



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

April 8, 2004

Colonel Timothy J. Gallagher  
District Engineer  
U.S. Army Corps of Engineers  
P.O. Box 898  
Anchorage, Alaska 99506-0898

Re: POA-1995-41  
Mendenhall River

Attn: John Leeds, III

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) received your response to our Essential Fish Habitat (EFH) Conservation Recommendations on the above referenced permit application on March 30, 2004. This letter seeks to resolve issues in your permit decision that are contrary to NMFS' recommendations on the project.

NMFS recommendation #4 urged the Corps to require compensatory mitigation for the project. The Corps' response to this recommendation states that "[i]t is the Corps determination that the proposed action, if authorized, would not have a direct impact on Anadromous waterways, nor has it been adequately demonstrated that the action would result in adverse indirect impact to these streams or adjacent wetlands. Therefore, this condition shall not be carried on the Corps permit, if authorized"

As we indicated in our May 27, 2003 letter, the project area is designated as a class B wetland under the Juneau Wetland Management Plan (JWMP). According to this plan, this wetland is rated as Very High for salmonid habitat, and High for sediment retention, nutrient export and erosion. The drainage that is proposed for diversion under this permit joins directly into Casa Del Sol Creek, which provides rearing and spawning habitat for coho salmon. This stream is included in the state *Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes* (Stream # 111-50-10490-2013).

The JWMP states that class B wetlands may be developed "only if there is no net loss of aggregate function," and that "to the extent feasible and prudent, individual environmental functions that are rated high or medium high...will be retained within the wetland unit." By removing wetland area, the proposed fill will result in a loss of wetland function at the site of the fill. NMFS' Auke Bay Laboratory has estimated the cumulative loss of wetlands along the



Mendenhall River at between 40% and 50% over the last 30 years. The requested fill is in addition to approximately 2.34 acres of previously permitted and unmitigated fill for this property. The applicant proposes no mitigation for the fill requested in the subject application. Therefore, the proposed fill will result in aggregate loss of wetland function for salmon habitat, sediment retention, nutrient export and erosion control.

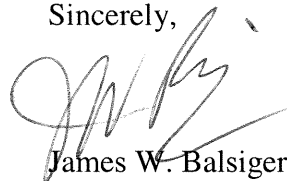
For Class A and B wetlands, the JWMP also states that “[w]here the loss of functional values at a development site is substantial and irreversible and cannot be avoided, minimized, or rectified” the wetland loss should be compensated either in-kind or out-of-kind provided that the net aggregate values of the wetland unit are maintained. The applicant has proposed neither minimization nor mitigation for the requested fill. Other proposed projects in the vicinity have either been withdrawn or modified in recognition of the potential impacts, both direct and indirect, to wetland habitat.

NMFS’ recommendation for compensatory mitigation is supported by JWMP wetland classification for the project area, by data on the use of the associated streams by anadromous species, and by the JWMP policies for wetland management. The proposed recommendation is reasonable and implementable, and it falls within NMFS’ requirement to make recommendations to avoid, minimize, mitigate or otherwise offset adverse effects of proposed actions on EFH in accordance with Section 305(b) of the Magnuson Stevens Fishery Conservation and Management Act. NMFS would be interested in reviewing whatever other sources of information the Corps used in reaching its decision against requiring mitigation.

We hope that the information provided in this letter will be helpful in clarifying our conservation recommendations such that the Corps may agree to carry them into the final permit. We trust that any outstanding issues can be resolved through further coordination between our agencies prior to issuance of the final permit.

If you have any further questions, please contact Katharine Miller at 907-586-7643.

Sincerely,



James W. Balsiger  
Administrator, Alaska Region

cc: EPA Juneau, Chris Meade  
ADF&G, Janet Schempf  
ADEC, AADGC, ADNR, USFWS, Juneau