

Nondalton Tribal Council – Pebble Project Preliminary Draft EIS Chapter 1 Comments

Agency	Comment No.	Section, Paragraph, and Page #	Cooperating Agency Comment (and Purpose of Comment)	Response
Nondalton Tribal Council		General Language and Accessibility	<p>The environmental impact statement (“EIS”) should be clearly written for public review and use accessible language. Even in this introductory section, there is an overuse of jargon and acronyms. The U.S. Army Corps of Engineers (“USACE”) must minimize the use of acronyms and ensure that the language used is accessible to the general public.</p> <p>This section is incomplete as currently drafted. It is typical in an EIS to include the following additional information in Chapter 1.0 Purpose and Need:</p> <p>Background – The background section should provide a general description of the proposed project area including its location related to major towns, cities, and villages, watersheds, areas of special interest (e.g. national parks, wilderness areas, state parks), and a concise description of the project’s proposed production. The section should include information about the original project discovery and the various developments that have occurred prior to the application for a permit that initiated this EIS. This should include discussion about previous project proposals as well as associated evaluations by Environmental Protection Agency (“EPA”) and other regulatory agencies concerning proposed mining at the Pebble deposit. It should also include information about the project proponent including their history and address their capacity, such as whether they are an existing reputable mining company with currently active mining operations, or whether this would be their first and only operation. This section should also disclose to what extent, if any, a completeness review was conducted on the proponent’s application for a 404 permit, prior to initiation of the National Environmental Policy Act (“NEPA”) process.</p> <p>Decisions to be made – In addition to describing the decisions to be made by the lead agency, in this case the USACE, this section must identify all the other regulatory agencies with decision making authority, including the U.S. Coast Guard (“USCG”) and the Bureau of Safety and Environmental Enforcement (“BSEE”).</p> <p>Significant Issues – With respect to an EIS, issues are points of discussion, debate, or dispute with respect to the environmental impacts of the proposed action. Issues may be determined to be significant based on the extent, duration, or magnitude of the environmental effect. Significant issues focus the environmental analyses in the EIS on those aspects of the project that are of the greatest concern to regulatory agencies or the public or that have the most potential for producing adverse environmental effects. Alternatives to the proposed action or specific mitigation measures are developed in response to significant issues. By associating measures with individual issues, the public and decision-makers are better able to differentiate among different alternatives in terms of environmental impacts. The significant issues based on public, tribal, and agency comments made during the scoping process should be summarized in this section. The summary for each issue should describe the measures to be used to assess each of the issues across alternatives at the end of each item.</p> <p>Agency Responsibilities, Approvals and Compliance - This section typically describes the primary roles of each agency involved in developing the EIS.</p> <p>Information on Scoping and Public Involvement as well as government-to-government consultations with federally recognized tribes and consultations with native corporations are also included in Chapter 1.</p> <p>The Preliminary Draft EIS (“PDEIS”) should be revised to include these sections and to address our previous comments and comments provided below. The revised EIS</p>	<p>Comment noted. A certain level of technical language is necessary to describe the various authorities under which the project requires review.</p> <p>Comment noted. The format of the document follows the recommended format in the 33 CFR 325 Appendix B. Information that is not included in Chapter 1, but is necessary to the analysis, is provided in subsequent chapters of the draft EIS.</p> <p>Language was added to Chapter 1 to clarify.</p> <p>Comment noted. Issues raised during scoping are identified throughout the draft EIS.</p> <p>Comment noted, language was added to Chapter 1 referencing Chapter 6 – information on consultation. Appendices A and E provide additional information on scoping and agency authorities.</p>

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			should then be provided to the cooperating agencies for review as an Administrative Review DEIS prior to publication and release of a DEIS for public review and comment.	
Nondalton Tribal Council		1.2 APPLICATION DESCRIPTION	<p>A two-paragraph description of the application is insufficient for a project of this size. This section should be significantly expanded with maps, figures, and a more detailed description of each major project element. Portions of the Project Description with accompanying figures that was provided as Attachment D to the permit application would be appropriate for this purpose. As a public review EIS for a very significant project, the public should have available to it up front a complete and clear description of the entire project, without having to search through attachments and appendices to learn what the project consists of.</p> <p>This section mentions that the project application is provided in Appendix N, including an updated version of the applicant's preferred alternative; however, Appendix N was not made available for the cooperating agencies to review. This piecemeal distribution of the PDEIS and attachments significantly hinders the ability to meaningfully comment on the PDEIS document, since it is unknown what aspects of the proposed project has been changed or updated since the permit application was submitted in late December 2017, nearly 11 months ago.</p>	<p>Chapter 2 describes the proposed project and Appendix N provides additional detail. The updated application and project descriptions were posted on the pebbleprojecteis.com website as they were received from the applicant.</p> <p>Cooperating agencies were notified of changes to the proposal in May and October 2018.</p>
Nondalton Tribal Council		1.3 FEDERAL DECISIONS TO BE MADE	<p>According to this Section 1.3, “DA <i>authorization is required for the proposed permanent discharges of dredged or fill material into XX acres and temporary discharge of fill into XX acres of WOUS (actual acreage to be inserted prior to DEIS) associated with the construction of the mine and associated roads, port, and natural gas pipeline in wetlands and other WOUS under Section 404 of the CWA.” Omitting this critical information and providing blank placeholders for areas permanently damaged by dredging and filling is inappropriate. The PDEIS should have included the best available current information in this instance and throughout the PDEIS with respect to other critical metrics, figures, and tables. The information that is not included throughout the PDEIS prevents reviewers from providing both meaningful and substantive comments. Similarly, the lack of availability of documents that are referenced in this PDEIS are apparently the basis on which the PDEIS is based; however, most of these documents have not been made available to reviewers for the cooperating agencies, and this prevents reviewers from providing meaningful and substantive comments. To ensure informed and substantive public comment, the USACE must ensure that when the DEIS is released, a website has been established that contains all the supporting documentation and information on which the DEIS relies. Additionally, the completeness of this essential information must be confirmed before the DEIS is released for public comment.</i></p> <p>This Section 1.3 or Section 1.4 should identify whether there are independent public review processes and opportunities for comment associated with the USCG and BSEE decisions.</p> <p>While these may be the only other federal agencies with direct permitting authority, there are requirements for consultation with other federal agencies (e.g., natural resource trustees) and state agencies, as well as consultation with tribal governments. State and borough agencies also have a permitting role with respect to the project. These processes and their relationship to the federal permitting process must also be described.</p>	<p>Comment noted. The acreage information that was omitted from Chapter 1 was reported in Chapter 4 and updated in the dEIS.</p> <p>Supporting reports and information have been made available in real time on pebbleprojecteis.com.</p> <p>Comment noted.</p> <p>Comment noted. Chapter 6 and Appendix E provides information on consultation and other federal, state, and local authorities.</p>

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Nondalton Tribal Council		1.4 ENVIRONMENTAL ANALYSIS	<p>The USACE is supposed to develop a range of alternatives to address major issues. NEPA requires the agency to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources” [42 U.S.C. § 4332(E); 40 CFR § 1508.9(b)]. The USACE must “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action [City of Tenakee Springs v. Clough, 915 F.2d 1308, 1310 (9th Cir. 1990)]. Indeed, NEPA’s implementing regulations recognize that the consideration of alternatives is “the heart of the environmental impact statement” [40 CFR 1502.14, quoted in Alaska Wilderness Recreation and Tourism Association v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995)]. In this case, as identified in our comments on Chapter 2 of the PDEIS, the USACE fails to meet this requirement.</p> <p>With a project of this magnitude, intensity, and potential for adverse environmental impacts, it is unclear that it can be implemented in a manner that avoids the potential for substantial environmental harm. It is also unclear whether the project elements identified can be mitigated in any reasonable manner. This section must be clearer about whether and under what circumstances the environmental analysis could result in a decision that the project would not be permitted. Currently, it reads as though one of the action alternatives would need to be selected, i.e., that the agencies’ responsibility is to identify “the least environmentally damaging practicable alternative.” Yet, it may be the case that the only “practicable means to avoid or minimize environmental harm” is to not permit the project. This section needs to be clearer about whether this falls within the scope of the federal agencies’ decision authority.</p>	Comment noted. The language in Chapter 2.2.1 was edited to clarify how the no action alternative would be selected.
Nondalton Tribal Council		1.5 PURPOSE AND NEED	<p>According to this Section 1.5, “<i>PLP’s (the applicant) stated need for the proposed project is, “to meet the increasing global demand for commodities such as copper, gold, and molybdenum.”</i>” It goes on to say: “<i>Any overall purpose must seem feasible as well as take into account the need for the type of proposed development. The USACE has determined that the overall project purpose is to develop and operate a copper, gold, and molybdenum mine in Alaska in order to meet current and future demand.</i>”</p> <p>This section fails to take into account the need for the type of proposed development. This section demonstrates neither a need for the project in Alaska nor in the United States. The PDEIS must note that the primary commodities to be produced by the project (copper, gold, and molybdenum) are not considered by the United States to be “critical minerals.” Pursuant to Executive Order 13817 dated December 20, 2017, “A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals,” the Secretary of the Interior on May 18, 2018, presented a final list of 35 mineral commodities deemed critical under the definition provided in the Executive Order.¹ The final list was prefaced by an explanation of critical minerals as follows:</p> <p>“The United States is heavily reliant on imports of certain mineral commodities that are vital to the Nation’s security and economic prosperity. This dependency of the United States on foreign sources creates a strategic vulnerability for both its economy and military to adverse foreign government action, natural disaster, and other events that can disrupt supply of these key minerals.”</p> <p>The Final List of Critical Minerals includes: Aluminum (bauxite), antimony, arsenic, barite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium,</p>	Comment noted. Language in Chapter 1 was revised to further support the determination of the overall purpose.

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			<p>graphite (natural), hafnium, helium, indium, lithium, magnesium, manganese, niobium, platinum group metals, potash, the rare earth elements group, rhenium, rubidium, scandium, strontium, tantalum, tellurium, tin, titanium, tungsten, uranium, vanadium, and zirconium. The United States is currently, and for the foreseeable future, a global supplier of copper, gold, and molybdenum as the country's current and future planned production exceeds demand, and domestic production is diverse. With respect to the USACE's determined overall project purpose, there is no apparent need in the United States, including Alaska, for an additional copper, gold, or molybdenum mine to meet current or future domestic demand. It is not the role or responsibility of the USACE to address global demand or to speculate on future global demand for these metals. The USACE must address this potential conflict in the DEIS and consider whether in fact there is a legitimate need for the proposed project that outweighs the damage to and loss of natural resources that the proposed project would cause.</p> <p>Because the need for this project is predicated on global supply and demand, and because the potential environmental impacts are great, a better case needs to be made that this mine is necessary to meet global requirements for these minerals. In the context of an EIS, simply discussing whether there is adequate supply of such metals is insufficient; the EIS also needs to address whether there are other practicable alternatives for meeting this apparent demand that would be less environmentally damaging.</p> <p>The reasons for and implications of the USACE's change in the wording of the project's purpose and need are unclear; however, the wording appears designed to inappropriately limit the scope of potential alternatives for review. The purpose of the project cannot simply be to "develop and operate a copper, gold, and molybdenum mine in Alaska," since there is no particular need to have such a mine specifically located in Alaska, and project alternatives are not discussed that are sited elsewhere in Alaska. The addition of "in Alaska" implies that the only practicable alternatives that would be considered are those located in Alaska. However, since the demand being addressed is both national and global, according to the applicant's own description, other alternatives both nationally and globally for meeting this demand must be considered, including projects already under development or alternatives to the use of these metals.</p> <p>Consideration of global purpose and need is particularly appropriate in light of the natural resources and human resources that will potentially be affected. Bristol Bay has globally important fisheries, and there are several marine and wildlife reserves in the proposed project area that contain irreplaceable resources. Alaska Native cultural ways of life are intrinsically place-based and, once adversely impacted or destroyed, these cultural lifeways are also irreplaceable. Mining projects are an intense land use and are intrinsically destructive; therefore, the proposed project in the proposed location will cause serious multi-generational adverse impacts on Alaska Native and rural Alaskan communities that cannot be mitigated or restored. Avoidance of these impacts through careful consideration of the need for this project is essential.</p> <p>¹Federal Register / Vol. 83, No. 97 / Friday, May 18, 2018 / Notices, p. 23295-23296. https://www.federalregister.gov/documents/2018/05/18/2018-10667/final-list-of-critical-minerals-2018</p>	<p>The USACE's decision to issue a permit will be based upon an evaluation of the probable impacts of the activity and its intended use on the public interest. Evaluation of the probable impact involves a careful weighing of the benefits and the reasonably foreseeable detriments. This decision will be documented in the Record of Decision.</p>