



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

January 8, 2004

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

Re: Johnson Creek 5
4-980742

Attn: Randy Vigil

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) has reviewed the after-the-fact public notice of application for permit by Ms. Geraldine Williams for the placement of approximately 680 cubic yards of gravel over approximately 0.083 acres of forested and scrub shrub wetland area to construct a foundation to support a modular house. In August of 1998, NMFS reviewed Ms. Williams' related permit application for wetland fill at this site to construct a driveway and septic system for a single family residence. As a result of that review we commended Ms. Williams for the decision to place the residence on pilings to minimize wetland fill, recommended against using creosoted or pentachlorophenol treated pilings, and recommended improvements to the proposed septic system which would protect the quality of fish habitat and human health in the watershed (Enclosure 1).

On November 3, 1998 a Department of the Army Permit (Permit No. 4-980742) was issued to Ms. Williams for the excavation and placement of approximately 120 cubic yards of clean rock and gravel over an approximately 1,010 square-foot forested wetland for the construction of a 20' by 24' long driveway, 14' by 20' long walkway, 5' wide by 10' long septic tank area, and 10' wide by 20' long septic field area. All work was to be performed in accordance with attached plans that specified pilings for the house foundation. On September 22, 1998 the Alaska Department of Environmental Conservation issued to Ms. Williams a Water Quality Certificate of Reasonable Assurance (Enclosure 2) specifying that the residence will be constructed on pilings to minimize effects to wetlands, limiting land clearing and fill to the amount reasonably necessary for construction of the driveway and septic pad as proposed, and requiring staking the boundary of the fill area prior to construction to prevent the inadvertent encroachment of adjacent wetlands. The State of Alaska's Division of Governmental Coordination issued to Ms. Williams (September 15, 1998, Enclosure 3) a finding that the proposed project - placement of fill in wetlands for construction of a driveway and septic system - was consistent with the Alaska Coastal Management Program. This finding also specified that the land clearing and fill be limited to the amount reasonably necessary for construction of the driveway and septic pad as proposed and noted that placing the residence on a piling foundation minimized the project's wetland fill.



The project site is located in high value Category A wetlands, as described in the Juneau Wetlands Management Plan (JWMP; Adamus 1987). According to the JWMP, the development standard for all Category A wetlands is: "development may occur only if there is no net loss of individual functional values in the wetland unit and projects must avoid damage to wetlands; where avoidance of damage cannot be accomplished, they must minimize loss or damage by limiting the degree or magnitude of the development....where minimization is not possible, the wetland must be restored to predisturbance condition to the extent feasible and prudent, or the applicant must provide appropriate compensation".

This wetland is composed of approximately 500 acres of scrub shrub and forested wetland types. It provides important rearing habitat for coho salmon, Dolly Varden char and cutthroat trout, and riparian support for adjacent Johnson Creek. This wetland protects sensitive wildlife from disturbance, and has high regional ecological diversity, characterized by the presence of rare and specialized species and habitats. Its peat soils and large diameter trees (>40' DBH) give this wetland a high ecological replacement cost. Adjacent Johnson Creek is cataloged by the Alaska Department of Fish and Game as an anadromous fish stream (Juneau Map B-2, (#108-40-10150)). It supports runs of coho, chum and pink salmon, and Dolly Varden char.

This high value wetland has been identified as Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, because it contains habitat important for spawning, breeding, feeding and growth to maturity for coho salmon. Its habitat functions are high and critically important to fish in the adjacent and interconnected Johnson Creek and Mendenhall Wetlands. This productive wetland is hydrologically connected to a major anadromous fish stream (Johnson Creek) and a wildlife refuge. Its habitat values and hydrologic functions are important and should be maintained.

NMFS offers the following EFH Conservation Recommendation pursuant to Section 305(b)(4)(A) of the Magnuson-Stevens Act: the Corps of Engineers should deny the permit for discharge of fill and require the applicant to remove the illegally placed fill, because an alternative to wetland fill exists - specifically, the previously proposed use of pilings for the house foundation. The identified purpose and need for this project is not water dependent, and the project would exacerbate cumulative impacts to the interconnected wetlands and salmon habitat in the project area. Moreover, this project as proposed would result in substantial and unacceptable impacts to aquatic resources of national importance as defined in Part IV, 3. (B) of the Memorandum of Agreement between the Department of Commerce and the Department of the Army (August 11, 1992).


If the Corps does not deny this permit as recommended and proceeds further toward authorization of this project, the Corps should require extensive mitigation for any unavoidable adverse impacts from fill in EFH. NMFS requests an opportunity to review any proposed mitigation plan before the Corps issues a permit for this project.

Under section 305(b)(4)(B) of the Magnuson-Stevens Act the Corps is required to respond in

writing within 30 days to this recommendation. If the Corps will not make a decision within 30 days, the Corps should provide NMFS with a letter within 30 days to that effect, and indicate when a full response will be provided.

Susan Walker is the NMFS contact person for this project. She may be reached at (907)586-7510.

Sincerely,


James W. Balsiger
Administrator, Alaska Region
For

Enclosures (3)