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May 21, 2020

Colonel David R. Hibner
Alaska District Acting Commander
U.S. Army Corps of Engineers
P.O. Box 6898
JBER, Alaska 99506-0898
Attn: Regulatory Branch, Mr. Shane McCoy
Submitted via email to: poaspecialprojects@usace.army.mil

Re: Pebble Project (POA-2017-271) LEDPA Determination and BBNC Property

Dear Colonel Hibner,

As the largest private landowner in the Bristol Bay region, Bristol Bay Native Corporation (BBNC) is again writing to the Army Corps to reiterate that our surface and subsurface estate is not available to the Pebble Limited Partnership (PLP) to use for any components of its proposed Pebble Mine Project. BBNC understands that the Army Corps is currently undertaking an effort to define the Least Environmentally Damaging Practicable Alternative (LEDPA) for the project. All alternatives under the Army Corps' consideration would require permission from BBNC to use our surface and subsurface estate, including the north route which is now appears to be PLP's preferred alternative. BBNC has not extended and will not extend to PLP permission to occupy or trespass on BBNC's lands or to make use of BBNC's subsurface resources. Please see the enclosed for more details on BBNC's property interests.

Defining the LEDPA is a process that requires the Corps to consider economic feasibility, technological feasibility, and practicality, among other things. As the Corps stated in the Draft EIS, "practicable alternatives" are "those that are available and capable of being done after taking into consideration cost, existing technology, and logistics."¹ The LEDPA involves two separate determinations: it must be both practicable and the least environmentally damaging. The Corps will screen out as "not practicable" alternatives that are not logistically possible, such as when a private landowner objects to use of its property.

At every point in the 404 permitting process, BBNC has stated that its property is not available to PLP for this project, making all alternatives currently under consideration by the Corps not practicable. PLP itself has acknowledged this point with respect to the northern transportation corridor, stating in communications with the Corps that "PLP does not currently have access to private lands in the Diamond Point to Eagle Bay area *that would be required for this alternative to be practicable.*"²

In similar circumstances, the Alaska District of the Corps has removed from consideration alternatives for which the property is not available to the project applicant. In the context of a

¹ Pebble Draft EIS, at page 1-4.

² Memo from James Fuego, PLP, to Shane McCoy, USACE (Aug. 3, 2018) re Additional Lake Access Options Studied by PLP (attached to response to RFI-032 at pdf page 20 of 26), available at <https://pebbleprojecteis.com/files/bacef91d-2da7-4acb-b06b-2e438eb4aafa> (emphasis added).

proposed oil spill response facility near Cordova, Alaska, for example, the Corps rejected an alternative as not practicable because a landowner would not sell land necessary to effectuate that alternative.³

In defining the LEDPA for the Pebble project, BBNC demands that the Corps remove from consideration all alternatives that would require use of its subsurface or surface estate, as ourlands are unavailable to PLP. This includes the eastern terminus of the northern transportation corridor at Diamond Point, a property jointly owned by Bristol Bay Resource Investments (a BBNC subsidiary) and Iliaska Environmental, LLC, a subsidiary of the Igiugig Village Council.

BBNC also reiterates our objection to the Corps' impermissibly narrow analysis of the project. It is eminently clear from the record and the statements PLP and its parent company Northern Dynasty Minerals have made to the investment community that their true aim is and has always been to develop the entire Pebble deposit.⁴ PLP's recent decision to make the northern transportation corridor its preferred alternative,⁵ despite prior claims that such route is not practicable, further reveals this true intent. There is no explanation for PLP's decision to change its preferred alternative in the public record. What is clear in the record is that the northern transportation corridor is uniquely necessary amongst all of the transportation corridor alternatives for any mining operations beyond the 20-year mine plant.⁶ This change at this juncture late in the NEPA process, underscores the fact that the Corps' work has been focused on the wrong alternative, that the public was made to focus on the wrong alternative in its feedback and comments on the Draft EIS, and that the Corps should prepare a new Draft EIS that focuses on PLP's true plans for long-term operations that mine the entire Pebble ore deposit.

Sincerely,



Daniel Cheyette
Vice President, Lands and Natural Resources

Enclosure – BBNC Property Interests and the Pebble Project

Cc:

Principal Deputy Assistant Secretary of the Army Ryan Fisher
Governor Michael Dunleavy
Senator Lisa Murkowski
Senator Dan Sullivan
Congressman Don Young

³ Corps file # POA-1994-1014, Orca Inlet.

⁴ See for example, <https://www.youtube.com/watch?v=IzdoJg6PITQ&feature=youtu.be> (NDM mining conference presentation, February 28, 2020) ("we're only permitting 1.3 billion tons. But you have to walk before you run. [...] Pebble clearly will allow from a resource point of view, expansion. But this permitting case is all about proving to Alaskans that a mine at Pebble can coexist with the fishery."); <https://vimeo.com/395801339> (PLP Resource Development Council presentation, March 5, 2020).

⁵ See email from AECOM to Corps, "Pebble EIS: Change in Applicant's Preferred Alternative" (April 24, 2020).

⁶ Draft EIS, at page 4.1-24 ("copper concentrate and diesel being transported via pipeline to/from Iniskin Bay. [...] A road would be constructed along the concentrate pipeline to provide access for servicing the pipeline, but would not be used for regular traffic.").