construction, spill response equipment and supplies such as sorbent pads shall be available and used immediately to contain and cleanup oil, fuel, hydraulic fluid, antifreeze, or other pollutant spills. Any spill amount must be reported in accordance with Discharge Notification and Reporting Requirements (AS 46.03.755 and 18 AAC 75 Article 3). The applicant must contact by telephone the DEC Area Response Team for Southeast Alaska (907) 465-5340 during work hours or 1-800-478-9300 after hours. Also, the applicant must contact by telephone the National Response Center at 1-800-424-8802.

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- 5. During construction equipment shall not be operated below the ordinary high water mark if equipment is leaking fuel, oil, hydraulic fluid, or any other hazardous material. Equipment shall be inspected and recorded in a log on a daily basis for leaks. If leaks are found, the equipment shall not be used and pulled from service until the leak is repaired.
- 6. Excavated or fill material, including overburden, shall be placed so that it is stable, meaning after placement the material does not show signs of excessive erosion. Indicators of excess erosion include: gullying, head cutting, caving, block slippage, material sloughing, etc. The material must be contained with siltation best management practices (BMPs) to preclude reentry into any waters of the U.S., which includes wetlands.
- 7. Fill material must be clean sand, gravel or rock, free from petroleum products and toxic contaminants in toxic amounts.
- 8. This project is within impaired waters due to residues, pulp residues, wood waste, logs, and bark, and for sediment toxicity focus on hydrogen sulfide, ammonia, and resin acids. Take care that activities do not unduly agitate the sediments to prevent spread of the pollutants of concern in the impaired waters.
- 9. If it appears that there is significant disturbance from the construction activities that goes beyond the intent of the MOU, monitoring for the contaminants of concern shall be conducted and the sampling analysis results should be sent to Evonne Reese of DEC's Contaminated Sites at Evonne.Reese@alaska.gov and to Shannon Dewandel of Division of Water, Shannon.Dewandel@alaska.gov.
- 10. Project documents held onsite will include a copy of the No Disturbance Zone, attached at the end of this certificate, so that all contractors and construction participants are aware of its boundaries.
- 11. Disposal of the removed creosote pilings will require a solid waste disposal permit or plan approval as the previous sampling indicated concentrations of chemicals or metals are present above the most stringent cleanup levels found in Tables A1, A2, B1 and B2 of 18 AAC 75.341.

This certification expires five (5) years after the date the certification is signed. If your project is not completed by then and work under U.S. Army Corps of Engineers Permit will continue, you must submit an application for renewal of this certification no later than 30 days before the expiration date (18 AAC 15.100).

Date: March 20, 2017

James Rypkema, Program Manager
Storm Water and Wetlands

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KENAI FIELD OFFICE Regulatory Division (1145) CEPOA-RD 44669 Sterling Highway, Suite B Soldotna, Alaska 99669-7915

Public Notice of Application for Permit

PUBLIC NOTICE DATE:

January 20, 2017

EXPIRATION DATE:

February 21, 2017

REFERENCE NUMBER:

POA-2016-576

WATERWAY:

Sawmill Cove

Interested parties are hereby notified that a Department of the Army permit application has been received for work in waters of the United States as described below and shown on the enclosed project drawings.

Comments on the described work, with the reference number, should reach this office no later than the expiration date of this Public Notice to become part of the record and be considered in the decision. Please contact Mr. Jamie Hyslop at (907) 753-2670, toll free from within Alaska at (800) 478-2712, or by email at Jamie.R.Hyslop@usace.army.mil if further information is desired concerning this notice.

APPLICANT: Mr. Dan Tadic, City and Borough of Sitka, Department of Public Works

AGENT: Ms. Robin Reich, Solstice Alaska Consulting, Inc.

<u>LOCATION</u>: The project site is located within Section 3, T. 56 S., R. 64 E., Copper River Meridian; USGS Quad Map Sitka A-4; Latitude 57.0463° N., Longitude 135.2290° W.; from the City of Sitka travel east approximately 5.5 miles on Sawmill Creek Road to the Gary Paxton Industrial Park (GPIP), Sitka, Alaska.

<u>PURPOSE</u>: The applicant's stated purpose is to construct a multipurpose dock that will serve a wide variety of vessels, provide deep water port access to the GPIP, meet modern standards for safety, and promote marine commerce in the region.

<u>PROPOSED WORK</u>: The applicant requests authorization for the following work in waters of the United States.

 Discharge 1,700 cubic yards of clean rock fill material into 0.02 acres below the high tide line (HTL approximate elevation +12.7 feet above the 0.0 foot contour) and the mean high water mark (MHW +9.1 feet above the 0.0 foot contour) to construct an abutment (figure 3 of 5);

Install a 250 foot by 74 foot by 19 foot floating dock, a 12 foot by 100 foot small craft float and gangway, and a 90 foot by 25 foot transfer bridge over and below the MHW

(figure 3 of 5);

3. Install 12 temporary 30-inch diameter steel piles, over and below the MHW, that would be removed prior to project completion;

4. Permanently install 2- 48-inch vertical piles, and 4- 30-inch batter piles over and below

the MHW (figure 5 of 5);

5. Remove up to 280 abandoned creosote treated piles together with 5 dock structures over and below the MHW as funding allows (figures 2 and 3 of 5).

All work would be performed in accordance with the enclosed plan (sheets 1-5), dated January 2017.

<u>ADDITIONAL INFORMATION:</u> The Corps is not aware of any additional authorizations (state local or federal) the applicant is required to obtain.

<u>APPLICANT PROPOSED MITIGATION</u>: The applicant proposes the following mitigation measures to avoid, minimize, and compensate for impacts to waters of the United States from activities involving discharges of dredged or fill material.

- a. Avoidance: To meet the project purpose and need the project must be constructed in and over waters of the United States and a small amount of fill must be placed in waters of the U.S. The applicant has avoided undeveloped shoreline and choose to locate the proposed dock within the GPIP, in an area designated for commercial docks. Steel piles are proposed to be used as opposed to wood piles that has been surface or pressure-treated with creosote or treated with pentachlorophenol. If treated wood must be used, any wood that comes in contact with water will be treated with waterborne preservatives in accordance with Best Management Practices developed by the Western Wood Preservers Institute. Additionally, the project uses a design that does not require dredging.
- b. Minimization: The project uses the most compact design and few piles and a very small amount of fill to minimize impacts to waters of the United States. Plans for avoiding, minimizing, and responding to releases of sediments, contaminants, fuels, oil, and other pollutants would be developed and implemented. Spill response equipment will be kept on-site during construction and operation. The project has been designed so that floats or barges would not be grounded at any tidal stage.
 - c. Compensatory Mitigation: Compensatory mitigation is not proposed.

WATER QUALITY CERTIFICATION: A permit for the described work will not be issued until a certification or waiver of certification, as required under Section 401 of the Clean Water Act

(Public Law 95-217), has been received from the Alaska Department of Environmental Conservation.

CULTURAL RESOURCES: The latest published version of the Alaska Heritage Resources Survey (AHRS) has been consulted for the presence or absence of historic properties, including those listed in or eligible for inclusion in the National Register of Historic Places. There are unevaluated properties in the vicinity of the worksite. Because these properties have been determined to lie within the project area, a determination of eligibility and, if needed, a determination of effect will be made in consultation with the State Historic Preservation Officer (SHPO). Consultation of the AHRS constitutes the extent of cultural resource investigations by the District Commander at this time. This application is being coordinated with SHPO. Any comments SHPO may have concerning presently unknown archeological or historic data that may be lost or destroyed by work under the requested permit will be considered in our final assessment of the described work.

<u>ENDANGERED SPECIES</u>: The project area is within the known or historic range of the threatened humpback whale (Mexico DPS; *Megaptera novaeangliae*), and the endangered Steller sea lion (Western DPS; *Eumatopia jubatus*), N. Pacific right whale (*Eubalaena japonica*), sperm whale (*Physeter macrocephalusI*).

We have determined the described activity may affect the threatened humpback whale in the Mexico DPS, the endangered Steller sea lion in the Western DPS, N. Pacific right whale, and sperm whale. We believe consultation under section 7 of the Endangered Species Act with the National Marine Fisheries Service (NMFS) is required for these species. On December 28, 2016, the Corps notified NMFS that we designated the City and Borough of Sitka, as represented by Ms. Robin Reich/Solstice Alaska Consulting, Inc., as our non-Federal representative to conduct section 7 consultation. Any comments they may have concerning endangered or threatened wildlife or plants or their critical habitat will be considered in our final assessment of the described work.

<u>ESSENTIAL FISH HABITAT</u>: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH).

The project area is within the known range of the Chinook (*Oncorhynchus tshawytscha*), chum (*Oncorhynchus keta*), Coho (*Oncorhynchus kisutch*), pink (*Oncorhynchus gorbuscha*), and sockeye (*Oncorhynchus nerka*) salmon.

Sawmill Creek, which empties into Sawmill Cove just east of the proposed dock site, is an anadromous stream. Sawmill Creek provides spawning and rearing habitat for chum, pink, coho, and sockeye salmon.

The applicant proposes in-water work pile driving would not be conducted between March 15 and June 15 (of any year) to protect migrating Pacific salmon smolts.

Because fill and piles would be placed in a previously disturbed industrial area, and because of the applicant proposed in-water work timing window we have determined the described activity would not adversely affect EFH in the project area.

TRIBAL CONSULTATION: The Alaska District fully supports tribal self-governance and government-to-government relations between Federally recognized Tribes and the Federal government. Tribes with protected rights or resources that could be significantly affected by a proposed Federal action (e.g., a permit decision) have the right to consult with the Alaska District on a government-to-government basis. Views of each Tribe regarding protected rights and resources will be accorded due consideration in this process. This Public Notice serves as notification to the Tribes within the area potentially affected by the proposed work and invites their participation in the Federal decision-making process regarding the protected Tribal right or resource. Consultation may be initiated by the affected Tribe upon written request to the District Commander during the public comment period.

<u>PUBLIC HEARING</u>: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, reasons for holding a public hearing.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts, which the proposed activity may have on the public interest, requires a careful weighing of all the factors that become relevant in each particular case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. The outcome of the general balancing process would determine whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur. The decision should reflect the national concern for both protection and utilization of important resources. All factors, which may be relevant to the proposal, must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership. and, in general, the needs and welfare of the people. For activities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(l) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria (see Sections 320.2 and 320.3), a permit will be granted unless the District Commander determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered

species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

AUTHORITY: This permit will be issued or denied under the following authorities:

- (X) Perform work in or affecting navigable waters of the United States Section 10 Rivers and Harbors Act 1899 (33 U.S.C. 403).
- (X) Discharge dredged or fill material into waters of the United States Section 404 Clean Water Act (33 U.S.C. 1344). Therefore, our public interest review will consider the guidelines set forth under Section 404(b) of the Clean Water Act (40 CFR 230). Project drawings and a Notice of Application for State Water Quality Certification are enclosed with this Public Notice.

District Commander U.S. Army, Corps of Engineers

Enclosures

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION DIVISION OF WATER 401 Certification Program Non-Point Source Water Pollution Control Program

DEPARTMENT OF ENVIRONMENTAL CONSERVATION WQM/401 CERTIFICATION 410 WILLOUGHBY AVENUE JUNEAU, ALASKA 99801-1795 PHONE: (907) 465-5321/FAX: (907) 465-5274

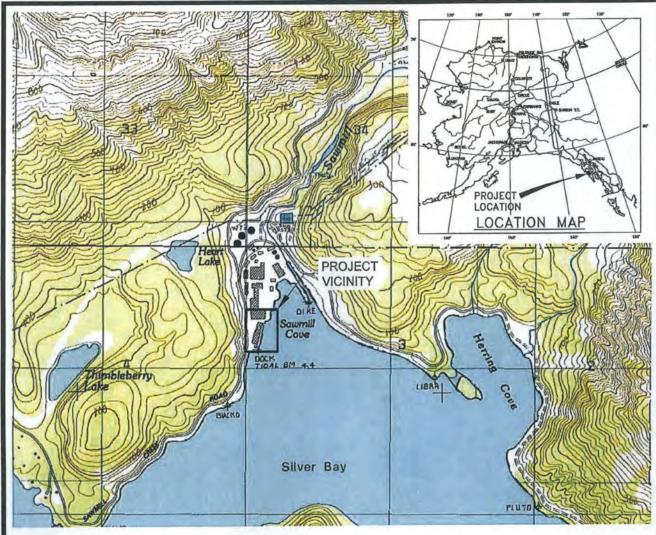
NOTICE OF APPLICATION FOR STATE WATER QUALITY CERTIFICATION

Any applicant for a federal license or permit to conduct an activity that might result in a discharge into navigable waters, in accordance with Section 401 of the Clean Water Act of 1977 (PL95-217), also must apply for and obtain certification from the Alaska Department of Environmental Conservation that the discharge will comply with the Clean Water Act, the Alaska Water Quality Standards, and other applicable State laws. By agreement between the U.S. Army Corps of Engineers and the Department of Environmental Conservation, application for a Department of the Army permit to discharge dredged or fill material into navigable waters under Section 404 of the Clean Water Act also may serve as application for State Water Quality Certification.

Notice is hereby given that the application for a Department of the Army Permit described in the Corps of Engineers' Public Notice No. <u>POA-2016-576</u>, <u>Sawmill Cove</u>, serves as application for State Water Quality Certification from the Department of Environmental Conservation.

After reviewing the application, the Department may certify there is reasonable assurance the activity, and any discharge that might result, will comply with the Clean Water Act, the Alaska Water Quality Standards, and other applicable State laws. The Department also may deny or waive certification.

Any person desiring to comment on the project, with respect to Water Quality Certification, may submit written comments to the address above by the expiration date of the Corps of Engineer's Public Notice.



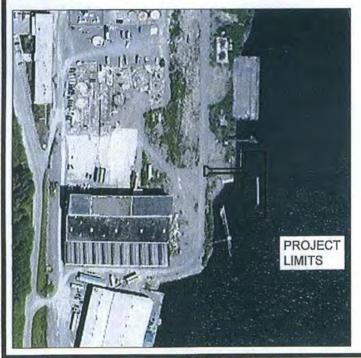


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CITY AND BOROUGH OF SITKA

GARY PAXTON INDUSTRIAL PARK MULTIPURPOSE DOCK

WATERBODY: SAWMILL COVE, SILVER BAY, SITKA SOUND

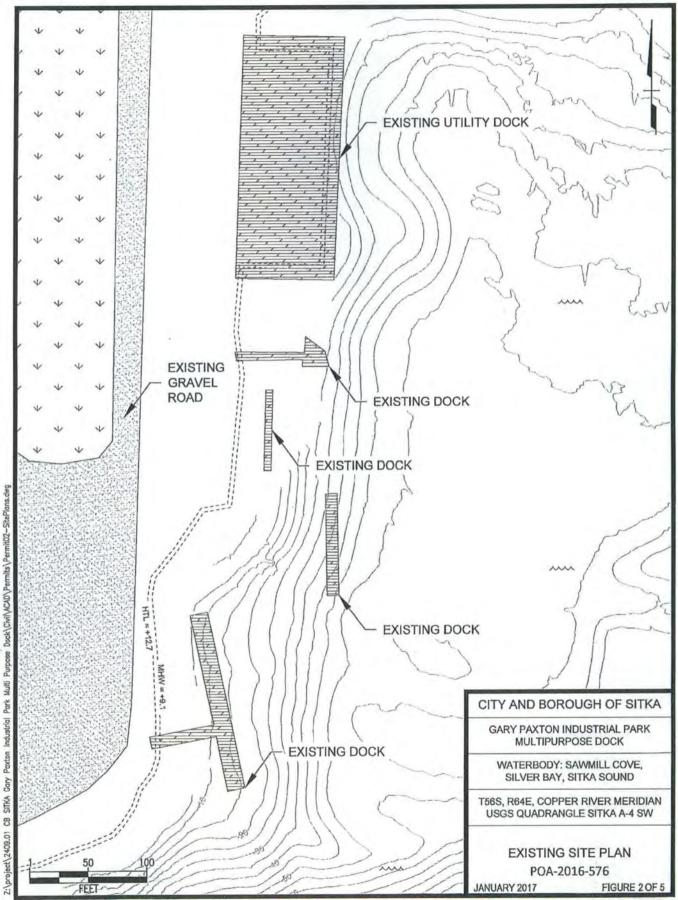
T56S, R64E, COPPER RIVER MERIDIAN USGS QUADRANGLE SITKA A-4 SW

LOCATION & VICINITY MAP POA-2016-576

JANUARY 2017

FIGURE 1 OF 5

project/2409.01 CB SITXA Gary Paxton Industrial Park Multi Purpase Dock/Civii/ACAD/Permits/Permit01-Location&Micrity.dwg



CB SITKA Gary Paxton Industrial Park Multi Purpose Dock\Civi\ACAD\Permits\Permit02-SitePlans.dwg

