



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

January 9, 2008

Colonel Kevin J. Wilson
District Engineer, Alaska District
Army Corps of Engineers
P.O. Box 6898
Elmendorf AFB, Alaska 99506-6898

Re: Vanderbilt Creek, Gastineau Channel 341
POA-1991-566-4

Attn: Randal P Vigil

Dear Colonel Wilson:

This letter is in response to your request for the National Marine Fisheries Service's (NMFS) review of the draft mitigation plan proposed by R&M Engineering, Inc. on behalf of their client Mr. Hugh Grant for wetland fill to construct a retail/commercial building complex and associated parking. The proposed mitigation is intended to compensate for the loss of wetland functions that would result from filling 1.98 acres of riparian, estuarine and intertidal wetland habitats next to the existing Grants Plaza located adjacent to Vanderbilt Creek and the Mendenhall Wetlands State Game Refuge in the Lemon Creek area of Juneau, Alaska.

The wetlands proposed for filling are important to the biological productivity of the Mendenhall Wetlands ecosystem, and the proposed mitigation plan is inadequate to offset the wetland functions that would be lost. NMFS has reviewed proposals for development and wetland fill at this site in 1998, 2003, 2005, and 2007 and has consistently recommended denial of ACOE permits for wetland fill for non-water dependant use. In our letter of October 2, 2006, NMFS agreed to six proposed permit conditions that would protect or mitigate for the loss of ecological values that would result from filling the site. The conditions included developing a suitable mitigation plan for unavoidable wetland losses. Adjacent uplands are filled wetlands used for vehicle storage and a variety of other non-water dependant uses. Existing uplands appear to have room for further commercial development. Justification of the need for additional fill is not sufficient to warrant filling high value wetland habitat with minimal mitigation and no effective on-site replacement of wetland functions. The mitigation plan lacks adequate detailed mitigation for wetland functions that would be lost.

In regard to specific mitigation plan revisions, we agree that the reconfiguration of the parking lot and south driveway minimizes wetland fill within the 50 foot riparian setback on Vanderbilt Creek. The proposal to cut and cap the creosote-treated piles below grade, remove the creosote-treated timber bulkhead at the bridge location, and use the concrete



capped creosote piles to support the foundation of a new bridge at the south entrance to the site are all actions that would minimize some of the project's adverse impacts to wetlands. The mitigation plan includes an additional area of wetland fill to construct a snow storage and runoff ditch. NMFS and the U.S. Fish and Wildlife Service previously recommended including the snow-storage and ditching facility, but our suggestion was to convert several proposed packing spaces into the snow treatment area rather than expand the wetland fill footprint. A dedicated snow storage and runoff treatment site would minimize the transport of sediment and pollutants including hydrocarbons into Vanderbilt Creek but should not require additional wetland fill. We also concur with the proposal to install an oil/water separator with a sump in the Glacier Highway right-of-way on the west side of Glacier Highway north of Short Street to improve water quality in the ditch that discharges to Vanderbilt Creek. These are all actions that would minimize the effects of wetland fill.

The extent of proposed enhancement work that the applicant is coordinating with the City and Borough of Juneau to expand the Duck Creek Greenbelt near the Mendenhall subdivision is not clearly described and documented. Further details need to be provided before any off-site mitigation credit for these actions should be considered. The applicant is not aware of opportunities for wetland creation in the vicinity of the project. NMFS suggests that an opportunity exists to create a swale to replace the slough that would be filled should the permit be granted. This slough provides the greatest habitat value among the features existing on the property, and constructing a replacement slough through higher elevation wetlands adjacent to the site could replace some of this habitat function.

The "underdeveloped" greenbelt of 1.2 acres between the existing building complex and the Alaska Department of Transportation right-of-way functions as the remnant Vanderbilt riparian corridor and is largely if not wholly within the non-developable CBJ stream setback. Thus we do not support the applicant's proposed mitigation at this site, due to lack of development potential and the low risk of further degradation.

We support placing a protective covenant on remaining un-impacted wetlands at the site as partial minimization of project impacts.

If the purpose and need for this non-water dependant development on valuable wetland habitat is determined to be adequate for permitting, compensatory mitigation remains a viable option to offset remaining unavoidable wetland impacts. Given the high value of Vanderbilt Creek, its impaired waterbody status, and the high wetland values of the surrounding intertidal estuarine wetlands adjacent to the Mendenhall Wetlands State Game Refuge, NMFS proposes a minimum preservation to impact ratio of four to one. That is, approximately eight acres of permanently preserved intertidal wetlands would be required to offset the loss of the 1.98 acres of wetland habitats. This ratio was accepted by the Corps in its extensive review and approval of Sealaska's Mitigation Bank for wetland preservation and is in line with nationwide preservation ratios that range from 4:1 to 22:1.

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 Essential Fish Habitat. NMFS is required to make conservation recommendations, which may include measures to avoid, minimize, mitigate or otherwise offset adverse effects.

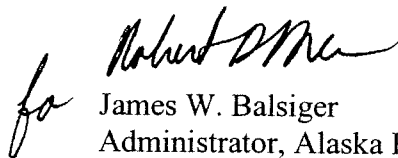
In accordance with Section 305(b) of the Magnuson-Stevens Act, NMFS offers the following conservation recommendations:

- (1) Further modify the proposed project design to avoid and minimize impacts to wetlands as discussed above.
- (2) Wetland preservation as compensatory mitigation for unavoidable wetland impacts should be calculated at a ratio of four times the filled acreage, or approximately 8 acres. Wetlands without permits for fill immediately adjacent to the proposed project site are listed for sale and zoned commercial. These properties and others could be purchased and preserved by the applicant via a conservation easement or used by a qualified real estate appraiser to determine the appropriate fee-in-lieu for the proposed project's wetland mitigation.
- (3) Denial of the permit if the above recommendations are not followed.

Under section 305(b)(4) of the Magnuson-Stevens Act, The Corps is required to respond to NMFS's EFH Conservation Recommendations in writing within 30 days. If the Corps will not make a decision within 30 days of receiving NMFS's EFH Conservation Recommendations, the Corps should provide NMFS with a letter within 30 days to that effect, indicating when a full response will be provided.

Please contact Sue Walker (susan.walker@noaa.gov or 586-7646) with any questions regarding NMFS's review of the draft mitigation plan.

Sincerely,


James W. Balsiger
Administrator, Alaska Region

Cc: Neil Stickert, USFWS, Juneau, AK
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