



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

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

October 9, 2008

Colonel Kevin J. Wilson
U.S. Army Corps of Engineers
P.O. Box 6898
Anchorage, Alaska 99506-0898

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, submitted by the City of Seward, to discharge 25,400 cubic yards of fill material into 3.1 acres of wetlands and 0.3 acres of Japanese Creek and realign approximately 900 linear feet of Japanese Creek streambed channel for construction of a levee and road. The stated purpose of the proposed project is flood control, with a secondary goal of reducing truck traffic in the North Forest Acres subdivision, thereby increasing public safety.

Background

NMFS has participated in numerous meetings and site visits with the City of Seward, to assist them in attaining project objectives, while minimizing impacts to our trust resources. Our primary concerns have been the realignment of Japanese Creek, the location of the project within the floodplain of the Resurrection River, and the potential adverse impacts to anadromous fish, their habitat, and associated wetlands. NMFS has commented previously on this project (copies of letters enclosed). We continue to support less environmentally damaging alternatives that meet the stated purpose and need of the project and do not require building in the flood plain or realignment of Japanese Creek. However, the current alternative, as listed in the above referenced Public Notice, represents an agreement reached between the City of Seward and the resource agencies, including NMFS.

Essential Fish Habitat

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 (EFH). NMFS is required to make EFH Conservation Recommendations, which may include measures to avoid, minimize, mitigate or otherwise offset adverse effects. The project area is EFH for coho salmon. The new alternative described in the Public Notice avoids and minimizes impacts, but will still have adverse effects on important habitat for coho. Accordingly, NMFS requests mitigation to compensate for the direct fill of wetlands, as well as loss of functional value of wetlands isolated by the levee. Compensatory mitigation for unavoidable wetland impacts may be accomplished through restoration, establishment, enhancement or preservation of wetlands to offset unavoidable adverse impacts.



Thus, in accordance with Section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS makes the following EFH Conservation Recommendations regarding compensatory mitigation for the effects to EFH due to the proposed project.

1. The permanent protection of ecologically important wetlands or other aquatic resources through the implementation of appropriate legal and physical mechanisms (i.e. conservation easements, title transfers) is a recognized method of compensatory mitigation. The City of Seward should purchase and preserve existing wetlands along the floodplain in areas that would be southwest of the proposed levee/road, identified as parcels DB, DC, DE, DF, DG, SS, RR, QQ, and TR 4, as noted in the March 2, 2007 letter from DNR/OHMP (enclosed - see map of Wetlands Impacted Along 2008 Proposed Alternative). These parcels should be purchased from existing land owners by the City of Seward and title transferred to Kachemak Heritage Land Trust (KHLT) to manage in conservation status (easement) in perpetuity. The conservation easement should be worded so that these parcels are never developed or used for any purpose that diminishes their value as functional wetlands and wildlife habitat; as well as a buffer for storm-water storage. KHLT must have the ability to carry out these tasks and agree to this role.

NMFS suggests the City of Seward work with the North Forest Acres Subdivision and KHLT to modify the existing covenants to identify the aforementioned parcels on maps and posted on the ground to ensure only compatible uses of these parcels are allowed. In particular, property owners that abut the conservation parcels should be informed before they buy and/or build, the nature of the conserved parcels, restrictions on encroachment, and importance as wetland habitat for wildlife and as storm water storage that will protect their homes/families when a major flood event occurs.

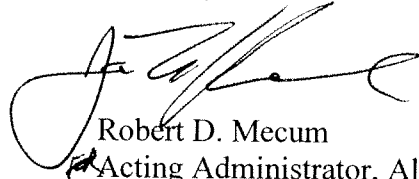
2. Based on the acreage impacted (isolated) by construction of the levee/road, the City of Seward has agreed to pay \$180,000 of in-lieu-fee funds to an account with KHLT. These funds should be used for the purchase of functional fish habitat in the Seward area, including the Salmon/Clear Creek area. Any parcels purchased with these funds should be placed in conservation status for perpetuity.

NMFS acknowledges the City of Seward's commitment to update the mitigation plan with these components and will not object to the issuance of the permit provided the mitigation plan is adopted as proposed, and included as stipulations on the Corps permit. NMFS acknowledges the importance of this project to the City of Seward and would like to thank the City of Seward, in particular Kris Erchinger, for working toward a solution for a complex project.

Under section 305(b)(4)(B) of the Magnuson-Stevens Act the Corps is required to respond to NMFS EFH Conservation Recommendations in writing within 30 days. 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.

If you have any questions regarding our EFH recommendations for this project, please contact Brian Lance at 907-271-1301 or brian.lance@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Mecum", written over the typed name and title.

Robert D. Mecum

Acting Administrator, Alaska Region

Enclosures:5

cc: DNR/OHMP - lee_mckinley@dnr.state.ak.us
EPA – phil.north@epa.gov
USFWS – lynnda_kahn@fws.gov
City of Seward - kerchinger@cityofseward.net
Solstice Environmental - robin@solsticeak.com