



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

December 2, 2002

Colonel Steven T. Perrenot
District Engineer, Alaska District
Army Corps of Engineers
Regulatory Branch (1145b)
8800 Glacier Highway, Suite 106
Juneau, Alaska 99801-8079

RE: Ref # M-1996-0019
Waterway: Favorite
Channel 43

Attn: Susan J. Hitchcock

Dear Colonel Perrenot:

The National Marine Fisheries Service (NMFS) has reviewed the proposal by the City and Borough of Juneau to fill forested wetlands adjacent to the access road for the planned NOAA facility at Lena Point for construction of a residential subdivision containing 48 lots. Work would include placing approximately 15,145 cubic yards of clean fill material within approximately 5.78 acres of forested wetlands for the construction of twenty-four house pads and twenty-seven driveways. In addition, the proposed project would include placement of a marine wastewater outfall into Favorite Channel. The Corps has determined the proposed activity will not adversely affect Essential Fish Habitat as defined under the Magnuson-Stevens Fishery Conservation Management Act including anadromous fish and federally managed fishery resources. The recommendations that follow are provided pursuant to provisions of the Fish and Wildlife Coordination Act and Clean Water Act 404 (b)(1) guidelines.

Mitigation:

A fundamental precept of the Section 404(b)(1) Guidelines is that no discharge of fill material in the waters of the U.S. may be permitted unless appropriate and practicable steps have been taken to minimize all adverse impacts associated with the fill (40 CFR 230.10(d)). Specifically, these guidelines establish a mitigation sequence under which all appropriate and practicable steps have been taken to first avoid and then minimize wetland impacts prior to development of compensatory mitigation. The first step in this sequence requires evaluation of potential alternative sites to locate the proposed project so that aquatic impacts are avoided to the



extent practicable. This project is not water-dependant and does not require siting in a special aquatic site. Alternatives, therefore, that do not include fill in wetlands are presumed available under the guidelines unless otherwise demonstrated. The applicant has not presented an alternative site analysis for review. The second step in sequencing involves making changes in project design or construction methods to reduce overall project impacts to aquatic resources. The applicant has not indicated any changes in project design or construction techniques to reduce the extent of wetland fill necessary for the proposed project. The final step in the sequencing process, occurring after all practicable steps have been taken to avoid and minimize adverse effects, is compensation for remaining unavoidable impacts and involves such measures as wetland creation, restoration or enhancement in order to replace lost aquatic functions and values. The applicant has not demonstrated that the avoidance and minimization criteria have been met.

The applicant has proposed dedication of an approximate 54-acre greenbelt adjacent to nearby Picnic Creek as mitigation for wetland impacts from construction of this project along with buffer zones and seasonal restraints around three Bald Eagle nesting trees and secondary treatment of wastewater prior to discharge through the outfall line. Compensation for unavoidable impacts to aquatic resources is the final step in the mitigation sequence and should be considered only when all practicable measures have been taken to reduce potential adverse impacts associated with proposed projects in wetlands.

Picnic Creek is described in the Juneau Fish Habitat Assessment¹ as an anadromous fish stream with excellent spawning and rearing areas for coho, pink and chum salmon, Dolly Varden char and cutthroat trout. Picnic Creek is partly spring fed and drains an area of approximately 250 acres. NMFS believes that protection of this stream could provide at least partial mitigation for this project. The applicant has not provided information on the proposed greenbelt's location or method of dedication.

¹Bethers, Mike; Munk, Kris; and Seifert; Cheryl. 1993. Juneau Fish Habitat Assessment. Alaska Department of Fish and Game, Division of Sport Fish, Douglas, Alaska. 131 pp.

NMFS has not been provided sufficient information on proposed compensatory mitigation actions for NMFS to determine if unavoidable adverse effects to existing aquatic resources will be offset by the proposed mitigation.

The applicant also suggests that buffers and seasonal work restraints around Bald Eagle nest trees and secondary treatment of wastewater prior to marine discharge are mitigation efforts to reduce impacts to the aquatic environment. How the nest tree buffers provide mitigation for impacts to aquatic resources is unclear.

NMFS has previously provided comment on the limitations and risks of the marine outfall based on a study of water currents in the vicinity of the proposed marine outfall (August 7, 2002 letter to Ms. Cynthia Johnson of the City and Borough of Juneau, copy attached). In summary, NMFS concluded from the study that little likelihood exists of acute coliform bacteria contamination of the intake sea water at the NOAA site. Nonetheless, the net effect of prolonged weak currents transporting low levels of coliform bacteria or other contaminants to the NOAA intake is cause for concern. Because of the generally weak water currents in the vicinity of the marine outfall, coliform bacteria contamination of the adjacent beachfront is possible if one or more residential treatment plants fail and raw sewage enters Favorite Channel from the marine outfall.

Recommendations:

- 1) Develop lots that contain uplands of sufficient size for building pads and driveways and eliminate lots from the subdivision and future development that are completely or predominately forested wetlands.
- 2) Minimize fill by restricting the size of construction footprints of driveways and building pads for homes on sites where wetlands would be affected to that size which is demonstrated to be absolutely necessary.
- 3) Provide detailed information about the proposed dedicated greenbelt on Picnic Creek so that the functional values of this aquatic area can be determined and the success of the greenbelt at protecting the aquatic values of Picnic Creek can be assessed. Include information regarding the existing degree of protection this stream corridor and wetland

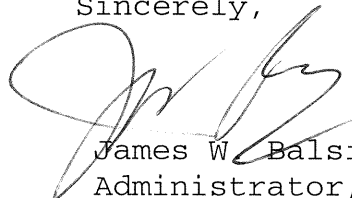
currently enjoy and how this protection will be enhanced by the greenbelt proposal.

4) Develop a mechanism to assure that the individual secondary treatment or aeration units will be operated and maintained to prevent the interconnected sewage treatment and discharge system from contaminating the beachfront and intertidal zone of Favorite Channel with coliform bacteria should one or more of the residential treatment plants fail and raw sewage enter from the marine outfall.

We recommend that the proposed project be re-designed to address these concerns. If the applicant is unwilling to do so, we recommend that the requested permit be denied. If you choose not to follow these recommendations, please notify this office in accordance with the local procedures agreed to by our respective agencies.

Ms. Susan Walker, the NMFS Habitat Conservation Division contact for this project, is available at 907-586-7646 or susan.walker@noaa.gov.

Sincerely,



James W. Balsiger

Administrator, Alaska Region

cc: EPA Juneau (Chris Meade)
ADEC, AADGC, ADNR, Juneau
USFWS Juneau, ADF&G Habitat Division