



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

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

November 20, 2008

John C. Leeds
Department of the Army
U.S. Army Engineer District, Alaska
Juneau Regulatory Field Office
8800 Glacier Highway, Suite 106
Juneau, Alaska 99801-8079

Re: POA-2007-1705-4
Gastineau Channel

Dear Mr. Leeds:

This letter is in response to your November 13, 2008 letter responding to Essential Fish Habitat (EFH) Conservation Recommendations for a Department of the Army permit application submitted by John and Sharon Mallinger, file number POA-2007-1705. The proposed project would place fill into jurisdictional wetlands, including an intertidal slough, to construct a 110-unit boat storage condominium in Juneau's Mendenhall Valley. The Corps concluded that the proposed project will not adversely affect EFH. In a March 26, 2008 letter responding to the permit application, the National Marine Fisheries Service (NMFS) concluded that the proposed project would adversely affect EFH, due to direct loss of wetlands and important wetland functions for Casa Del Sol Creek, the Mendenhall Wetlands State Game Refuge, and adjacent marine habitat. NMFS offered three Conservation Recommendations to avoid, mitigate, or otherwise offset adverse effects on EFH:

1. The application as submitted should be denied. The Corps should require the applicant to evaluate upland alternative sites for this project.
2. If fill for the proposed project is permitted, the project should be minimized to avoid intertidal fill and to maintain a minimum 50 foot buffer from the intertidal slough to reduce impacts to adjacent wetlands and downstream aquatic environments.
3. If the project location is permitted, all wetland function should be replaced through appropriate compensatory mitigation.

In an April 30, 2008 letter to the Corps, the applicant addressed the above Conservation Recommendations, which included reference to an Alternatives Analysis submitted to the Corps on March 11, 2008. With respect to Recommendation #1, the applicant's analysis concluded that development of an upland site (Alternative 3 in the analysis) would not be practicable due to greater land costs, safety concerns, and the lack of suitably-sized industrially zoned sites in Juneau. However, only one alternative site was analyzed without explanation for such limited review of alternative sites. With respect to Recommendation #2, the alternatives analysis considered a reduction of project scope (Alternative 4) to buffer the intertidal slough as recommended by NMFS, and various pile-supported alternatives (Alternatives 5 & 6) were



considered to minimize the project's wetland footprint. The applicant considered these alternatives to be impracticable for economic reasons.

In response to Recommendation #3, the applicant has proposed features (sediment traps, subdrains, oil/water separators) that capture sediment and toxins and maintain water supply to receiving waters as partial mitigation for the loss of those wetland functions. To minimize impacts to EFH the applicant will reduce but not eliminate fill in intertidal areas, remove a culvert and associated unpermitted intertidal fill, remove debris from a ditch flowing into a tributary stream, and re-contour the intertidal swale to create new lower elevation wetlands.

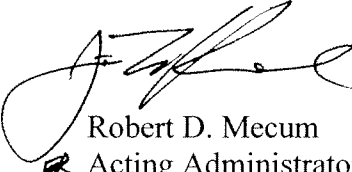
NMFS supports the inclusion of features into the project design that will moderate runoff rates and reduce the transfer of sediment and other pollutants from the development into adjacent wetlands and other aquatic habitats. NMFS also appreciates the applicant's proposal to enhance upland habitat, minimize wetland fill, and to create new intertidal wetlands.

NMFS is concerned that the remaining loss of nearly four acres of wetlands adjacent to the Mendenhall Wetlands State Game Refuge will adversely impact EFH despite the proposed mitigation features. The ecologically important and rare emergent estuarine wetland habitat of the Mendenhall Flats has been lost at an accelerated rate during the past century due to development of numerous non-water dependant uses such as this project. The proposal restricts pavement to 35% of the site and proposed to route all runoff through a drain system that includes sediment traps and an oil/water separator. It is the total amount of impervious surfaces that affect flows in the adjacent stream channels and not paved areas alone. Routing runoff from pavement and roofs through a drain system accelerates surface and groundwater transport as the water infiltration and storage functions of a wetland are lost. These changes result in increased high flows and reduced low flows in adjacent stream channels, resulting in their degradation and negatively affecting downstream fish habitat in an impaired waterbody.

Although the proposed modifications to the project would reduce the impacts of this project on these important wetland habitats, unavoidable losses of about four acres of wetlands remain and warrant compensatory mitigation. NMFS recommends that the Corps require a fee-in-lieu payment (\$30,000 per acre for the net loss of uncompensated wetland functions resulting from four acres of fill) to the Southeast Alaska Land Trust for purchase, preservation and stewardship of ecologically important wetlands as compensation for loss of wetland habitat and functions resulting from construction of this project. This compensation rate represents 50% of the approximate 2006 market value of wetlands adjacent to the Mendenhall Wetlands State Game refuge (per the proposed In-Lieu Fee arrangement as compensatory mitigation for impacts to wetlands from the Juneau International Airport improvements, POA-1981-320-M22 and Juneau International Airport FEIS, April 2007); this reduced value takes into consideration the downgraded functional assessment of the wetlands on this site. We recommend the same 2:1 ratio of preservation to impact applied to the airport wetland impacts be applied to this project, i.e., eight acres of preservation to offset four acres of fill, for a total fee-in-lieu compensation of \$240,000 for impacts to wetlands from this non-water dependant project.

If you have any questions regarding the issues raised in this letter, please contact John Hudson (907-586-7643 or 907-789-6024, john.hudson@noaa.gov).

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

Cc: Applicant
Richard Enriquez, USFWS, Juneau, AK, richard_enriquez@fws.gov *
Teri Camery, CBJ, Juneau, AK, Teri_Camery@ci.juneau.ak.us *
Chris Meade, EPA, Juneau, AK, meade.chris@epa.gov *
Kyle Moselle, ADFG, Juneau, AK, kyle.moselle@alaska.gov *
Jackie Timothy, ADNR, Juneau, AK, jackie_timothy@dnr.state.ak.us *
Erin Allee, DCOM, erin.allee@alaska.gov*
Bill Groom, DCOM, william.groom@alaska.gov*
Kevin Monagle, ADF&G, kevin.monagle@alaska.gov*
Brian Glynn, ADF&G, brian.glynn@alaska.gov*
Diane Mayer, Southeast Alaska Land Trust, setrust@ptialaska.net*

*e-mail

Literature Cited:

City and Borough of Juneau, Alaska. 2005. Juneau Coastal Management Plan, Appendix A, Enforceable Policies. <http://www.alaskacoast.state.ak.us/District/Plans/Juneau/Draft/2-appendixa.pdf>. December, 2005. Juneau, Alaska, 12 pps.

G:\COE\2008 - MASTER FILE\Gastineau Channel Mallinger Boat Condos POA-2007-1705-4
shw 3_25_08.doc

File Code: 1503-16(a) Gastineau Channel - wetland fill

Applicants:

John and Sharon Mallinger

P.O. Box 211308

Auke Bay, AK 99821

Applicant's Agent:

Pat Kemp, P.E.

1720 Glacier Ave.

Juneau, AK 99801