



Enriching Our Native Way of Life

August 5, 2019

Submitted via Email to:

Shane McCoy
U.S. Army Corps of Engineers, Alaska District
P.O. Box 6898
JBER, AK 99506-0898
Shane.M.Mccoy@usace.army.mil
poaspecialprojects@usace.army.mil

Re: Bristol Bay Native Corporation Comment on National Historic Preservation Act Determination of Eligibility and Area of Potential Effect for Amakdedori Port, Proposed Pebble Mine Project (POA-2017-00271)

Dear Mr. McCoy:

This correspondence responds to your letter dated July 5, 2019 requesting Bristol Bay Native Corporation's (BBNC) comments on the U.S. Army Corps of Engineers' (the Corps) determinations under the National Historic Preservation Act (NHPA or the Act) related to cultural resources located at the proposed Pebble Mine Project's Amakdedori port site. Specifically, the Corps has requested comments on its determinations that cultural and historic resources discovered at the site are not eligible for listing in the National Register of Historic Places (NRHP) and on the report the Corps relies on to support its determinations.

First, BBNC continues to recommend that the Corps revisit its definition of area of potential effect (APE) to align with the legal requirements of NHPA. BBNC, local tribes, the Advisory Council on Historic Preservation (ACHP), and the State Historic Preservation Officer (SHPO) have all requested the Corps revise its APE to consider a broader array of direct and indirect impacts to historical and cultural resources. To date, the Corps has ignored these requests and continues to improperly limit the scope of its review contrary to the requirements of the Act.

Second, BBNC disagrees with the Corps' determination of eligibility (DOE) at Amakdedori and has significant concerns with the Corps' lack of efforts to identify cultural and historic resources at Amakdedori. The report relied on by the Corps—*Cultural Resources Investigation for the PLP-Amakdedori Port Project, Kenai Peninsula Borough, Alaska*, by HDR, Inc. (June 2019)—contains significant shortcomings due to the limited nature of field surveys and identification efforts. Once the Corps has properly redefined the APE to meet the requirements of the NHPA, the Corps must undertake additional field surveys and government-to-government consultations to inform additional identification efforts prior to making informed DOEs at Amakdedori.

And third, BBNC requests that the Corps closely consult with tribes to evaluate whether the Amakdedori village and surrounding resources associated with the cultural and traditional uses of the entire Amakdedori area is a Traditional Cultural Landscape eligible for listing on the National Register of Historic Places.

I. Area of Potential Effects

BBNC has previously submitted comments to the Corps regarding its inappropriate use of “permit area” to avoid its NHPA obligations and limit the geographic area potentially impacted by the proposed Pebble Mine Project.¹ The Corps has ignored our comments, as well as comments from tribes, ACHP, and Alaska SHPO that its use of “permit area” is inappropriate and contrary to law. Indeed, the Corps is now improperly relying on its “permit area” definition to avoid making determinations of eligibility at the Amakdedori site.²

As recently explained to the Corps by the Alaska SHPO: “Our office recommends revisiting the APE. A recent court case reaffirmed the Council’s interpretation of NHPA language that direct effects refer to causation not physicality. [...] Our office recommends that the geographic area considered for direct effects to be expanded to include the area that may directly experience visual, auditory, and other sensory effects, in addition to the area that will be physically impacted by the undertaking.”³

As discussed in Section II below, by continuing to limit the analysis to an improperly defined “permit area” rather than an APE defined as the NHPA regulations require, the Corps has improperly limited the survey and identification effort at the Amakdedori port site and is improperly avoiding its obligations to make determinations of eligibility for known sites in the area. The Corps must revisit its definition of APE for the entire proposed Pebble mine project and require the Pebble Limited Partnership (PLP) to conduct additional field verification and identification surveys once its definition of APE complies with the requirements of NHPA.

II. Amakdedori Port Site Survey Efforts and Determinations of Eligibility

BBNC has significant concerns with the Corps’ lack of efforts to identify cultural and historic resources at Amakdedori and disagrees with the Corps’ determination of eligibility (DOE) at Amakdedori for the newly-discovered archeological site (ILI-00295). In addition, the Corps has failed to provide any DOE for two other known sites within the project area – Amakdedori Village (ILI-00044) and *Agram* shipwreck (ILI-00291). As to these two other known sites, BBNC agrees with HDR that Amakdedori Village is eligible for listing on the NRHP and agrees with HDR that additional surveys should be conducted on the *Agram* shipwreck.

HDR Report and Amakdedori Port Site Survey Efforts

As an initial matter, the report relied on by the Corps (HDR Report)⁴ to support its DOE contains significant shortcomings due to the limited nature of field surveys and identification efforts. This report and a single field survey season (summer 2018) is the only field effort the Corps and PLP undertook to identify cultural and historic resources at Amakdedori. Indeed, as noted by the

¹ See letter from Daniel Cheyette, BBNC VP Lands and Natural Resources, to Shane McCoy, Program Mgr, U.S. Army Corps of Eng’rs (April 22, 2019).

² Letter from Shane McCoy, Program Mgr, U.S. Army Corps of Eng’rs, to Jason Metrokin, President & CEO, BBNC (July 5, 2019) (“ILI-00044, Amakdedori Village, is located outside the permit area.”).

³ Letter from Judith E Bittner, Alaska State Historic Preservation Officer, to Shane McCoy, Program Mgr, U.S. Army Corps of Eng’rs (July 26, 2019) (emphasis added).

⁴ *Cultural Resources Investigation for the PLP-Amakdedori Port Project, Kenai Peninsula Borough, Alaska*, by HDR, Inc. (June 2019) (hereinafter “HDR Report”).

Advisory Council on Historic Preservation: "aside from the small surveys near Amakdedori port, the complete Amakdedori port site and the transportation corridor have not been surveyed."⁵

The report itself admits to the lack of field surveys, concluding with recommendations that the Corps and PLP collect more field information due to project footprint changes post-dating the report and concerns of local tribes and residents:

The project area has expanded since the field survey discussed in this report occurred. As shown on Figure 1-2, the water extraction access site to Amakdedori Creek has not undergone an archaeological field survey. Due to the proximity of the location to ILI-00044 and the sensitive nature of the area, as described by residents of Kokhanok and Igiugig, it is recommended that an archaeological field survey be conducted at this location prior to ground disturbing activities.

Residents of Kokhanok and Igiugig have expressed concern over the status of Amakdedori as a historic site, subsistence use area, and as the location of known historic graves (USACE 2018a, 2018b). Although HDR archaeologists did not observe indications of grave sites during the present investigation, PLP should continue to work with local communities in an effort to determine the location of graves in order to ensure adequate site avoidance measures are implemented prior to ground disturbing activities.

Although a thorough survey strategy was employed, with a low probability for occurrence, there is always the possibility that unanticipated cultural resources will be encountered during ground-disturbing activities. In the event that buried cultural deposits (e.g., prehistoric stone tools, grinding stones, human remains or grave goods, historic glass, bottles, foundations, cellars, privy pits) are encountered during project activities, HDR recommends that PLP stop ground-disturbing activities at the discovery site until a professional archaeologist can determine the nature of the resources discovered.

The effect of limited field surveys means the delineation of historic properties in the area is incomplete and thus conclusions in the HDR Report regarding whether resources are directly impacted by the project footprint are premature. For example, the HDR Report notes that previous delineation of the Amakdedori Village site (ILI-00044) was improper and the 2018 field efforts delineated the site closer to the direct project footprint. But these field efforts remain incomplete. Resources associated with the Amakdedori Village site may extend further towards new and existing project footprint components and thus additional field verification is required.

Until additional field verification is undertaken, the Corps' conclusion that the village site is "located outside the permit area" is unfounded in both fact and law.⁶ Indeed, the Corps' use of "permit area" to avoid determinations of eligibility and assessing impacts to cultural and historic resources is contrary to the NHPA and its implementing regulations. Over the past year, the

⁵ Pebble Project Comment Response Matrix ACHP Comments on Section 3.7, comment no. 9, at page 2 (emphasis added).

⁶ Letter from Shane McCoy, Program Mgr, U.S. Army Corps of Eng'rs, to Jason Metrokin, President & CEO, BBNC (July 5, 2019) ("ILI-00044, Amakdedori Village, is located outside the permit area.").

Corps has been repeatedly informed by the ACHP and SHPO that its use of “permit area” is inappropriate and contrary to law. Instead, for NHPA Section 106 consultation, determinations of eligibility, and assessing impacts, the Corps must use “area of potential effect” which includes the whole undertaking – not just the permit area – and should encompass effects that are caused directly or indirectly by the project, including those that are reasonably foreseeable, farther removed in distance, or cumulative.⁷ The Amakdedori Village site (ILI-00044) is located 1,700 feet from the proposed Amakdedori port site⁸ and will be directly and indirectly impacted by routine port site operations, including a wide array of constant visual, auditory, and sensory impacts.

To summarize, the Corps should conduct government-to-government consultation and consider NHPA consulting parties’ input to inform additional field surveys throughout the Amakdedori area to identify additional cultural resources prior to moving to the next step in the NHPA consultation process. For example, Igiugig Village Council has specifically requested “On-the-ground investigation in closer transects than 15-meter distances to locate the known existing grave sites and other cultural properties.”⁹ The Corps cannot meaningfully consult with parties about the project’s proposed impacts to cultural resources without a complete and comprehensive identification effort.

Determinations of Eligibility from Army Corps and HDR Report

The Corps has specifically requested consulting parties’ comments on the agency’s determination that a newly-discovered archeological site at the Amakdedori port site (ILI-00295), proposed to be directly disturbed and bisected by the port access road, is not eligible for listing in the National Register of Historic Places (NRHP).¹⁰ In addition, the Corps has failed to make determinations of eligibility for two other known sites in the Amakdedori area – Amakdedori Village (ILI-00044) and the *Agram* shipwreck (ILI-00291), citing these as outside the “permit area” and requiring additional surveys.

BBNC disagrees with the Corps that the newly-discovered site (ILI-00295) is not eligible for listing in the NRHP. This site consists of two chipped stone artifacts located 60 meters apart, has not been completely surveyed, and has potential to yield “information important in prehistory or history,” and thus eligible for listing under Criteria D.¹¹ BBNC also requests this newly-discovered site and entire the Amakdedori Village and surrounding area be further assessed as part of the same, contiguous historic property (see section III below).

Furthermore, BBNC agrees with HDR that Amakdedori Village is eligible for listing in the NRHP. BBNC believes Amakdedori Village is eligible under multiple Criterion (A and D). Finally, BBNC agrees with HDR that additional surveys should be conducted on the *Agram* shipwreck to support a determination of eligibility.

The following table illustrates BBNC’s recommendations on the Corps’ DOEs at Amakdedori.

⁷ See 54 U.S.C. § 306.108 and 36 C.F.R. § 800.5(a)(1).

⁸ HDR Report, Figure 4-1, at page 27.

⁹ Letter from Igiugig Village Council, to Shane McCoy, Program Mgr, U.S. Army Corps of Eng’rs (June 30, 2019), at page 2.

¹⁰ Letter from Shane McCoy, Program Mgr, U.S. Army Corps of Eng’rs, to Jason Metrokin, President & CEO, BBNC (July 5, 2019) (“our determination that ILI-00295 is not eligible for listing in the National Register of Historic Places [...] we request your review and comment on this determination of eligibility.”).

¹¹ 36 C.F.R. § 60.4(d).



Site	Description	Location	Determination of Eligibility (DOE)	BBNC Recommended DOE
ILI-00044 Amakdedori Village	HDR Report: "a previously-recorded Eskimo or Alutiiq settlement on the north bank of Amakdedori Creek ... consisting of nine features comprised of 15 individual surface depressions ... noted by	USACE Letter: "Outside the permit area" HDR Report: "60 meters south of the study area" and "1,400 feet from areas of anticipate ground	HDR Report: "recommends that ILI-00044 is eligible for listing on the NRHP under Criterion D (information potential)." USACE Letter: does not contain a determination of eligibility, only states that the village site is "located outside the permit area."	BBNC Recommended DOE Eligible for NRHP. Amakdedori Village is eligible for listing under Criteria A ("associated with events that have made a significant contribution to the broad patterns of history") based on continued and uninterrupted subsistence practices centered in the area for numerous

Site	Description	Location	Determination of Eligibility (DOE)	BBNC Recommended DOE
<p>ILI-00295 Newly-discovered site</p>	<p>name and as inhabited by two families by K.F. Mather in 1923." "contains a variety of historic structures, and subsurface testing at the site in 1980 resulted in the identification of numerous classes of subsurface artifacts"</p>	<p>disturbance by the PLP project." <u>HDR Report:</u> "plotted within the indirect APE."</p>	<p><u>HDR Report:</u> "HDR recommends that a 500-foot buffer be placed around ILI-00044 in order to protect the site from ground-disturbing activities. If a buffer is not a feasible option for project activities, mitigation measures will need to be coordinated through consultation with the lead federal agency and other consulting parties."</p>	<p>Native Alaskan groups. Amakdedori village is also eligible under Criteria D (potential to yield "information important in prehistory or history"). Recommends consideration as a Traditional Cultural Landscape and District eligible for NRHP.</p>
<p>ILI-00295 Newly-discovered site</p>	<p><u>HDR Report:</u> "consists of two non-diagnostic chipped stone artifacts located 60 meters apart. Subsurface testing at the site did not result in the identification of additional archeological deposits."</p>	<p><u>HDR Report:</u> "located approximately 160 meters west of the shoreline of Cook Inlet at the northern extent of the study area." "a portion of ILI-00295 is located within the proposed footprint of the road leading to the port terminal."</p>	<p><u>HDR Report:</u> "recommends that ILI-00295 is not eligible for listing on the National Register of Historic Places." <u>USACE Letter:</u> "is recommended by HDR as not eligible for listing in the NRHP under any criteria. Upon review of the enclosed technical report, the USACE concurs with this recommendation."</p>	<p>Eligible for NRHP. This newly-discovered site is eligible under Criteria D (potential to yield "information important in prehistory or history"). Recommends further study and consideration as part of the same, contiguous site as Amakdedori Village (ILI-00044).</p>
<p>ILI-00291 Agram Shipwreck</p>	<p><u>HDR Report:</u> "site of the shipwreck of the cannery tender <i>Agram</i> ... based on a 1924 incident report describing the location where the ship was lost ... unknown if any remains of the <i>Agram</i> vessel still exist."</p>	<p><u>HDR Report:</u> "located 0.25 mile southeast of the direct APE and is within the indirect APE boundary." <u>HDR Report:</u> "plotted within the indirect APE."</p>	<p><u>HDR Report:</u> "There is insufficient information available at this time to complete a DOE for this site. Based on the information available, the site has the potential to be significant under Criterion A for its relevance to local history and potentially under Criterion D for its data potential as a historic shipwreck. If there is potential for the site to be adversely effected by project activities, the location of the shipwreck, and its subsequent integrity, would need to be determined. This could be accomplished through additional archival research plus a site visit utilizing underwater archaeological survey methods (including dives, interviews, and sonar technology). The site visit should consist of an archaeologist with expertise in underwater archaeology survey methods and a Kokhanok village representative." <u>USACE Letter:</u> "there is insufficient information at this time to confirm if any remains of the site exist."</p>	<p>Likely eligible for NRHP, conduct additional surveys.</p>

III. Consideration of Amakdedori as a Traditional Cultural Landscape and District Eligible for the National Register of Historic Places

BBNC requests the Corps, in close consultation with tribes, evaluate the Amakdedori Village site and surrounding area as a Traditional Cultural Landscape and District eligible for the National Register of Historic Places. As acknowledged by the HDR Report, the Amakdedori region has been an important place where tribes have met and gathered for thousands of years, and the area has been inhabited by multiple Native Alaskan groups, including the Yup'ik, Dena'ina, and Alutiiq peoples. Moreover, Traditional Knowledge in recent public testimonies and written comments from Iliamna Lake area community members to the Corps has demonstrated that the Amakdedori Village and surrounding lands remain culturally significant for tribes today:

- "I'm also worried about Amakdedori and the road there. The elders tell us that there are old graves there where the road would run."¹²
- "Everyone, not just Kokhanok, use the Amakdedori as a subsistence place. And there was a settlement there. I've talked with elders, and there are graves that are there. And it's still used [...]. We take our kids there for culture camps and for harvesting to teach them about our ways of the past."¹³
- "On the Amakdedori site, it has been a long-used historical site [...]. And I talked to my uncle not long ago, and he said there could be grave sites out there, because people around Lake Iliamna were nomadic people."¹⁴
- "And like everyone said about Amakdedori being a culture place, I used to go to Amakdedori as a child. My dad's cabin is still in Amakdedori. He's got a little, tiny cabin with a stream right next to that creek. And we would go over there early May right after school was out because we would set the net out because salmon came over there first before they came on this side. So [name] and I used to go over as kids and spend a lot of time with my dad on that side. And there are grave sites over there."¹⁵
- "[T]he traditional subsistence use area of Amakdedori on Cook Inlet side, this will be torn up and no longer be able to support the fish habitat that depend on Amakdedori Creek [...]. Chenik, not five miles away that is used for clam gathering, will probably not survive, either."¹⁶
- "[...] about Amakdedori where graves are, because when we were camping over there, I sleep on top of a grave. [...] I'm not from Amakdedori, but the first time I trip over there, and my dad used to tell me there is graves over there. [...] They said a long time ago they used to stay. People are there."¹⁷

¹² Pebble Project Scoping Meeting—Igiugig, Alaska (April 18, 2018), Transcript Vol. I, page 12.

¹³ Pebble Project Scoping Meeting—Igiugig, Alaska (April 18, 2018), Transcript Vol. I, page 25.

¹⁴ Pebble Project Scoping Meeting—Igiugig, Alaska (April 18, 2018), Transcript Vol. I, page 45.

¹⁵ Pebble Project Scoping Meeting—Kokhanok, Alaska (April 18, 2018), Transcript Vol. I, page 49.

¹⁶ Pebble Project Scoping Meeting—Kokhanok, Alaska (April 10, 2018), Transcript Vol. I, pages 17-18.

¹⁷ Pebble Project Scoping Meeting—Kokhanok, Alaska (April 10, 2018), Transcript Vol. I, page 46.

- “Our tribal members exert an inherent sovereign right to Amakdedori, due to thousands of years of use and access to ocean-side resources. The village site, cabins, and trails have significant personal and cultural values to the Igiugig tribal members. In the Yup’ik language, *Amaktatuli* means ‘the place to carry things over,’ denoting its significance as a site for hunting marine subsistence resources. There are more cultural resources at the Amakdedori port [...].”¹⁸

Furthermore, as explained to the Corps by cooperating agency Lake and Peninsula Borough:

The borough has significant concerns about the lack of information concerning cultural resources at the Amakdedori Port Site. [The Draft EIS] reads that the historic Amakdedori Village “has not been fully surveyed and distinct site boundaries have not been established.” Further it implies that the historic village boundaries could extend into the project area. The village site, cabins and trails, have significant personal and cultural value to a number of individuals in the Borough. One Planning Commission member indicates that it was the location of her grandfather’s cabin. The old cabins, trails, and village have personal meaning to many who reside in our borough. [...] Our citizens would like to go to the site their grandfather or other relatives used without feeling as if they are in or immediately adjacent to an industrial zone. For that reason, we believe that the location of cultural features around the Amakdedori Port be located before the EIS is finalized. We cannot realistically comment on the impacts and mitigation measures without a better understanding of the location of the village and other cultural facilities.¹⁹

Thus, the Corps’ record and Traditional Knowledge supports the consideration of the Amakdedori area as a Traditional Cultural Landscape eligible for the National Register of Historic Places.²⁰ In addition, the Corps should consider whether all newly-discovered archeological sites in the Amakdedori area – such as the newly-discovered site ILI-00295 and any graves and other artifacts found in the area – lend further support to District eligibility.

IV. Conclusion

The Corps cannot move to step three of the NHPA process (findings of effect) unless and until the agency has properly complied with the NHPA consultation process requirements of step two (identification of historic properties and a properly defined APE). Moreover, the Corps cannot move forward to select a project LEDPA and preferred alternative before the NHPA Section 106 consultation process is complete.²¹ As an NHPA consulting party for the Pebble mine project, we expect further discussions with the Corps regarding options to resolve the above three

¹⁸ Letter from Igiugig Village Council, to Shane McCoy, Program Mgr, U.S. Army Corps of Eng’rs (June 30, 2019), at page 2.

¹⁹ Letter from Nathan Bill, Mgr., Lake & Peninsula Borough, to Shane McCoy, Program Mgr, U.S. Army Corps of Eng’rs, Comments on Preliminary Draft of Section 4.7 – Cultural Resources (Sept. 24, 2018) (emphasis added).

²⁰ See, e.g., NRHP Criterion A (36 C.F.R. § 60.4(a)) (associated with continuing cultural history and practices and broad patterns of our history) and NRHP Criterion D (36 C.F.R. § 60.4(d)) (have yielded, or may be likely to yield, information important in prehistory or history).

²¹ Advisory Council on Historic Preservation, *Protecting Historic Properties: A Citizen’s Guide to Section 106 Review*, at page 20 (“Agencies should not make obligations or take other actions that would preclude consideration of the full range of alternatives to avoid or minimize harm to historic properties before Section 106 review is complete.”).

issues, as well as our outstanding concerns with NHPA Section 106 consultation and NEPA public processes, prior to the Corps making any determinations of adverse effects to cultural and historic resources.

Sincerely,



Daniel Cheyette
Vice President, Lands and Natural Resources

Cc:

Principal Deputy Assistant Secretary of the Army Ryan Fisher, ryan.a.fisher12.civ@mail.mil
Colonel Philip Borders, Army Corps of Engineers, POA.ExecutiveOffice@usace.army.mil
John Eddins, Advisory Council on Historic Preservation, jeddins@achp.gov
Judith E. Bittner, Alaska State Historic Preservation Officer, judy.bittner@alaska.gov
Sarah Meitl, SHPO Archaeologist, Unit Coordinator, sarah.meitl@alaska.gov
Katie McCafferty, Army Corps Alaska District, katherine.a.mccafferty2@usace.army.mil