



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

November 7, 2005

Randy P. Vigil
Project Manager
Army Corps of Engineers
8800 Glacier Highway, Suite 106
Juneau, Alaska 99801-8079

RE: Vanderbilt Creek 7, POA-1991-566-4

Dear Mr. Vigil:

The National Marine Fisheries Service (NMFS) has reviewed the Corps letter of October 5, 2005 regarding Mr. Grant's response to NMFS' concerns and questions about Mr. Grant's proposed fill of ecologically important wetland habitat adjacent to Vanderbilt Creek in Juneau, Alaska. We have reviewed the responses to our May 11, 1998 letter that were prepared for Mr. Grant by his agent, Malcolm Menzies of R& M Engineering on June 2, 2002 and offer the following comments.

Mr. Grant states that the *mouths* of the two sloughs originating on his property will not be filled for this project, yet it is clear from both the engineering drawings and the site visit that *the sloughs themselves* will be filled. These low lying natural drainage sloughs are important wetland habitats and perform the valuable natural functions of retaining sediments and toxins that flow from adjacent developed parking areas, access routes and buildings on the applicant's property, and provide riparian support functions for the anadromous slough along the west property boundary.

Mr. Grant acknowledges the importance of both Vanderbilt Creek and the drainage slough to rearing coho salmon during the mid to late summer, and states that the channels will continue to flow with very little change to configuration as a result of the project. In fact, flows in these channels are likely to be altered significantly as a result of the proposed project fill. Replacing wetland habitat with impervious fill will alter the rate of surface runoff, and reduce water quality by reducing or removing the wetland function of retaining sediment and toxics.

In response to NMFS comments that the proposed project fill will remove an important intertidal habitat from the watershed and that the 25 foot riparian buffer is inadequate, Mr. Grant states that only a portion of the intertidal habitat will be removed and that the plans show a minimum 25 foot setback. NMFS agrees that a portion of the wetlands will be removed, however, the ecological significance of removing this portion of the watershed is high. The site of the proposed fill borders existing development that contributes runoff into the wetland, and buffers both an anadromous stream that is listed by the Alaska Department of Environmental Conservation as an impaired waterbody due



to water quality concerns and an anadromous drainage slough. Further, the plans indicate only a 25 foot no build setback, when the Corps of Engineers General Permit for Juneau class C and D wetlands requires no less than a 100 foot riparian setback for anadromous streams. A 25-foot no build setback is inadequate to protect the ecological functions of these anadromous channels, and when combined with filling associated contiguous high value wetlands, is likely to further impair the ecological functioning of these channels. In our previous comments, NMFS also stated that the impacts from the proposed project include alteration of flow patterns, introductions of hydrocarbons from vehicle leaks and introductions of sediments from snow removal activities. Mr. Grant's response that the site will be designed to drain to the southwest via catch basins and that all water will flow through an oil-water separator prior to discharge (into the drainage slough?) does not address our concerns thoroughly. Specifically, flow patterns will be altered, as the wetland losses will result in less moderated discharge patterns, i.e. high flows will increase and low flows will decrease as surface discharge will no longer be slowed through the wetland. Oil-gas separators may control hydrocarbon discharges, if properly designed, installed, and maintained. Snow removal and associated sediment and chemical discharge remain unaddressed.

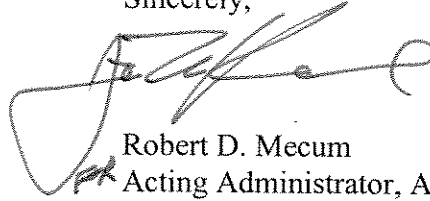
NMFS also raised the issue of previous outstanding violations related to existing developments adjacent to this property. Mr. Grant's agent states that it is his understanding that Mr. Grant has either corrected these problems or is working with the Corps toward resolution. NMFS seeks confirmation of outstanding violation resolution from the Corps.

In addition to our concerns that were address by Mr. Grant's agent, we note that of the properties considered in the alternative site analysis, the 3.1 acre site Fr. USS 3801 has been purchased by Mr. Grant from the City and Borough of Juneau and should thus be available, and site Fr. USS 2121 – 43 acres in Lemon Creek, needs more explanation as to why a "previous business relationship" precludes this site, or part of it, from consideration.

NMFS concerns remain the same as in 1998 and 2003. The proposed project would eliminate a large area of wetlands that supports fishery resources, and less damaging alternatives are available. We continue to recommend permit denial per Part IV 3(b) of our 404(q) Memorandum of Agreement. Due to the high ecological value of this wetland, we have suggested to Mr. Grant that this property may be suitable for purchase at fair market value as mitigation for a number of large transportation projects in the area that are in final planning stages.

If you have any questions regarding our comments and conservation recommendations for this project please contact Sue Walker at (907) 586-7646.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Mecum", with a large, sweeping flourish extending to the left.

Robert D. Mecum

Acting Administrator, Alaska Region