



VIA CERTIFIED MAIL ONLY

September 25, 2012

Cora Campbell, Commissioner  
Alaska Department of Fish & Game  
P.O. Box 115526  
Juneau, AK 99811-5526

RE: APPEAL & HEARING REQUEST REGARDING SPECIAL AREA PERMIT 12-II-0196-SA

Dear Commissioner Campbell:

This is an appeal under 5 AAC 95.920 and a request for a hearing pursuant to AS 44.62.370 regarding Special Area Permit FH 12-II-0196-SA.

#### I. Introduction

On August 29, 2012, the Alaska Department of Fish & Game issued the above-referenced permits to allow Hilcorp Alaska, LLC (Hilcorp) to extract materials and fill/cross an anadromous stream in the Redoubt Bay Critical Habitat Area (RBCHA). Hilcorp intends to use the materials extracted from the RBCHA to bolster the revetments surrounding its Drift River Oil Terminal (DROT) so it may resume storing oil at the base of an active volcano (Mt. Redoubt).

Cook Inletkeeper is a nonprofit, public interest organization formed in 1995 to protect the Cook Inlet watershed and the life it sustains. Inletkeeper works on behalf of its Board, staff and members to promote clean water and healthy salmon habitat. Inletkeeper has a long history pressing for responsible oil and gas development, and for ensuring industry and state and federal agencies comply with habitat protection rules.

#### II. Statement of Issues

The above-referenced permits authorize Hilcorp to extract up to 125,000 cubic yards of boulders and riprap materials; conduct up to 135 round trips per day using rock trucks, excavators and a front end loader; land helicopters; and fill and cross a salmon stream.

The Alaska Legislature created the Redoubt Bay Critical Habitat Area in 1989. See AS §

16.20.625. The purpose of the RBCHA “is to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose. AS § 16.20.500 (emphasis added).

ADFG has an affirmative duty to apply and enforce the standards contained in the RBCHA Management Plan for activities in the RBCHA:

The Redoubt Bay Critical Habitat Area goals and policies stated in the Trading Bay State Game Refuge and Redoubt Bay Critical Habitat Area Management Plan dated July 1994 are adopted by reference. The plan presents management goals and policies for the critical habitat area and its resources that the department will use in determining whether proposed activities in the critical habitat area are compatible with the protection of fish and wildlife, their habitats, and public use of the critical habitat area. Under [5 AAC 95.420](#), a special area permit is required for certain activities occurring in a designated state critical habitat area. The department will review each special area permit application for consistency with the Redoubt Bay Critical Habitat Area goals and policies adopted by reference in this section. A special area permit for an activity in the Redoubt Bay Critical Habitat Area will be approved, conditioned, or denied based on the criteria set out in the Redoubt Bay Critical Habitat Area goals and policies stated in the Trading Bay State Game Refuge and Redoubt Bay Critical Habitat Area Management Plan and on the standards contained elsewhere in 5 AAC 95. 5 AAC 95.615

The RBCHA Management Plan states:

**Material Extraction** – Do not allow material extraction within the critical habitat area unless for the purposes of maintenance, enhancement, or restoration of the critical habitat area, except that gravel extraction may be allowed if extenuating circumstances create a transcending public need for which there is no feasible alternative.... RBCHA Management Plan, p. 17 (1994).

Thus, the RBCHA flatly prohibits materials extraction. Even if ADFG attempts to erroneously classify Hilcorp’s material extraction as gravel extraction, ADFG has failed to make the requisite findings required by the RBCHA Management Plan to extract gravel in the RBCHA. Specifically, ADFG has failed to show any 1) extenuating circumstances that 2) create a transcending public need 3) for which there is no feasible alternative.

There is no extenuating circumstance in this instance; Hilcorp has been successfully operating the Drift River Oil Terminal (DROT) in a “tight-lined” configuration since shortly after the 2009 eruption of Mt. Redoubt washed through and around the DROT. Similarly, there is no transcending public need; Hilcorp is a private corporation and its interests are not the public’s interest. Finally, and perhaps most importantly, there is a clear, feasible and prudent alternative to mining rock from a

critical habitat area: Hilcorp can use barges to transport the rock to the facility from a location not within a critical habitat area.

### III. Statute & Regulations Violated

ADFG violated AS §§ 16.20.500, 16.05.625, 5 AAC 95.615 and the Redoubt Bay Critical Habitat Management Plan when it issued the above-referenced permits.

### IV. Verification

The information contained within this request for a hearing is verified based on information contained in this request; review of the permit application and the permitting document, and on the information and belief of the Requestor.

### V. Relief Requested

Inletkeeper requests ADFG to revoke the authorizations granted in its permitting decision document dated August 29, 2012, and to issue an immediate stay on all activities authorized under that decision until this issue has been adjudicated. Inletkeeper requests a hearing in this matter if ADFG does not revoke the authorization.

### VI. Conclusion

Thank you for your prompt attention to this matter. You may contact me at the above address, by phone (907.235.4068 x21) or email (bob@inletkeeper.org).

Very truly yours,

Bob Shavelson, Inletkeeper  
Director of Advocacy