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

OFFICE OF
ENVIRONMENTAL REVIEW
AND ASSESSMENT

FEB 05 2018

Sheila Newman
Regulatory Division Program Manager
Alaska District
U.S. Army Corps of Engineers
P.O. Box 6898
JBER, Alaska 99506-0898

Dear Ms. Newman:

The Alaska District of the U.S. Army Corps of Engineers issued Public Notice POA-2017-271 on January 5, 2018. The Public Notice provides information concerning an application submitted by the Pebble Limited Partnership to discharge fill into and perform work within waters of the United States. The District has made these application materials available to the public via its website, and the PN announces this availability.

The PN states that the Corps has determined that an environmental impact statement will be required and that the EIS will be used in the review of the permit application. It further identifies that the District will publish a Notice of Intent to develop an EIS, and will subsequently take public comment on the scope of the EIS. Given the significant public interest in this proposed project and the potential for confusion, we recommend that the District provide clarification on the following issues.

First, although the Alaska District's PN website indicates an expiration date of February 5, 2018, the notice does not address the solicitation of public and agency comments to the PN. Because this PN does not solicit comments on the application materials now, we understand that the PN has not opened a "basic or extended comment period" as that phrase is used in the 1992 Clean Water Act Section 404(q) Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army. As such, we have confirmed with you that the EPA's timeframe to submit comments specified in paragraph 3(a) of the 404(q) MOA has not begun. If the District believes that it has initiated a public comment period that would implicate this MOA, the EPA requests notice clarifying this matter as soon as possible.

Second, the PN provides no information about whether the District has determined the application to be complete, or whether it has concluded its completeness review of the application materials. The EPA appreciates that the District has made the application materials public. Although the application materials do include some information about proposed measures the applicant would take to avoid and minimize impacts to waters of the United States, they do not include a statement describing how unavoidable impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required for the proposed impacts. We request that the District provide clarity on this issue.

Finally, while the PN refers to an application to discharge "fill material" into waters of the United States, the PN does not disclose the proposed discharge of "dredged material." The application proposes

to: dredge a navigation channel in Kamishak Bay; dispose up to 20 million cubic yards of dredged material in a containment area on land near Amakdedori Creek; and discharge an unspecified volume of water from the containment area into marine waters in Kamishak Bay. The application does not identify a disposal site or mixing zone for the proposed dredged material effluent. To ensure a complete and effective CWA Section 404 review for all elements of this project, we recommend that future PNs include all proposed discharges of dredged material and fill material into waters of the United States, including wetlands.

The EPA appreciates the opportunity to provide this input, and we look forward to working collaboratively with the Alaska District. Should you have any questions about this letter, please do not hesitate to contact me or have your staff contact Matthew LaCroix in our Alaska Operations Office at (907) 271-1480, or by email at lacroix.matthew@epa.gov.

Sincerely,

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