



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

*National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668*

April 7, 2003

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 # 4-2002-1100
Waterway: Lemon Creek 13

Attn: Mr. Randal P. Vigil

Dear Colonel Perrenot:

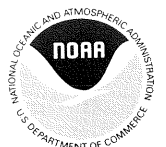
The National Marine Fisheries Service has reviewed the referenced permit application. The applicant, Secon, is proposing to discharge approximately 300 cubic yards of rock into approximately .07 acre below the ordinary high water mark of Lemon Creek to stabilize portions of the creek bank and prevent further erosion and property loss.

Lemon Creek is an Alaska Department of Fish and Game (ADF&G) cataloged anadromous fish stream that supports runs of coho and chum salmon, and Dolly Varden char. Lemon Creek was placed on the State of Alaska 303(d) list of impaired waterbodies in 1996 for turbidity, sediment, and habitat modification. A waterbody recovery plan was approved by EPA and implemented the fall of 1995 (see Alaska Department of Environmental Conservation website). The area around this project has been subject to rock and gravel mining, adjacent urban development, and prior bank stabilizing actions by both the applicant and other property owners. ADF&G has informed us that the property is also the subject of a current outstanding notice of enforcement action.

Bank stabilization activity, such as proposed, alters habitat by removing riparian vegetation (or preventing its growth), channelizing streams, and altering current and sediment delivery. These effects may impede fish passage, and may limit successful spawning and rearing of eggs and juveniles. These effects combined with other development activities on Lemon

Creek pose a significant cumulative adverse effect to habitat quality in Lemon Creek. The proposed actions may also affect downstream habitat by contributing to erosion and flooding.

The Corps previously proposed to authorize this project under Nationwide Permit (NWP) #13, Bank Stabilization. In response to this notice, NMFS offered EFH Conservation Recommendations, under



authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), and as our comments under the Fish and Wildlife Coordination Act, that the applicant should re-submit an application for an individual permit showing compliance with the following:

- 1) Consistency of the proposed action with the waterbody recovery plan approved by the EPA.
- 2) Development of a comprehensive plan with adjacent land owners that includes:
 - a) avoidance of mining in the active channel;
 - b) avoidance and minimization of turbidity during sensitive salmon life history stages, including spawning, fry emergence and smolt outmigration;
 - c) plans for stabilization of areas disturbed by fills and bank cuts;
 - d) maintenance of stable channel configuration and avoidance of erosion and destabilization following completion of projects;
 - e) demonstration of how the plan provides for fish passage; and
 - f) demonstration of how bioengineering methods were considered for bank stabilization, that include use of riparian vegetation in stabilization plans and approximate natural streambank conditions to the maximum extent.

The purpose of a comprehensive plan among landowners is to avoid a single-project approach to resolving bank stabilization issues on Lemon Creek, and allow for watershed-wide approaches that will minimize the cumulative adverse impacts to this impaired waterbody. The plan should be developed in cooperation with NMFS, ADF&G, and the U.S. Fish and Wildlife Service.

Subsequent to receiving our comments, an individual permit notice for the project was submitted without demonstrating consideration of our recommendations submitted for the Nation-wide permit. An interagency meeting was also hosted by the Alaska Department of Governmental Coordination, on April 2, 2003, with the applicant's representative, Mr. Ian Black. In that meeting, numerous options to permit the project while still accounting for habitat concerns were discussed and proposed. The applicant indicated that they would be willing to consider partial bioengineering designs for the project, as well as mitigation and participation in watershed planning. However, no conclusion was reached at the time NMFS staff left the meeting. NMFS and other resource agencies expressed a commitment to continue to work with the applicant to find a mutually acceptable solution.

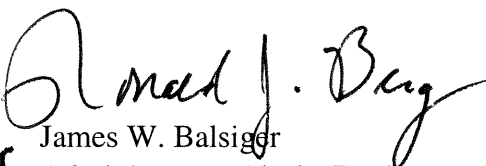
NMFS is compelled to comment on the current permit application and design, and therefore recommends as our **EFH Conservation Recommendation** that:

The applicant should re-submit the project with a partial bio-engineering design that provides structural stability of the bank, but incorporates the use of vegetation where appropriate to provide habitat values to Lemon Creek. If, after careful consideration, bioengineering is deemed unsuitable for the project, mitigation should be proposed to compensate for detrimental impacts to fishery and property values of Lemon Creek. Mitigation could include participation towards the development of a watershed plan for Lemon Creek.

Under section 305(b)(4) of the MSFCMA, the Corps is required to respond to NMFS EFH recommendations in writing within 30 days. If the Corps will not make a decision within 30 days of receiving NMFS EFH Conservation Recommendations, the Corps should provide NMFS with a letter within 30 days to that effect, and indicate when a full response will be provided.

If you have any further questions, please contact Linda Shaw at 907-586-7510.

Sincerely,


For James W. Balsiger
Administrator, Alaska Region

cc: Applicant, Secon
EPA Juneau, Chris Meade
ADEC, ADF&G, AADGC, ADNR, USFWS, Juneau