



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

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

September 12, 2006

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

Re: POA-2005-142-2
Lemon Creek

Attn: Randal P. Vigil

Dear Colonel Wilson:

The National Marine Fisheries Service (NMFS) has reviewed the Public Notice for Lacano Investments, LLC to discharge fill materials into waters of the United States near or in Lemon Creek to mine sand and gravel, stabilize creek banks, and make useable land. The Corps has determined that the proposed project may adversely affect 5.81 acres of Essential Fish Habitat (EFH) for juvenile and adult salmon, and may also adversely affect associated species such as major prey or predator species not covered by Fishery Management Plans. The Public Notice does not include an EFH assessment, as the Corps does not have sufficient information to assess the cumulative effects of the proposed work on EFH.

Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act requires federal agencies to consult with NMFS on all actions that may adversely affect EFH. Given the certainty that this project will result in the loss of a significant amount of EFH, NMFS requests that an EFH assessment be completed for this project. Mandatory contents of the EFH assessment are: a description of the proposed action; an analysis of the potential adverse effects of that action on EFH and the managed species; the Federal action agency's conclusions regarding the effects of the action on EFH; and proposed mitigation, if applicable (50 CFR 600.920(e)). An example of an abbreviated EFH assessment can be found on our website at:

http://www.nmfs.noaa.gov/habitat/habitatprotection/pdf/efh/consult_guidance/EFH%20Assessment%20Example%20No%201.pdf. Upon review of the completed EFH assessment, NMFS will make conservation recommendations, which may include measures to avoid, minimize, mitigate or otherwise offset adverse effects.

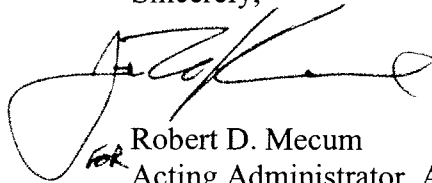
Section 404(b)(1) of the Clean Water Act prohibits discharge of dredged or fill material into the waters of the United States if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem. The Public Notice does not identify an intended use of the proposed filled land, it merely states that the purpose of filling the floodplain of Lemon Creek is "to create usable land." Without an actual proposed use, it is difficult to determine what alternatives to that unspecified use are available. Under the 404(b)(1) guidelines, the applicant must specify the proposed use and if that use is not water dependent, alternatives are assumed to be available. The applicant should complete an alternatives analysis that clearly demonstrates whether a practical alternative that is less environmentally damaging exists.



NMFS is aware of the historic use of Lemon Creek for sand and gravel mining. With proper planning and analysis this project may be able to provide needed additional sources of these materials. Many Corps permits near the project site authorize the mining of sand and gravel. The current state of these operations and any required mitigation should be presented in order for reviewers to assess the need for and cumulative effects of such developments on EFH at this site. A hydrologic study should be completed to determine the likely effects of the proposed project on Lemon Creek's floodplain, flood storage capacity, and ability to provide both adult and juvenile fish passage.

NMFS recommends that the Corps not issue a permit for the proposed project until the information requested is available and a completed permit application is provided for our final review and recommendations. Please contact Susan Walker at (907) 586-7646 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Mecum', written over a horizontal line.

Robert D. Mecum
Acting Administrator, Alaska Region

Enclosure

cc: Applicant
ADF&G, Jackie Timothy
ADNR, USFWS, Juneau, Richard Enriquez, Neil Stichert
CBJ Wetland Review Board, K Koski