UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

November 12, 2002

Colonel Steven T. Perrenot
District Engineer, Alaska District
Army Corps of Engineers
Regulatory Branch (1145b)
P.O. Box 898
Anchorage, Alaska 99506-0898

RE: Ref # 2-2002-0842
Waterway: Switzer Creek 8

Attn: Mr. Randy Vigil

Dear Colonel Perrenot:

Thank you for the opportunity to review the above referenced proposal by S&S Development to place fill in approximately 15 acres of intertidal estuarine and palustrine wetlands below the high tide line on a fraction of USS 2121 at 6 mile Old Glacier Highway in Juneau, Alaska. The purpose of the project is to develop a commercial subdivision.

The proposed work will include the discharge of about 210,000 cubic yards of fill into 15 acres below the high tide line. No alternative site analysis is provided and no mitigation is proposed.

This estuarine and palustrine wetland proposed for fill has been identified as Essential Fish Habitat because it contains habitat important for spawning, breeding, feeding and growth to maturity for a variety of anadromous salmonid fish species including coho salmon and Dolly Varden char. A thorough fisheries inventory has not been conducted for this habitat but its habitat functions are high and critically important to fisheries in the adjacent and interconnected Switzer Creek and Mendenhall Wetlands.

Estuarine and estuarine/palustrine wetlands are regionally uncommon and of great importance to fish and wildlife. Many invertebrate species that are important food sources for juvenile fish live within the intertidal zone proposed for fill. They provide vital support functions for many other species. They are a source of food for invertebrates and benthic organisms and they offer shelter from predators, thereby increasing rates of individual survival.

This productive estuarine wetland is hydrologically connected to a major anadromous fish stream and a wildlife refuge. Habitat values and hydrologic functions are important and should be maintained.

The Corps has previously considered and denied three very similar proposals for fill at this location for identical purposes. Reasons for these permit denials were the lack of alternative site analysis for alternative upland sites, the project purpose is not water dependant, and because area wetlands have experienced significant cumulative impacts from fill. The current proposal again lacks any alternative site analysis, is not water dependant, and this sensitive area continues to be affected by cumulative impacts from fill.

The National Marine Fisheries Service (NMFS) has considered the potential impacts of the project to Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. In accordance with Part IV, paragraph 3(b) of the 1992 Memorandum of Agreement between the Department of Commerce and the Department of the Army, under Section 404(q) of the Clean Water Act, the permanent fill of approximately 15 acres of intertidal estuarine and palustrine habitat will have a substantial and unacceptable impact on aquatic resources of national importance.

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 because, 1) an alternative upland site analysis has not been provided, 2) the identified purpose and need for this project is not water dependent, 3) cumulative impacts to the interconnected wetlands in the project area continue, and 4) this site continues to function as essential fish habitat.

Reasonable alternatives are presumed available that would achieve the purpose for which the proposed work is being conducted. Alternative locations should be thoroughly addressed before wetland habitats are sacrificed for commercial development. The purpose of the water-dependency test is to recognize the special values of these habitats and to avoid their unnecessary destruction, particularly when less environmentally damaging practicable alternatives are available to achieve the basic purpose of the proposal (40 FR 55810-55825). Construction in uplands will likely have less impact on valuable habitat of wetland dependent trust resources.

If the Corps proceed further toward authorization of this project, the Corps should require extensive compensatory mitigation for unavoidable adverse impacts from fill in an ecologically sensitive area. NMFS requests an opportunity to review any proposed mitigation plan before the Corps issues a permit for this project. Information necessary to further assess the effects of this project on the sensitive habitats proposed for fill include 1) complete inventories of fish use by species, life stage and season, 2) mapping of mean and extreme high tide contours, 3) mapping of all sloughs and channels of Switzer Creek including connectivity to other streams and the Mendenhall Wetlands State Game Refuge, and 4) mapping of estuarine and palustrine dependent plant communities.

Under section 305(b)(4)(B) of the Magnuson-Stevens Act the Corps is required to respond in writing within 30 days to these recommendations. 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 contact person for the NMFS Alaska Region. She may be reached at 907-586-7510.

Sincerely,

For James W. Balsiger
Administrator, Alaska Region

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