



Title 9 Conditional Use Permit No.: 109-03-22
Drake Construction, Inc. Noatak Pit Bulk Fuel Storage and
Barge Transfer of Aggregate
Date of Public Notice: May 5, 2022
Date of Issue: June 2, 2022
Permit Expires: December 31, 2024



Permit Issued By:

Northwest Arctic Borough, Planning Department
c/o John Chase
PO Box 1110
Kotzebue, AK 99752
Tel 907.442.8212 / 800.478.1110 extension 112
Fax 907.442.3740
jchase@nwabor.org

Permittee:

Drake Construction, Inc.
P.O. Box 603
Kotzebue, AK 99752
Tel 907.360.2673 Fax 907.442.2604
tdrake@drakeconstruction.net

Permittee Contact Information:

Toby Drake
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Project Description:

Drake Construction, Inc. (DCI) proposes to haul sand/gravel/rock aggregate by way of tug and barge between Kotzebue and a gravel quarry approximately 20 miles north of Kotzebue on the Noatak River ('Bulk fuel storage' is a Conditional Use and 'Miscellaneous commercial uses' is a Minor Use in the Subsistence Conservation District). The gravel quarry is on a federally-restricted Native allotment in the vicinity locally identified as Hugo Mountain. Because the Borough's Title 9 provision does not apply to federally restricted allotments, the scope of this permit is for the barge landing, loading operations, and transportation of aggregate that are ancillary to the gravel extraction itself.

DCI proposes to commence project activities annually from June 1st through October 31st of each year. To accommodate Kotzebue and the surrounding areas by providing aggregate material sales, DCI plans to run two (2) barges simultaneously 24 hours per day, 7 days a week, for two months. Actual seasonal barge activity depends on aggregate demands so each year will be different. DCI will cease all operations (to include barging and hauling of aggregates) from



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~~August 15 until September 15~~ September 15 until October 15 of each season to accommodate fall subsisting.

This Title 9 Conditional Use Permit #109-03-22 is a renewal permit for Title 9 Permits #104-03-17 and #106-03-12. Project activities will remain the same. Specific details of the project are contained in the permit application (22-02-109) and documents submitted by DCI to the Borough Planning Department. These documents are incorporated into the Borough's administrative record. Project Activities are summarized below.

Project Location:

The barge landing site on the Noatak River is located on state-owned lands and waters below the mean high water mark within Township 20 North, Range 17 West, Section 2 of Kateel River Meridian. It is approximately located at 67°09'16.62 north longitude and 162°19'49.36" west longitude using Google Earth as a resource medium.

The project is located in the Subsistence Conservation District (Noatak Pit, landing site, and transportation corridor).

Barge, Landing, Loading and Transportation:

The barge used for the hauling of aggregate to and from the site is the DCI barge "156." It is a 150' x 54' x 10' steel deck barge and has a 24' wide x 12' long steel ramp hinged at the bow. The ramp is controlled by cables and sheaves which are powered by a hydraulic enclosed power pack, which was installed in May of 2010. The barge 156 had a marine survey done in the spring of 2016 and overall evaluation was that the barge was in very good shape. A new, longer, higher hinged ramp was installed in 2012 that will enable DCI to drop the ramp on the river bank instead of having to cut into a bank or high landing site.

Loading the barge at the proposed site will be as follows: The tug and barge will nose into the landing starboard side (right side) first and use the flow of the river's current and the engines to swing the tug and barge around until the barge is perpendicular with the landing site. One to two lines will be handed off to crew on the landing to secure the barge. This will be done with a "dead-man" anchored in the shore at the landing. The lines will be pulled tight until the vessel is secure. DCI will not need to dredge in the river as the depths are adequate for barging.

Volvo A-25 or equivalent size trucks and a frontend loader will be used to load the barge. DCI estimates the average load to carry between 560 and 960 tons or approximately 350 to 600 cubic yards of material per trip. An area 250' by 100' adjacent to the barge landing site will be used to stock pile aggregate for loading. No stockpile will be left after the barging season. While moored at the barge landing site, propulsion engines / transmission will be either turned off or disengaged so that the propellers do not rotate while being loaded.

Transportation to the barge landing site will follow the main natural waterways between Kotzebue and the Noatak Pit on the Noatak River. Commuting time between Kotzebue and the



barge landing site is estimated at 2.5 to 3 hours. Up to three round trips per 24 hour period are projected depending on demand for construction projects.

DCI will provide public service announcements on the radio station informing the community regarding barging activities and boater safety. When traveling at night the operators of the tug and barge will ensure all navigation lights are functional. During adverse weather the operational speeds will be reduced for added safety. In addition, barge/tug Lights, Radar Equipment, VHF Radios and Horns will be maintained in good working order for added safety.

Bulk Fuel Storage:

DCI proposes to haul and store fuel in support of the project within the confines of the restricted allotment project site. The total amount of bulk fuel storage to be on site at any one time is 10,000 gallons. There will be one (1) 5,000 gallon double-walled tank on skids and four (4) 1,200 fuel pods.

DCI proposes to deliver fuel to the site by transporting the fuel in 1,200 gallon double walled fuel pods. The pods have fork pockets built in to them and are transported to the fuel storage area with a front end loader equipped with forks. At any one time 1-2 pods will be taken to Kotzebue when empty and full replacement pods will be loaded on the barge and taken to the pit.

Diesel fuel and other potentially hazardous material (oils, lubricants, grease, antifreeze etc.) will be hauled in sealed containers or other approved methods and transferred at the barge landing area. The double-walled fuel container will be no less than 200' from any water body including rivers, streams or creeks.

Federal laws require a Spill Prevention, Control and Countermeasure Plan (SPCCP) be developed for any above ground fuel storage capacity greater than 1,320 gallons. The Borough having more stringent standards requires a SPCCP be prepared for bulk fuel storage greater than 660 gallons, as defined in Title 9.04.070 Definitions "Bulk fuel storage." The applicant has submitted a SPCCP, revised June 2019.

Permit Authorization and Documentation:

DCI submitted a Title 9 Land Use Permit application (22-02-109) for the following Uses: 'Bulk fuel storage' is a Conditional Use and 'Miscellaneous commercial uses' is a Minor Use in the Subsistence Conservation District. The Title 9 application was received on February 4, 2022. On April 29, 2022 the Borough Planning Department deemed the application was complete. The public comment period started on May 5, 2022 and ended on May 31, 2022. There were no public comments.

Permit fees totaled \$400 for the project (Bulk Fuel Storage \$250 and Misc. Commercial Uses \$150)

Pursuant to Northwest Arctic Borough Code (NABC) 9.12.030, the **Planning Director** has the authority to permit:



- Miscellaneous commercial uses (Minor Use in the Subsistence Conservation District)
Pursuant to Northwest Arctic Borough Code (NABC) 09.12.030, the **Planning Commission** has the authority to permit:
- Bulk fuel storage (Conditional Use in the Subsistence Conservation District)

Proposed Permit Terms and Conditions:

1. Drake Construction, Inc. (DCI) shall comply with the terms of the permission, permits and/or agreements granted by the federal government, State of Alaska, Northwest Arctic Borough and other applicable agencies.
2. DCI shall comply with any and all applicable local, borough, state and federal laws. Failure to abide by any part of this permit, or violations of any pertinent borough ordinances or state or federal law or regulation, will be considered grounds for revocation of the permit or denial of future permit requests and may result in issuance of fines or other penalties. This provision applies to all persons working under the authority of this permit.
3. The Permittee is responsible for ensuring that all employees, contractors, sub-contractors, and any other persons working for the permittee and conducting activities allowed by this permit are familiar with and adhere to the conditions of this permit.
4. All trash and human waste generated at the property must be properly disposed of in accordance with Northwest Arctic Borough Ordinance 9.25.020.M., establishing standards disposal of refuse, human body waste, and chemicals. All remedial activities shall comply with any and all other applicable state and federal laws, including all applicable hazardous waste and disposal requirements, all waste disposal and landfill requirements, and all open burning and air quality standards.
5. During and after construction of the landing site, the permittee must conduct activities in a manner to maintain natural drainage patterns; water shed protection, and permafrost stability, to prevent runoff and erosion into water supplies and to minimize alteration of vegetation.
6. Loading and unloading activities shall be planned and conducted in a manner to minimize or eliminate siltation, surface runoff, and pollution of the Noatak River.
7. All project activities shall utilize measures to minimize noise and nuisance affecting surrounding residential and camp properties including excessive noise, fumes, odors, glare, smoke, vibration, dust, litter, interference in any telephone, radio or television receivers, and/or significant line voltage fluctuation.
8. DCI shall post public notices (at the Borough offices and US Post Office at a minimum) and provide public service announcements on KOTZ radio informing the community regarding the date and times of barge hauling operations between Kotzebue and the barge landing site to promote boater safety.



9. When traveling at night or adverse weather, DCI shall ensure the operators of the tug and barge operate all navigation lights and ensure the lights are functional. During adverse weather the operational speeds shall be reduced for added safety. In addition, barge/tug Lights, radar equipment, VHF Radios and Horns shall be maintained in good working order for added safety.
10. Uses permitted shall cease upon the discovery of archaeological, prehistoric, historic or cultural resources during the construction activities, and DCI shall immediately contact both the Land Specialist at the NAB Planning Department and Alaska State Historic Preservation Office to determine the conditions to continue.
11. The siting, design, construction and monitoring of the project activities are required to minimize alteration of shorelines, water courses, wetlands, and minimize significant disturbance to important habitats, and avoid critical fish, and other species' migration periods.
12. Any development by the project in floodplains and shoreline areas are to be constructed to minimize loss of life or property due to seasonal flooding, ice movement, and shoreline erosion.
13. Bulk fuel and petroleum storage (onshore and offshore) are required to have an oil spill control and clean-up plan. The plan must contain a risk analysis indicating where oil spills are likely to flow under various sets of local meteorological, oceanographic, hydrologic or soil conditions.
Impact areas must be identified and strategies fully developed to protect environmentally sensitive areas; the spill control and clean-up equipment which is available to the operator and the response time required to deploy this equipment under the various scenarios must be contained in the risk analysis.
Depending on the nature of the activity, adequate spill response equipment may be required to be kept on-site. Duplicative borough oil spill and clean-up plans will not be required where a state or federally approved plan meeting these criteria is in effect.
14. Project equipment/vehicle servicing and fueling operations are prohibited within 100 feet of any surface water body, including any rivers, drainage channels, sloughs and lakes.
Equipment and vehicles are to be maintained to eliminate or minimize any fuel spills and fluid leaks. Equipment and vehicles must be monitored prior to use for hydraulic leaks. If equipment is in continuous use, it shall be inspected daily for hydraulic leaks.
Project equipment shall not be abandoned.
15. DCI shall immediately notify the borough (at least within 24 hours) of any damage to the tundra and shoreline due to project activities in excess of those identified in or different from those notes in the permit application (17-02-104), including but not limited to scraping of vegetation and spill of fuel or other chemicals.



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16. DCI shall immediately notify the Borough (at least within 24 hours) of any change in the project plans and seek modification of the permit. DCI shall suspend uses until approval is given by the Planning Director/Title 9 Administrator. If the proposed action(s) constitutes an emergency, DCI shall comply with NABC 9.16.040 for emergency actions and shall make reasonable efforts to conduct modified uses in a manner that avoids or minimizes significant harm to the environment, consistent with the need to protect property and human life.
17. DCI shall be required in consultation with the Administrator to post a cash bond or other suitable surety in an amount and form consistent with the requirements of NABC 9.08.040A to guarantee performance of all obligations under this permit.
18. DCI is subject to all penalties and civil actions pursuant to section 9.08.240 for violation of the permit conditions and stipulations prescribed herein.
19. The Noatak River area, where project activities are set to occur, fall within a priority subsistence use area designated by Borough Code (9.25.045). In summary, Borough subsistence policy states that uses and activities in this area shall not significantly interfere with or have an adverse impact on subsistence activities such as fishing, trapping, waterfowl hunting, berry picking, egg gathering and caribou hunting. Moreover, commercial or industrial uses in the Noatak River area during caribou migration are prohibited. All project activities shall utilize reasonably economically viable measures to avoid or minimize disrupting subsistence use.
DCI shall cease all barging and transport operations when migrating caribou are in the Immediate Vicinity of activities or within visual sight ("Immediate Vicinity" is defined as within $\frac{3}{4}$ of a mile from the barge landing site).
20. During the fall caribou migration, DCI or any project contractors shall not, during the migration of caribou, locate any operation and/or equipment so as to block or cause diversion of the migration of caribou. DCI and/or any project contractors shall cease any activity that may interfere with the seasonal fall caribou migrations and/or caribou summer movements, such as marine, ground and airborne transports, ground and airborne surveys or movement of equipment, until such time as the migration or summer movements have cleared $\frac{3}{4}$ of a mile from the area where the activity had occurred. Concern for human safety will be given special consideration when applying this policy.

As a general guideline, caribou migration means an area where 500 or more caribou are travelling or congregating. However, during the seasonal fall period of mid-August through mid-November, DCI shall take extra precautions to avoid deflecting even small numbers (e.g. group sizes of 5-10) of the first caribou moving through the area as these groups/bands set trails as "lead caribou" that subsequent caribou later follow during the migration. The intent of these guidelines are to ensure free passage of caribou through the area to avoid impacting caribou and the communities that historically and currently depend upon it as well as preserving existing and important adjacent land uses. These guidelines may be revised based upon updated information and research (including local traditional knowledge) which is approved by the borough planning commission.



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21. All project activities shall utilize measures to avoid or minimize disrupting wildlife and bird migration, or subsistence activities including fishing, trapping, waterfowl hunting, egg gathering, berry picking, wild greens, muskrats, seals, moose and caribou hunting. DCI will ensure reasonable access to subsistence users to subsistence resources.
22. All project activities shall utilize measures to avoid or minimize disrupting migrating fish, including but not limited to salmon, trout, and whitefish, and/or feeding seals in the Noatak River.
23. Native allotments and camp sites are common to the area, and DCI shall ensure that staff/personnel/contractors do not disturb or trespass on these areas.
24. The propulsion engines / transmission shall be either turned off or disengaged so that the propellers do not rotate while being loaded at the landing site except in an emergency or severe weather conditions.
25. DCI shall avoid fish nets and other potential conflicts with the Kotzebue Sound Commercial Fishermen during open fisheries periods by avoiding nets, and to the extent practicable, modifying barge schedules to avoid openings periods.
26. DCI shall avoid subsistence set nets along the transit route between their Kotzebue facilities and the Noatak barge landing site. All incident reports or conflict shall be immediately reported to the borough (at least within 24 hours) for corrective action.
27. Vehicles, vessels and aircraft that are likely to cause significant disturbance must avoid areas where species that are sensitive to noise or movement are concentrated. Concentrations may be seasonal or year-round and may be due to behavior (e.g., flocks or herds) or limited habitat (e.g., polar bear denning, seal haul-outs). Horizontal and vertical buffers will be required where appropriate. Concern for human safety will be given special consideration when applying this policy.
When adverse effects are likely and cannot be avoided, the borough Planning Director/Title 9 Administrator may require DCI to prepare and submit a mitigation plan to minimize impacts. The effects addressed in this standard may result from a single project or from a series of projects. The mitigation plan, if required, shall be approved by the borough planning director and/or borough planning commission.
28. At the conclusion of each season the Borough Planning Department shall evaluate the effectiveness of the permit conditions. The Title 9 Administrator shall be authorized to adopt corrective measures for ineffective or inadequate permit conditions.
29. At the completion of each season, the permittee shall file a written report with the Borough Planning Department describing the following:
 - (a) aggregate number of trips between Kotzebue and the barge landing site supported with maritime transit logs,
 - (b) complete report of any fuel or other hazardous substances discharges and clean-up activities completed,



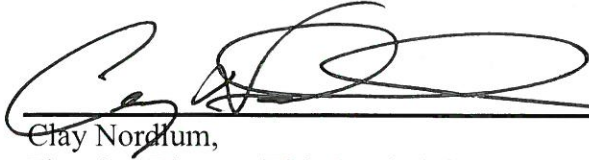
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- (c) report the incidents of caribou migration and dates/times of ceased operations for allowing migration of caribou,
 - (d) report the incidents of commercial fishing periods and dates/times of ceased operations for allowing fisheries to be conducted,
 - (e) report of incidents involving subsistence fishing set nets within the transit route describing corrective measures taken,
 - (f) other matters as reasonably required by the Administrator/Planning Director.
30. DCI shall, if requested by the Administrator, provide periodic activity reports to the following entities: the City of Kotzebue, the Native Village of Kotzebue, Kotzebue Fishermen's Association and the Native Village of Noatak.
31. Access by Borough personnel and their agents. Authorized personnel and/or their agents of the Northwest Arctic Borough when on official business and displaying proper identification shall be allowed access to the sites without interference. Borough personnel and/or agents may conduct scheduled or unscheduled inspections or tests to determine compliance with this permit or respond to emergency situations.
32. (A) DCI will not commence ANY project activities (to include barging and hauling of aggregates) before May 25th and shall cease ALL operations (to include barging and hauling of aggregates) by 11:30 p.m. October 31th of each season.
(B) DCI will cease all operations (to include barging and hauling of aggregates) from ~~12:01AM August 15 until 11:59PM September 15~~ 12:01AM September 15 until 11:59PM October 15; provided that DCI may transport equipment and supplies to and from the gravel quarry as needed.
33. This permit will expire December 31, 2024, unless revoked by the Title 9 Administrator and/or DCI.



Permit Approval

NORTHWEST ARCTIC BOROUGH



Clay Nordlum,
Planning Director/Title 9 Administrator

June 2, 2022

Date

CC: Native Village of Kotzebue, City of Kotzebue, NANA Regional Corporation,
Maniilaq Association, Kikiktagruk Inupiat Corporation, Native Village of Noatak
Posted at: NAB Bulletin Board, Kotzebue's Post Office, Kotzebue's AC, Kotzebue's
Rotman's Store, www.nwabor.org

**NORTHWEST ARCTIC BOROUGH PLANNING COMMISSION
RESOLUTION 22-02**

**A RESOLUTION OF THE NORTHWEST ARCTIC BOROUGH PLANNING
COMMISSION TO APPROVE THE DRAKE CONSTRUCTION
DRAFT CONDITIONAL USE PERMIT #109-03-22
NOATAK PIT BULK FUEL STORAGE & BARGE TRANSFER OF AGGREGATE
FOR RELATED PURPOSES**

WHEREAS: The Northwest Arctic Borough Planning Department received a Title 9 Permit Application (22-02-109) on 2/4/2022 from DRAKE Construction Inc for the following use in; Subsistence Conservation District: Bulk Fuel Storage –Conditional Use, Miscellaneous Commercial use –Minor Use

WHEREAS: On April 29, 2022, the Borough Planning Department deemed the application complete with all necessary information; and

WHEREAS: The Borough Planning Department has published a public notice for this permit on May 5, 2022, as required in borough code 9.20.030; and

WHEREAS: The Northwest Arctic Borough Planning Commission has the authority to approve: Bulk fuel storage and miscellaneous commercial use in the Subsistence Conservation District according to borough code 9.12.030, following a public hearing as required under borough code 9.20.030E.


NOW THEREFORE BE IT RESOLVED, The Northwest Arctic Borough Planning Commission hereby authorizes the Planning Director/Title 9 Administrator to approve the Conditional Use Permit #109-03-22 dated May 5, 2022, as discussed during the commission meeting;

PASSED AND ADOPTED ON THIS 2nd DAY OF JUNE 2022



Harold Lambert, Planning Commission Chair

SIGNED AND ATTESTED ON THIS 2nd DAY OF JUNE 2022



Helena Hildreth, Borough Clerk



Title 9 Conditional Use Permit No.: 109-03-22
Permit Expires: December 31, 2024
PERMIT AMENDMENT

Permittee:

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Permit Amendment Authorization and Documentation:

Pursuant to Project Description and Permit Condition 32, at the conclusion of each season the Borough Planning Department shall evaluate the effectiveness of the permit conditions. The Title 9 Administrator is authorized to adopt corrective measures for ineffective or inadequate permit conditions. To address public concern about the impact of DCI's operations, the Title 9 Administrator amends permit Condition 32 as detailed below.

Project Description:

DCI proposes to commence project activities annually from June 1st through October 31st of each year. To accommodate Kotzebue and the surrounding areas by providing aggregate material sales, DCI plans to run two (2) barges simultaneously 24 hours per day, 7 days a week, for two months. Actual seasonal barge activity depends on aggregate demands so each year will be different. DCI will cease all operations (to include barging and hauling of aggregates) from ~~August 15 until September 15~~ September 15 until October 15 of each season to accommodate fall subsisting.

A. NAB is allowing 9 additional days to provide for Phase 1 Cape Blossom Road project. Shutdown to begin September 24, 2022

Permit Terms and Conditions:

32. (A) DCI will not commence ANY project activities (to include barging and hauling of aggregates) before May 25th and shall cease ALL operations (to include barging and hauling of aggregates) by 11:30 p.m. October 31th of each season.



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(B) DCI will cease all operations (to include barging and hauling of aggregates) from ~~12:01AM August 15 until 11:59PM September 15~~ ~~12:01AM September 15~~ September 24th until 11:59PM October 15; provided that DCI may transport equipment and supplies to and from the gravel quarry as needed.

All other Permit conditions remain the same.

NORTHWEST ARCTIC BOROUGH

Clay Nordlum,
Planning Director/Title 9 Administrator

September 9th 2022

Date

CC: Native Village of Kotzebue, City of Kotzebue, NANA Regional Corporation, Maniilaq Association, Kikiktagruk Inupiat Corporation, Native Village of Noatak

Posted at: NAB Bulletin Board, Kotzebue's Post Office, Kotzebue's AC, Kotzebue's Rotman's Store