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TRIBES OF BRISTOL BAY

 **BRISTOL BAY NATIVE ASSOCIATION**

March 9, 2018

Shane McCoy
U.S. Army Corps of Engineers – Alaska District
Anchorage Field Office, Regulatory Division (1145) CEPOA-RD
1600 A Street, Suite 110
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**Re: Proposed Pebble Mine Project (POA-2017-271) – Permit Application and NEPA
Scoping Comment Period and Hearing Locations**

Dear Mr. McCoy,

Our organizations collectively represent the interests of fifteen Tribal governments and nine Alaska Native village corporations throughout the Bristol Bay region of southwest Alaska, as well as the interests of Bristol Bay Native Corporation's 10,300 shareholders of Yup'ik, Denai'na, and Alutiq heritage with ancestral ties to Bristol Bay. In addition, Bristol Bay Economic Development Corporation represents the economic interests and opportunities for the residents of 17-member communities throughout the region. Together, our organizations represent the economic, cultural, and social foundations of Bristol Bay, Alaska, home of the world's most prolific wild sockeye salmon fishery. We write to request that the U.S. Army Corps of Engineers (the Corps) not initiate a National Environmental Policy Act (NEPA) process until the Pebble Limited Partnership (PLP) supplies basic environmental and economic information about its proposal and, when the Corps does initiate a NEPA process, that it do so using a robust process designed to maximize transparency and public participation.

Our organizations are greatly concerned about the proposed Pebble mine project, one of the most controversial projects in the history of Alaska, going through what appears to be a very aggressive permitting timeline and without sufficient baseline data and project economics information necessary to undertake the permitting process. In addition to the well-known risks presented from the size of the Pebble deposit, its location at the headwaters of Bristol Bay, and the low-quality potentially acid-generating ore type, PLP is proposing entirely new components to the project in its Clean Water Act (CWA) permit application. These include a 188-mile long natural gas pipeline, a causeway, jetty, and dock extending 4.2 miles into Cook Inlet waters, use of an ice-breaking barge to make a daily round-trip crossing of Lake Iliamna, a 230-megawatt power plant, and the construction of more than 80 miles of private roads that will have more than 200 stream

crossings and at least eight bridges. Many of these components lack any of the necessary baseline studies to inform the NEPA and CWA 404 permitting process. In addition, PLP has not provided information about the economic viability of its proposal. Consideration of PLP's proposal and meaningful NEPA review cannot occur without these missing elements.

We write with these specific requests: (1) the Corps not initiate any NEPA process until PLP presents sufficient environmental baseline and economic data; (2) when it comes time to start a NEPA scoping process, the Corps include a minimum 120-day comment period, with public hearings and necessary translation services throughout Bristol Bay, the Kenai Peninsula, Anchorage, and the Pacific Northwest; and (3) the Corps provide full and broad-scope participation by federal and state resource agencies and tribal government entities as cooperating agencies. We provide detailed justification and recommendations on these requests, including providing recommended public hearing locations for Bristol Bay, in the attached document.

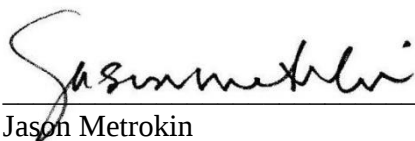
We do not make these requests in a vacuum. It is our understanding that PLP believes the Corps will issue its public notice of NEPA scoping in the coming weeks and it will include a scoping comment period of 60 days or fewer. If either of these are true, this is unacceptable for the largest mine, by far, ever proposed in Alaska, the largest development project ever proposed for Southwest Alaska, and a project that will have adverse impacts to the headwaters of the world's largest wild sockeye salmon fishery.

Any NEPA analysis of this project should not be rushed. The Corps should not begin a NEPA scoping process until PLP conducts and submits baseline data for the project's components, as it is difficult if not impossible for the public to meaningfully comment on scoping without at least a general understanding of its full range of potential impacts. Further, understanding the proposal's economics is important to inform any scoping-stage input on impacts and reasonable alternatives, and would protect against this entire effort being a colossal waste of government and public time and resources. Nor should the process reduce or marginalize the ability for the public, tribes, and cooperating agencies to meaningfully participate. We are discouraged that, to-date, the Corps has not extended cooperating agency invitations to the region's tribal governments and the Corps has not initiated consultation with any of Bristol Bay's Alaska Native Corporations.

We urge the Corps to take the time necessary to properly and adequately assess the project and its impacts and to conduct an open and robust permitting process. As the Governor of Alaska and our congressional delegation have all stated, Pebble is a unique project that must undergo the most extensive and fair, rigorous, and transparent permitting processes due to its risks. And as Administrator Pruitt noted, Pebble's "permit application must clear a high bar, because EPA believes the risk to Bristol Bay may be unacceptable." We agree. Bristol Bay's fisheries and fisheries-based economy and way-of-life demand an extensive, fair, rigorous, and transparent review.

We thank you for your consideration of our requests.

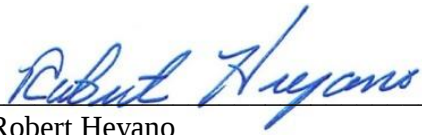
Sincerely,



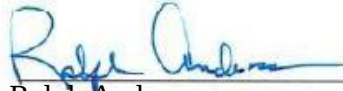
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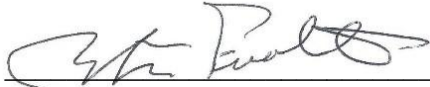
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Enclosure

Cc:

Honorable Bill Walker, *Governor of Alaska*
Honorable Byron Mallott, *Lt. Governor of Alaska*
Honorable Lisa Murkowski, *U.S. Senate*
Honorable Dan Sullivan, *U.S. Senate*
Honorable Don Young, *U.S. House of Representatives*
Honorable Maria Cantwell, *U.S. Senate*
Honorable Pete Kelly, *Alaska State Senate President*
Honorable Bryce Edgmon, *Alaska Speaker of the House*
Scott Pruitt, *EPA Administrator*
Chris Hladick, *EPA Region 10 Administrator*
Lee Forsgren, *EPA Deputy Assistant Administrator, Office of Water*
Todd T. Semonite, *U.S. Army Corps of Engr's, Commanding General & Chief of Engr's Lt. General*
Michael Brooks, *U.S. Army Corps of Engr's Alaska District Commander Col.*
David S. Hobbie, *U.S. Army Corps of Engr's Alaska District, Chief of Regulatory Division*
Ryan Fischer, *Principle Deputy Assistant Secretary of the Army*
Christopher Page, *Assistant to the Secretary for Env't, Tribal, and Regulatory Affairs*
Andy Mack, *Commissioner, Alaska Department of Natural Resources*
Larry Hartig, *Commissioner, Alaska Department of Environmental Conservation*
Sam Cotten, *Commissioner, Alaska Department of Fish & Game*
Chris Prandoni, *Associate Director for Natural Resources, Council on Environmental Quality*

Attachment to Bristol Bay leaders March 9, 2018 letter to the U.S. Army Corps of Engineers concerning the Pebble Permit Application and NEPA Scoping Comment Period and Hearing Locations

This document provides our detailed justifications and recommendations to the U.S. Army Corps of Engineers (the Corps) related to its National Environmental Policy Act (NEPA) scoping process for the proposed Pebble mine project (POA-2017-271), in particular regarding our requests that the Corps (1) suspend its NEPA process until the Pebble Limited Partnership (PLP) presents sufficient environmental baseline and economic data about its proposal so as to reasonably inform the NEPA process; (2) when the time is right, utilize a robust NEPA scoping public comment period of at least 120-days and public hearings with necessary translation services throughout Bristol Bay as well as in the Kenai Peninsula, Anchorage, and the Pacific Northwest; and (3) seek and promote full and broad-scope participation by federal and state resource agencies and tribal government entities as cooperating agencies, and undergo comprehensive formal consultation with appropriate entities, including relevant Alaska Native Corporations.

I. Request that the Corps Suspend the Permitting Process for the Proposed Pebble Mine Project

The Council on Environmental Quality (CEQ) defines scoping as an “early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.”¹ The scoping process provides an opportunity for people potentially affected by the project to express their views and concerns and to contribute to the completeness of the Environmental Impact Statement (EIS).

The Corps and CEQ regulations for NEPA in general and the scoping process in particular counsel that the Corps obtain information related to a project’s baseline studies and economic viability prior to undertaking the scoping process. Scoping “is the key to preparing a concise EIS and clarifying the significant issues to be analyzed in depth,”² and the Corps must analyze project alternatives with respect to both environmental impact and economics.³

As an initial matter, it is our understanding that no new baseline documents or data were submitted with PLP’s application to the Corps in December 2017. The only publicly available baseline documents compiled by PLP, therefore, are now more than a decade old, with data collected from 2004 to 2008.⁴ And those baseline studies failed to include newly proposed project components such as the transportation corridor, Iliamna Lake, and the proposed port site. The government and public’s ability to understand and consider this project are fundamentally

¹ 40 C.F.R. § 1501.7.

² 33 C.F.R. § 230.12. *See also* 40 C.F.R. § 1501.7(a)(2).

³ *See* 40 C.F.R. § 230.10(a) (environmental impact), 40 C.F.R. § 230.10(a)(2) (alternative practicability evaluated based on, among other things, cost). “Inaccurate economic information may defeat the purpose of an EIS by ‘impairing the agency’s consideration of the adverse environmental effects’ and by ‘skewing the public’s evaluation’ of the proposed agency action.” *NRDC v. U.S. Forest Serv.*, 421 F.3d 797, 811 (9th Cir. 2005) (agency misread market demand report before opening area to timber sales) (quoting *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 446-48 (4th Cir. 1996)). *See also Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 235 F.Supp.2d 1143, 1157 (D. Wash. 2002) (“An EIS that relies upon misleading economic information may violate NEPA if the errors subvert NEPA’s purpose of providing decisionmakers and the public an accurate assessment upon which to evaluate the proposed project.”).

⁴ The Pebble Environmental Baseline Documents (2004-2008) are available at <https://pebbleresearch.com/>.

hindered by the lack of such data, and the Corps and CEQ regulations support a Corps decision to wait until this information is available before undertaking the NEPA process. We note that for other hardrock mine projects in Alaska, such as the Donlin Gold Project, applicants provide detailed and current baseline data prior to the NEPA scoping process. Indeed, for the Donlin Gold Project the applicant submitted a voluminous permit application containing baseline information as well as a water resources management plan, an integrated waste management plan, a monitoring plan, a waste rock management plan, and a natural gas pipeline plan of development with its CWA permit application, all documents that were available to the public to assess during the scoping comment period.⁵ To-date, no such voluminous permit application and baseline information exists for the public to review for the proposed Pebble mine project.

With respect to project economics, the Corps utilizes Alternatives Screening Criteria to determine what alternatives will be reviewed under both the reasonable range of alternatives under NEPA and the alternatives review under the 404(b)(1) Guidelines of the CWA. It is therefore imperative that the applicant, prior to the outset of any permit processing and NEPA analysis, provide a feasibility assessment and underlying economic information that supports the applicant's assertions regarding the viability of the project. Without an economic feasibility assessment and underlying economic data that supports the applicant's assertions regarding the viability of the project, the public is simply unable to meaningfully comment about the appropriate scope of impacts or alternatives review.

Remarkably, PLP's parent company itself admits that it has not assessed the economics of its proposal, and asks the Corps to undertake, and the public to engage in, a permitting process that may have no basis in economic reality:

Northern Dynasty completed a Preliminary Assessment on the Pebble Project in February 2011 and, as noted above, since that time after considering stakeholder feedback, the Pebble Partnership has submitted an application for a CWA 404 permit for the Pebble Project on the basis of a substantially smaller mine facility footprint and with other material revisions As a result, the economic analysis included in the 2011 Preliminary Assessment is considered by Northern Dynasty to be out of date such that it can no longer be relied upon. In light of the foregoing, the Pebble Project is no longer an advanced property for the purposes of NI 43-101, as the potential economic viability of the Pebble Project is not currently supported by a preliminary economic assessment, pre-feasibility study or feasibility study. The EIS process currently underway by the USACE will consider alternative scenarios with respect to a number of aspects of the proposed project. Accordingly, the Company has not completed a current comprehensive economic analysis of the Pebble Project but anticipates that having a complete understanding of, and being able to properly assess all of the proposed alternatives that the USACE will be considering as part of the scoping process conducted during the

⁵ See, U.S. Army Corps of Engineers Alaska District, Donlin Gold Project Environmental Impact Statement Final Scoping Report, Aug. 2013, Appendix A at p. 99, *available at* <http://www.donlingoldeis.com/BackgroundDocuments.aspx>. In addition, Donlin's economic feasibility study, also available to the public prior to NEPA scoping, utilized Donlin's environmental baseline studies and data to inform its economic assessment of the project. See, NovaGold Technical Report on Second Updated Feasibility Study (Nov. 18, 2011), *available at* http://www.novagold.com/resources/projects/technical_report_donlin_gold.pdf.

initial phase of the EIS will provide additional clarity with respect to the project to be evaluated so that an economic analysis can be completed.⁶

PLP and its parent company thus ask the government bear the burden of crafting and implementing a permitting process on a project that may not be economic, and further expects the public to engage in good faith in such a farcical process. Such a process has a high chance of being a colossal waste of government and public time and resources, all because the mining company will not update its economic analysis.

Furthermore, project changes mid-permitting due to economic considerations will impact and undermine the purpose and need statement, analysis of direct, indirect, and cumulative impacts, and any alternatives analyses developed to date. To be sure, projects reasonably can evolve during a permitting process, but to start without any economic feasibility studies conducted on the project proposal would undermine the public's involvement and input during the scoping process by not allowing for informed input on a real proposal and potential alternatives to that real proposal.

The Corps should not begin scoping until PLP presents environmental baseline data and information about its proposal's economic feasibility to reasonably inform the NEPA process.

II. Guidance from the Corps' Past Project Scoping Examples

The Corps Alaska District is currently the lead NEPA permitting agency for three ongoing permitting processes – the Alaska Stand Alone Pipeline, the Nanashuk Project, and the Donlin Gold Project. For these proposed projects, NEPA scoping comment periods ranged between 75 and 106 days long with the Corps holding upwards of 16 public hearings during scoping periods.⁷ Moreover, preceding scoping for these projects, the Corps invited numerous tribal, local, state, and federal entities to participate *fully* as cooperating agencies on *myriad subject matters*. Cooperating agency entities included U.S. Bureau of Land Management (BLM), U.S. National Park Service (NPS), U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA), the Alaska Department of Natural Resources (DNR) State Pipeline Coordinator's Office (SPCO), Alaska Department of Fish and Game (AKDF&G), Alaska Department of Health and Human Services (AKHHS), and Alaska Department of Environmental Conservation (AKDEC), North Slope Borough, the tribal government of Nuiqsut, the Aniak/Kuskokwim Watershed Council, and the federally recognized Tribal governments of Crooked Creek, Chauthbaluk, Knik, and Napaimute.⁸

⁶ Northern Dynasty Minerals Ltd., 2018 Technical Report on the Pebble Project, Southwest Alaska, USA (effective date Dec. 22, 2017), pp. 1-2 *available at*

<https://www.sedar.com/DisplayCompanyDocuments.do?lang=EN&issuerNo=00003151> (date of filing Feb. 22, 2018), *see also* <https://www.sec.gov/Archives/edgar/data/1164771/000149315218002671/ex99-1.htm>.

⁷ In 2014, the Corps provided a 75-day public scoping period for the Alaska Stand Alone Pipeline supplemental EIS and held 16 scoping hearings across the State. *See* U.S. Army Corps of Engineers Alaska District Alaska Stand-Alone Pipeline Project SEIS Public Scoping Report, Nov. 2014, at 12, <http://www.asapeis.com/meetings.html>. In 2016, the Corps provided a 103-day scoping comment period and held 4 hearings for the Nanashuk project EIS. — an oil and gas project in the Colville River delta on the North Slope. *See*, U.S. Army Corps of Engineers Alaska District – Special Public Notice – Scoping Comment Period Extension, April 29, 2016, http://www.nanashukeis.com/projects/nanashukeis/documents/2016_04_29_special_public_notice_extension.pdf.

⁸ *See*, Alaska Stand Alone Pipeline SEIS, <http://www.asapeis.com/index.html> and U.S. Army Corps of Engineers Alaska District – Special Public Notice, Notice of Intent to Prepare an Environmental Impact Statement, Feb. 19,

A particularly useful comparison (due to the fact that both are hardrock mines) is that of the Donlin Gold Project, located in Kuskokwim drainage of southwest Alaska. In the years prior to initiating the federal permitting process, the owner of the Donlin Gold Project released two feasibility studies detailing the project's economic viability.⁹ Then, in late 2012, the Corps initiated the scoping stage for the Donlin Gold Project EIS. The Corps set out a 106-day scoping period, running from December of 2012 through March of 2013.¹⁰ In addition to issuing the public notice announcing its intent to prepare an EIS, the Corps prepared a project newsletter that it sent to a mailing list of 1,000 stakeholders and 7,450 mailing addresses, including all mailbox holders in the Yukon-Kuskokwim Delta communities.¹¹ The newsletter explained the EIS process, provided a summary of the proposed project and noted how the public could participate in developing the EIS. The Corps utilized several techniques to notify the public of the proposed project EIS and public comment opportunities including advertisements in regional newspapers, local radio advertisements, and notices sent by press release and mail.¹² Public scoping meetings were held in thirteen communities throughout the EIS analysis area plus Anchorage during the scoping period.¹³ The scoping meetings also provided the public with the opportunity to participate via teleconference.¹⁴ For villages where there was no scoping meeting, the *applicant* provided travel support. Overall, representatives from 21 neighboring villages attended scoping meetings in the host communities, for a total of 35 villages participating in person.¹⁵

At the outset of the Donlin EIS, the Corps began informal consultation with agencies regarding the permits that may be required to implement the proposed project. Those agencies included: BLM, FWS, PHMSA, EPA, DNR, Alaska Department of Fish and Game (AKDF&G), Alaska Department of Health and Human Services (AKHHS), and Alaska Department of Environmental Conservation (AKDEC).¹⁶ Of these agencies, the BLM, FWS, PHMSA, and DNR became cooperating agencies, with no participation limits.¹⁷ In addition to the governmental agencies, the Aniak/Kuskokwim Watershed Council and the federally recognized Tribal governments of Crooked Creek, Chauthbaluk, Knik and Napaimute served as cooperating agencies and provided valuable technical expertise and input on a variety of topics to be addressed in the draft EIS.¹⁸

2016, http://www.nanushukeis.com/projects/nanushukeis/documents/noi_to_prepare_eis.pdf and see Donlin Draft EIS Executive Summary at ES-50, <http://www.donlingoldeis.com/Documents/2%20Executive%20Summary.pdf>.

⁹ See, NovaGold Technical Report on Second Updated Feasibility Study (Nov. 18, 2011), available at http://www.novagold.com/resources/projects/technical_report_donlin_gold.pdf (updating the February 2009 first feasibility study).

¹⁰ Donlin Scoping Report at 5.

¹¹ See Donlin Draft EIS Executive Summary at ES-50, available at <http://www.donlingoldeis.com/Documents/2%20Executive%20Summary.pdf>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ U.S. Army Corps of Engineers Alaska District, Donlin Gold Project Environmental Impact Statement Final Scoping Report, Aug. 2013, at 6. In the Donlin Scoping Report, the Corps noted that “[c]ooperating agencies are those that have jurisdiction by law or special expertise, including tribes who request cooperating agency status.” *Id.*

¹⁷ See Donlin Draft EIS Executive Summary at 1, available at <http://www.donlingoldeis.com/Documents/2%20Executive%20Summary.pdf>.

¹⁸ *Id.*

These examples all entail robust and model NEPA scoping processes for large projects in Alaska – an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. Given the risk and intense controversy surrounding the proposed Pebble mine, in developing its methods of public engagement for scoping on the proposed Pebble mine project, the Corps should look to these examples as the *minimum* required for its Pebble permitting work.

III. Requested Public Engagement in the NEPA and Clean Water Act 404 Permitting Scoping Process

Given the magnitude of potential impacts and significant controversy related to the proposed Pebble mine, we collectively urge the Corps and its third-party contractor, AECOM, to proceed with robust public engagement. NEPA mandates certain procedures, which ensures informed agency decision-making and meaningful public participation.¹⁹

In order to ensure that there is meaningful public participation, the Corps should take every step possible to provide scoping meetings throughout the Bristol Bay region. As was the case in the Donlin scoping period, if meetings are not held in particular villages, the Corps and the applicant should take all possible steps to ensure that those from non-host locations are able to participate. Such steps should include providing travel support, as Barrick Gold did in the Donlin NEPA scoping process.

Further, the Corps and AECOM should ensure that all scoping meetings include translators and should provide translated copies of all written materials distributed at scoping meetings. Executive Order 12898 requires agencies to “translate crucial public documents, notices and hearings, relating to human health or the environment for limited English speaking populations.”²⁰ The Bureau of the Census recognizes the Dillingham Census Area, which encompasses the entirety of the Bristol Bay region, as having more than 5 percent of voting-age citizens belonging to single language minority (Alaska Native – Yup’ik) and are therefore classified as having limited English proficiency (LEP).²¹ Moreover, it is imperative that the Corps and AECOM provide information at the scoping meetings in a manner that is easily understood by the public and devoid of acronyms and procedural/administrative terminology not used by the general public. Likewise, we request that, like for the Donlin Gold Project scoping process, the translator at public hearings make efforts to use specialized vocabulary that has been established to help communicate about technical mining issues in Yup’ik.²²

We are formally requesting the Corps hold public scoping meetings in, but not limited to, the following list of Bristol Bay communities potentially impacted by the proposed Pebble mine:

- Dillingham
- Kokhanok
- New Stuyahok
- Koliganek
- Igiugig
- Togiak
- Pilot Point or Point Heiden
- Chignik, Chignik Lake, or Chignik Lagoon

¹⁹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348–49 (1989); *Oregon Nat. Desert Ass’n v. Zinke*, 250 F. Supp. 3d 773, 774 (D. Or. 2017).

²⁰ Executive Order No. 12898, 59 Fed. Reg. at 7630 (Feb. 16, 1994) (Section 5-5).

²¹ Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 63,602 (Oct. 13, 2011).

²² U.S. Army Corps of Engineers Alaska District, Donlin Gold Project Environmental Impact Statement Final Scoping Report, Aug. 2013, at 8.

- Iliamna
- Newhalen
- Nondalton
- Naknek
- King Salmon
- Ekwok
- Manokotak
- Egegik
- Levelock
- Pedro Bay

In addition to holding scoping meetings throughout the Bristol Bay region,²³ the Corps should ensure that scoping meetings are held where stakeholders, like commercial fisherman, sport fisherman, and businesses that rely upon Bristol Bay salmon or other resources potentially impacted by the proposed mine, including its transportation corridor, are located. Such scoping meetings should include meetings in the Pacific Northwest, Anchorage and throughout the Kenai Peninsula.

Finally, to ensure that there is meaningful public participation, which will serve the NEPA purpose of informing the decision-makers, the Corps should provide no less than 120 days for submission of scoping comments. Such a scoping period would be similar to the Donlin scoping period, which, again, provides the minimum standard that the Corps should follow. This is a reasonable request given the nature and concerns regarding the proposed mine. Moreover, Bristol Bay residents are busy throughout the year with subsistence and commercial fishing seasons, the lead-up preparatory work necessary to have successful subsistence and commercial seasons, and other economic and personal pursuits. A lengthy comment period is necessary to provide Bay residents a reasonable opportunity to participate in the process.

IV. The Corps Should Include Agencies With Special Expertise and Interested Tribal Governments as Cooperating Agencies.

NEPA mandates that Federal agencies responsible for preparing NEPA analyses and documentation do so in cooperation with other governmental agencies.²⁴ The Council on Environmental Quality (CEQ) Regulations specify that a lead agency consider establishing cooperating agency status to Tribes and State or local agencies which have jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal for legislation or other federal action.²⁵ To have jurisdiction by law, agencies must have “authority to approve, veto, or finance all or part of a proposal.”²⁶ An agency is considered to have special expertise when it has a related “statutory responsibility, agency mission, or . . . program experience.”²⁷

CEQ has long recognized the important role that cooperating agencies play in the decision making process. After addressing these relationships in the CEQ Regulations and in the guidance for implementing them,²⁸ CEQ provided further clarification on the roles and responsibilities of lead and cooperating agencies in the “Forty Most Asked Questions

²³ In addition to the proposed community meetings, we fully expect the Corps will honor the government-to-government consultation requests submitted by the region’s federally recognized Tribes, and will schedule such consultations during or before the proposed scoping period.

²⁴ 42 U.S.C. §§ 4331(a), 4332(2).

²⁵ 40 C.F.R. §§ 1501.6, 1508.5.

²⁶ 40 C.F.R. § 1508.15.

²⁷ 40 C.F.R. § 1508.26.

²⁸ See 40 C.F.R. §§ 1500-1508; Council on Environmental Quality, “Agency Implementing Procedures Under CEQ’s NEPA Regulations,” January 19, 1979.

Concerning CEQ's NEPA Regulations.”²⁹ Subsequently, the importance of designating non-Federal agencies as cooperating agencies was emphasized in CEQ Memoranda to Federal Departments and Agencies in 1999 and 2002.³⁰ These memoranda urge agencies to more actively solicit the participation of potential cooperating agencies in conducting NEPA reviews.³¹

In 2016, CEQ identified several benefits of cooperating agency participation, including: “disclosure of relevant information early in the analytical process; receipt of technical expertise and staff support; avoidance of duplicative reviews by Tribal, State, and local entities; and establishment of a mechanism for addressing inter- and intra-governmental issues and enhancing inter- and intra-agency and governmental trust.”³²

The importance of including agencies and tribal governments with special expertise in developing NEPA documents and analyzing a project's impacts cannot be understated. Agencies and Tribes have special expertise regarding impacts to natural resources including fisheries, wildlife, wetlands, water, air, as well as socio- and environmental impacts to potentially affected communities. This expertise should be welcomed in the NEPA process, not excluded. Thus, we request the Corps extend cooperating agency invitations to interested tribal governments, as well as local, state, and federal agencies with special expertise and involve cooperating agencies on the full scope of the proposed Pebble mine project.

²⁹ Council on Environmental Quality, “Forty Most Asked Questions Concerning CEQ's NEPA Regulations,” March 16, 1981.

³⁰ Council on Environmental Quality, “Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of NEPA,” July 28, 1999 and Council on Environmental Quality, “Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act,” January 30, 2002.

³¹ Council on Environmental Quality, “Reporting Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act,” December 23, 2004.

³² Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies Re: Fourth Report on Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, Oct. 4, 2016, at 2, *available at* <https://ceq.doe.gov/docs/ceq-reports/Final-Cooperating-Agency-Report-Oct2016.pdf>.