



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

*National Marine Fisheries Service*

*P.O. Box 21668*

*Juneau, Alaska 99802-1668*

August 22, 2008

Colonel Kevin J. Wilson  
District Engineer, Alaska District  
U.S. Army Corps of Engineers  
P. O. Box 898  
Anchorage, Alaska 99506-6898

Re: POA- 2000-52  
Japanese Creek

Attn: Jack Hewitt

Dear Colonel Wilson:

The National Marine Fisheries Service (NMFS) has reviewed the above referenced public notice regarding a proposal by the City of Seward to construct a levee/road for flood control, access, and public safety in the North Forest Acres subdivision. The proposed work includes discharge of 25,400 cubic yards of fill material into 3.1 acres of wetland and 0.3 acre of Japanese Creek, and the realignment of approximately 900 linear feet of Japanese Creek stream channel.

The Corps of Engineers has determined that the described activity may adversely affect Essential Fish Habitat. NMFS agrees with this determination and believes that the proposed mitigation submitted by the applicant in the Public Notice is not appropriate, nor adequate to offset adverse impacts from the project on our trust resources. NMFS, therefore, recommends compensatory mitigation in the form of purchasing fish habitat for conservation status.

In order for NMFS to complete our assessment of the potential options for such mitigation, we require additional time, during which we will work with the Kachemak Heritage Land Trust, Resurrection Bay Conservation Alliance, the City of Seward, and other interested resource agencies in developing options for compensatory mitigation.

We request that the public notice comment period be extended for thirty days. If you are unable to grant this request, we recommend denial of the permit pursuant to Part IV, Paragraph 3(b) of the 1992 404(q) Memorandum of Agreement between our agencies. Based on the limited available information, NMFS concludes that this project will have a substantial and unacceptable impact on aquatic resources of national importance. Brian Lance is the contact for this project and can be reached at (907) 271-1301 or by e-mail: [brian.lance@noaa.gov](mailto:brian.lance@noaa.gov).

Sincerely,

FOR Robert D. Mecum,  
Acting Administrator, Alaska Region



cc:

NOAA/AKR/Records

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COE: Japanese Creek POA- 2000-52 8-21-08 bl nl