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Juneau Office

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
REGULATORY DIVISION
P.O. BOX 6898
ELMENDORF AFB, ALASKA 99506-0898

REPLY TO
ATTENTION OF:
Regulatory Division
POA-2000-495-M3

Mr. Dick Somerville, P.E.
PND Engineers, Inc.
9360 Glacier Highway, Suite 100
Juneau, Alaska 99801

NOV 14 2008

Dear Mr. Somerville

This is to follow up on the November 5, 2008, meeting regarding the sampling analysis plan/quality assurance project plan (SAP/QAPP) entitled "Evaluation of Sediment from Douglas Harbor in Juneau, Alaska" dated October 2008. We have completed our review of this document and intend to express agreement with the testing and analytical methodology outlined therein following incorporation of the comments provided during the meeting. Below is a summary of the key outstanding issues that were discussed at the meeting.

1. The Corps of Engineers does not typically sign documents produced by others. However, concurrence with the approach and methodology outlined in the final document will be documented in the form of a letter.

2. The approach (reference area or reference point) and specific location of the reference sample(s) need to be resolved. The reference site selection process should be coordinated with interested agencies to ensure that the intent of the reference samples, as delineated in the Inland Testing Manual (ITM), is met to the extend practical.

3. The performance criteria for the testing and evaluation protocols should be revised to be consistent with those laid out in the ITM.

On July 9, 2007, you responded to our June 25, 2007, request for analysis of alternatives, which indicated that the City and Borough of Juneau had examined other alternatives for disposal of dredge spoils and had found the in-water disposal method to be the most practicable alternative. Please provide backup information to support this analysis, such as cost, upland site availability, or other potential uses of the dredged material locally. In addition to this information, the Corps believes it may be prudent to add Toxicity Characteristic Leaching Procedure (TCLP) analysis to the testing program outlined in the SAP/QAPP referenced above. TCLP results may provide additional useful information for the analysis of alternatives regarding this proposed project.

Also, in accordance with 33 CFR Part 325.1(d)(7), "For activities involving discharges of dredged or fill material into waters of the U.S., the application must include a statement describing how impacts to waters of the United States are to be avoided and minimized. The application must also include either a statement describing how impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required for the proposed impacts." Therefore, you

are required to provide information regarding your proposed avoidance, minimization, and compensatory mitigation, which will be included in the Corps public notice of your project. Additional information can be obtained from the Alaska District's *Final Mitigation Rule* Public Notice, Number POA-2008-834, which is available for viewing on our website at: http://www.poa.usace.army.mil/reg/SPNNew.htm. The enclosure titled, *"Applicant Proposed Mitigation"* can be used to assist you in this requirement.

Mr. Bret Walters of this office will be traveling to Juneau on Tuesday, November 18, 2008, with the intention of viewing the field sampling activities described in this document. He will be in Juneau through November 20, 2008, and will coordinate directly with you regarding timing and transportation to the sampling locations. Thank you in advance for your assistance in this matter.

Please note that our concurring with the SAP/QAPP listed above does not imply a concurrence with the proposed in-water disposal of dredge spoils from Douglas Harbor. A decision on this matter will not be made until after completion of the public comment period if and when a public notice is issued.

You may contact me via email at Richard.G.Jackson@usace.army.mil, by mail at the address above, by phone at (907) 753-5646, or toll free from within Alaska at (800) 478-2712, if you have questions.

Sincerely,

Richard G. Jackson
Project Manager

Enclosure

Applicant Proposed Mitigation Statements

Background:

The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency issued regulations that govern national compensatory mitigation policy for activities in waters of the U.S., including wetlands, authorized by Corps permits. The final mitigation rule was published in the federal register on April 10, 2008, and became effective on June 9, 2008. The final rule establishes standards and criteria for the use of appropriate and practicable compensatory mitigation for unavoidable functional losses of aquatic resources authorized by Corps permits (33 CFR Part 332). Additionally, the rule requires new information to be included in Corps permit applications and public notices to enable meaningful comments on applicant proposed mitigation. In accordance with 33 CFR Part 325.1(d)(7), "For activities involving discharges of dredged or fill material into waters of the U.S., the application must include a statement describing how impacts to waters of the United States are to be avoided and minimized. The application must also include either a statement describing how impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required for the proposed impacts." For additional information, the final mitigation rule can be viewed at: http://www.usace.army.mil/cw/cecwo/reg/news/final_mitig_rule.pdf

Mitigation is a sequential process of avoidance, minimization, and compensation. Compensatory mitigation is not considered until after all appropriate and practicable steps have been taken to first avoid and then minimize adverse impacts to the aquatic ecosystem. Please provide your proposed avoidance, minimization, and compensatory mitigation below:

Applicant's Proposed Mitigation (attach additional sheets as necessary):

1. Avoidance of impacts to waters of the U.S., including wetlands:

Please describe how, in your project planning process, you avoided impacts to waters of the U.S., including wetlands, to the maximum extent practicable. Examples of avoidance measures include site selection, routes, design configurations, etc...

Applicant Proposed Mitigation Statements

2. Minimization of unavoidable impacts to waters of the U.S., including wetlands:
Please describe how your project design incorporates measures that minimize the unavoidable impacts to waters of the U.S., including wetlands, by limiting fill discharges to the minimum amount/size necessary to achieve the project purpose.

3. Compensation for unavoidable impacts to waters of the U.S., including wetlands:
Please describe your proposed compensatory mitigation to offset unavoidable impacts to waters of the U.S., or, alternatively, why compensatory mitigation is not appropriate or practicable for your project. Compensatory mitigation involves actions taken to offset unavoidable adverse impacts to waters of the U.S., including wetlands, streams and other aquatic resources (aquatic sites) authorized by Corps permits. Compensatory mitigation may involve the restoration, enhancement, establishment (creation), and/or the preservation of aquatic sites. The three mechanisms for providing compensatory mitigation are mitigation banks, in-lieu fee of mitigation, and permittee-responsible mitigation. Please see the attached definitions for additional information.

Applicant Proposed Mitigation Statements

Definitions:

Enhancement: the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

In-lieu fee program: a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.

Mitigation bank: a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

Permittee-responsible mitigation: an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

Practicable: available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Preservation: the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Restoration: the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.