UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF ENVIRONMENTAL REVIEW AND ASSESSMENT

March 1, 2018

Colonel Michael S. Brooks
Department of the Army
Alaska District, U.S. Army Corps of Engineers
P.O. Box 6898
Joint Base Elmendorf-Richardson, Alaska 99506

Dear Colonel Brooks:

The purpose of this letter is to accept your January 9, 2018 invitation to serve as a cooperating agency during preparation of the Pebble Project Environmental Impact Statement (EPA Region 10 Project Number 18-0002-COE).

Over the past two months, we have communicated with you and members your staff about our concerns regarding the scope of EPA's cooperation in this project. As described in detail in our January 29, 2018 letter, we continue to believe that EPA has special expertise in areas beyond the CWA 404(b)(1) Guidelines that could assist the Corps in developing the EIS, and that this broader involvement would result in a more efficient EIS process overall. We remain open to revisiting the scope of our cooperating agency involvement as the EIS progresses, and we remain interested and available to engage with the Corps and other cooperating agencies early on the entire NEPA document. Such early engagement could reduce the possibility of EPA identifying significant issues with the draft EIS when it is released for public review.

Your January 9, 2018 cooperating agency invitation letter identified specific requirements for serving as a cooperating agency on the project and also referred to the draft Cooperating Agency Coordination Plan. It is our understanding that these two documents, along with our responses, will formulate the structure for cooperating agency involvement on the Pebble EIS. I have included the EPA's recommendations, most of which we have shared previously, for amendments to the draft Cooperating Agency Coordination Plan.

Please note that the EPA's status as a cooperating agency does not affect our independent responsibilities under Section 309 of the Clean Air Act to review and comment publicly on all draft EISs. Participation as a cooperating agency does not imply endorsement of the proposed project, nor can it be used to obligate or commit funds or as a basis for the transfer of funds.

We look forward to working with you on the development of this EIS. As you are aware, I have asked Patty McGrath to serve as the EPA's point of contact for our efforts related to the Pebble Project EIS and future permitting. Patty can be reached at (206) 553-6113 or by email at mcgrath.patricia@epa.gov.

Please let us know when you would like to meet to further discuss the EPA's role as a cooperating agency or the enclosed recommendations.

Sincerely,

R. David Allnutt, Director
Office of Environmental Review and Assessment

Cc: Sheila Newman, Alaska District, U.S. Army Corps of Engineers

Enclosure

EPA-5178-0000010

Pebble Project Cooperating Agency Coordination Plan
EPA Recommended Amendments

EPA Areas of Authority and Special Expertise

The January 13, 2018 Revised Draft Plan lists "404(b)(1) Guidelines of Section 404 Clean Water Act" as the EPA's only area of special expertise. Previous correspondence from the EPA on this matter dated January 11, 2018 and January 29, 2018 have noted additional areas of agency expertise. While we accept involvement in areas related to the 404(b)(1) Guidelines, we request that as the EIS development progresses, the Corps remain open to considering the other areas of EPA's statutory authority and special expertise noted in the previous correspondence:

- Clean Water Act Section 404 - Regulating the Discharge of Dredged or Fill Material to Waters of the U.S.
- CWA Section 402 - Oversight of State APDES Permits
- CWA Section 311 - Addressing the Discharge of Oil and Other Hazardous Substances to Waters of the U.S.
- Clean Air Act - Oversight of State CAA permits
- CAA Section 309 authority and responsibility to review and comment in writing for the public on Draft EISs
- Marine Protection, Research, and Sanctuaries Act Section 103(c) - Authority to Review and Concur on any Corps-issued Permit for the Ocean Disposal of Dredged Material
- Expertise in the review of mining project EISs and in the assessment of environmental impacts from mining projects

Materials EPA will Review or Contribute to

The CWA 404(b)(1) Guidelines include, for example, the following areas, as outlined in 40 CFR 230.10(a)-(d):

- Alternatives analysis;
- Other environmental standards including state water quality standards, toxic effluent standards, and compliance with the Endangered Species Act;
- The direct, secondary, and cumulative impacts of the proposed discharges of dredged or fill material on human health or welfare; life stages of aquatic life and other wildlife dependent on aquatic ecosystems; aquatic ecosystem diversity, productivity, and stability as well as recreational, aesthetic, and economic values; and,
- All appropriate and practicable steps to minimize and compensate for the adverse effects associated with the proposed 404 discharges.

We recommend that the Cooperating Agency Coordination Plan list the specific EIS chapters and related materials that would include these analyses or components of these analyses that would be made available for EPA review and input.

Minimum Review Time Frames

We continue to recommend that the Cooperating Agency Coordination Plan propose minimum timeframes for EPA review and that we have the opportunity to discuss and concur on these timeframes. Minimum timeframes for review and comment will enable our staff to be prepared to provide timely input on schedule.

Review of Preliminary Draft EIS

In our substantial experience as a cooperating agency on a wide variety of projects undergoing the NEPA process, the review of the Preliminary Draft EIS is a key task requested of all cooperating agencies prior to public release of the document. By providing this review opportunity to all cooperating agencies on the project, the lead agency is able to identify and correct issues or deficiencies with the analysis prior to public review. Doing so can streamline the process by reducing the amount of public comments received. We recommend that the Corps provide the full Preliminary Draft EIS for review by all cooperating agencies prior to public review. While cooperating agencies may choose to focus on their own areas of special expertise to reduce staff time required to review, providing the full document enables reviewers to have the full context of the analysis when performing their review task.

Acknowledgment of the EPA's Role in the EIS

We recommend that the EPA be given an opportunity to provide input into how our role as a cooperating agency is acknowledged and described in the EIS. In particular, we recommend that the EIS include acknowledgement of the scope of the EPA's role as a cooperating agency, as well as acknowledgement of the EPA's review authority pursuant to Clean Air Act Section 309 and that EPA's role as a cooperating agency does not alter that review.

Freedom of Information Act Requests

We recommend that the Cooperating Agency Coordination Plan include procedures for notification and coordination of FOIA requests received by the lead and/or cooperating agencies. Coordination among agencies in response to FOIA requests is often necessary to ensure compliance with the FOIA and its implementing regulations, can help reduce duplication of effort, and save time.

Modification of the Cooperating Agency Coordination Plan

We recommend that the Plan include procedures for future modification of the document, in the event that revisions become necessary.