

**Proposed Pebble Project
Preliminary Draft Environmental Impact Statement
Review Comments**

Reviewer: NARF Technical Team
Date: December 21, 2018
Chapter: Chapter 6: Consultation and Coordination
Section: Sections 6.0 – 6.4
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Comments

Section 6.0 Consultation and Coordination. In this first paragraph, the USACE must acknowledge the importance of consultation and coordination with federally recognized tribes on a government-to-government level.

Section 6.1 Agency Coordination. The first paragraph of this section is copied below:

The U.S. Army Corps of Engineers (USACE) is the lead federal agency for this EIS. Six federal agencies, the State of Alaska, Lake and Peninsula Borough, and two tribes are serving as cooperating agencies for this EIS, listed below. These cooperating agencies are involved in informing the EIS process based on their expertise, to ensure that this EIS provides a full and fair disclosure of the probable impacts of the proposed project and provides a sound basis for agency permit decisions. The cooperating agencies also informed the alternatives selection process to determine which alternatives would be carried through for analysis (see Chapter 2, Alternatives).

This statement is demonstrably false. The USACE has, at every opportunity, acted to minimize and undermine the role of cooperating agencies during the development of this PDEIS. Cooperating agencies have not been meaningfully involved in informing the EIS. When cooperating agencies have provided comments, in this cooperating agency's experience, those comments have been ignored. Thus, this PDEIS does not provide a full and fair disclosure of probable impacts of the proposed project, and it does not provide a sound basis for agency permit decisions.

Based on our participation in and input to the EIS scoping process and our review of this PDEIS as well as earlier drafts of specific sections, Draft Appendix B (Alternatives Development Process), and the Permit Application dated December 22, 2017, the statement above

dramatically overstates the degree of cooperation between USACE and this cooperating agency during the permitting and NEPA processes. The comments that we have prepared have been largely ignored, and changes, many of which we strongly recommended, have not been made and are not reflected in this PDEIS.

The Permit Application and this PDEIS are substantially incomplete; therefore, we have recommended that the USACE prepare and distribute to cooperating agencies an administrative draft EIS based on comments and input from cooperating agencies after they've reviewed this PDEIS.

Section 6.1.1 Biological Assessments. Appendix G and Appendix H have not been provided for review. This information is necessary to evaluate the impacts described in Chapter 4 of the PDEIS.

Similarly, Appendix I has not been provided for review. The information in this appendix would assist in evaluating impacts described in Chapter 4 of the EIS. Coordination among agencies and tribes is only effective if all parties can review the comments and assessments that other agencies and tribes have prepared and submitted.

Section 6.2 Tribal Consultation and Government-to-Government Consultation. In this section or in an appendix, more information needs to be provided regarding the USACE's attempts to conduct tribal consultation. For example, a record of which tribes were contacted and when should be provided. What opportunities were provided for consultation outside the public or agency review process? In what ways was information gained and incorporated into the EIS? How have the alternatives been modified, and how has the knowledge gained been used to assess potential impacts of the alternatives? What are the plans for additional consultation prior to releasing the Draft EIS? It does not appear that traditional ecological knowledge (TEK) has been used in a meaningful way to date or that information has been gained from local communities in which people are most familiar with the affected area of the proposed project.

For consultation to be meaningful, it must affect the decisions ultimately made in a way that honors the sovereignty and self-determination of affected tribes and treats Alaska Natives as equal partners with the U.S. Government in making decisions that will affect Alaska Natives, their culture, and lifeways.

Based on this cooperating agency's experience thus far, the USACE appears to have abjectly failed in its obligation to engage in meaningful government-to-government consultation. The USACE has consulted with the Tribe once on a government-to-government basis during the

development of this PDEIS. When the Tribe attempted to schedule another government-to-government consultation with the USACE prior to the publication of the Draft EIS, it was told that the USACE would not consult with the Tribe again until after the Draft EIS is published. When the Tribe was granted cooperating agency status and pushed back against the limited role it was assigned, the USACE told the Tribe that it did not need a larger cooperating agency role because it had the opportunity to provide information to the USACE via government-to-government consultation. The USACE's refusal to consult more than once with the Tribe during the development of this PDEIS proves that was a fallacy.

The USACE has also so far failed to engage in meaningful consultation with Tribes—and other consulting parties—during the NHPA Section 106 process. Consulting parties have repeatedly told the USACE that it must conduct Section 106 consultations in the villages and communities affected by the proposed Pebble Mine; that demanding consulting parties, especially tribes, travel to Anchorage and present to the USACE about historic properties, is not consultation. The Tribe's and other consulting parties' requests for the USACE to conduct Section 106 consultations in the villages and communities has, so far, fallen on deaf ears.

In all respects, the USACE is utterly failing in its obligations to consult with tribes, both on a government-to-government basis and through the Section 106 process.

Section 6.3 Scoping and Public Outreach. Appendix A has not been provided for review, making it impossible to evaluate the extent to which scoping comments were addressed and incorporated into this PDEIS.

Section 6.4 Ongoing Coordination Efforts. Tribal consultation is much more than sharing information and answering questions. It is intended to support a shared decision-making process in which key issues are raised and addressed to the satisfaction of the parties involved. Tribal consultation calls for sufficient time and proactive engagement to identify, address, and resolve issues. Please review relevant federal guidance regarding the consultation process and engage appropriate professionals as needed, commensurate with the scale and impacts of the proposed project, and to respect the substantial impacts the proposed project poses to the people and natural resources of this region.