

**NAVIGATION IMPROVEMENTS
SITKA HARBOR, ALASKA
CHANNEL ROCK BREAKWATERS**

DRAFT DEFICIENCY CORRECTION EVALUATION REPORT

APPENDIX E

PERTINENT DOCUMENTS

JUNE 2011

List of Pertinent Documents

Item	Date	Document
1	7 Dec 1993	Project Cooperation Agreement Between the Department of Army and the City and Borough of Sitka, Alaska, for Construction of the Southeast Alaska Harbors of Refuge Project
2	15 May 2009	CEMP-POD Memorandum, Implementation Guidance for Section 3005 of the Water Resources Development Act of 2007 (WRDA 2007) – Sitka, Alaska
3	25 June 2009	CEPOA-EN-CW-PF Memorandum. Sitka, Alaska – RIT Teleconference on Content of Deficiency Correction Evaluation Report
4	8 Oct 2009	POD-PDC email (Linda Hihara-Endo), RE: Sitka Design Deficiency
5	4 Nov 2009	CECC-ZB email (Lloyd Pike), Re: Sitka Harbor
6	16 Nov 2009	Issue Paper, Sitka Alaska Breakwaters
7	7 Jan 2010	CEMP-POD-RIT email (Gib Owen), Sitka Breakwater Issue Paper
8	no date	Suggested Modification to 1993 Project Cooperation Agreement between the Corps of Engineers and the City and Borough of Sitka
9	16 May 2011	Comments from City and Borough of Sitka, Coastal Management Coordinator
10	23 May 2011	DNR Division of Coastal and Ocean Management Final Consistency Determination
11	22 June 2011	NMFS Coordination letter
12	11 July 2011	CEPOA-EN-CW-ER response to NMFS EFH-related mitigation measures
13	12 Aug 2011	Letter of Intent from City and Borough of Sitka, AK
14	13 Dec 2011	State of Alaska ADEC Clean Water Act Section 401 Water Quality Certification for Channel Rock Breakwaters project
15	12 March 2012	Statement of Financial Capability from City and Borough of Sitka, AK

PROJECT COOPERATION AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

THE CITY AND BOROUGH OF SITKA, ALASKA

FOR CONSTRUCTION OF THE

SOUTHEAST ALASKA HARBORS OF REFUGE PROJECT

THIS AGREEMENT is entered into this 7th day of December, 1993, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works), and the City and Borough of Sitka (hereinafter the "Local Sponsor"), acting by and through Mayor of the City and Borough of Sitka.

WITNESSETH, THAT:

WHEREAS, construction of the Southeast Alaska Harbors of Refuge, Alaska at Sitka, Alaska, was authorized by Section 101(1) of P. L. 102-580 (WRDA 92), 31 October 1992;

WHEREAS, the Government and the Local Sponsor desire to enter into a Project Cooperation Agreement for construction of Southeast Alaska Harbors of Refuge at Sitka, Alaska (hereinafter the "Project" and defined in Article I.a. of this Agreement);

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project;

WHEREAS, the Government and Local Sponsor have the legal authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the construction of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Local Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

a. The term "Project" shall mean the general navigation features and adequate berthing areas to include not less than a 315 vessel float system as described in House Document 103-37. The improvement shall include floats, piers, slips, and similar marina and mooring facilities as needed for transient and local vessels, as well as necessary access roads, public use shore facilities, terminals, and transfer facilities open to all on equal terms and provide and maintain adequate depths in these areas and their access channels.

b. The term "general navigation features of the Project" shall mean the construction of three breakwaters with lengths of 480 feet, 1200 feet, and 320 feet that would partially close off Western Anchorage in Sitka, and the monitoring and mitigation, if necessary, of the herring spawning habitat, as generally described in the Southeast Alaska Harbors Interim Feasibility Report with Engineering Appendix and Environmental Impact Statement for Sitka, Alaska, dated April, 1992 and approved by the Chief of Engineers on 29 June, 1992.

c. The term "total cost of construction of the general navigation features" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the general navigation features of the Project. Such costs shall include, but not necessarily be limited to: all continuing planning and engineering costs incurred after October 1, 1985; all advanced engineering and design costs; all preconstruction engineering and design costs; engineering and design costs during construction; actual construction costs, including the costs of relocations not performed by or on behalf of the Local Sponsor; supervision and administration costs; the costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XVII.a. of this Agreement, but shall not include the value of lands, easements, rights-of-way, dredged material disposal areas, relocations performed by or on behalf of the Local Sponsor, non-Federal dredging of public or private channels and berthing areas, and aids to navigation.

d. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time the Contracting Officer certifies in writing to the Local Sponsor that construction of the general navigation features of the Project are complete. The Contracting Officer shall furnish to the Local Sponsor copies of the Government's Written Notice of Acceptance of Completed Work furnished to contractor(s) for all contracts for the general navigation and mitigation features of the Project.

e. The term "Contracting Officer" shall mean the U.S. Army Engineer for the Alaska District, or his designee.

f. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public road or way.

g. The term "relocations" shall mean the preparation of plans and specifications for, and the accomplishment of, all alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing: railroads (excluding existing railroad bridges and approaches thereto), highways, and other bridges, buildings, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation, and maintenance of the Project.

h. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

i. The term "functional portion of the Project" shall mean a completed portion of the Project as determined by the Contracting Officer in writing to be suitable for tender to the Local Sponsor to operate and maintain in advance of completion of the entire Project. To be suitable for tender, the Contracting Officer must determine that the completed portion of the Project can function independently and for a useful purpose, although the balance of the Project is not complete.

j. The term "betterment" shall mean the design and construction of a Project feature accomplished on behalf of, or at the request of, the Local Sponsor in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the design and construction of the Project.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND LOCAL SPONSOR

a. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the Local Sponsor, shall expeditiously construct the general navigation features of the Project (including construction, modification, or relocation of existing railroad bridges, and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Local Sponsor shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bids. To the extent possible, the Local Sponsor thereafter also will be afforded the opportunity to review and

comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. In those cases where providing notice to the Local Sponsor of the required contract modifications or change orders is not possible prior to issuance of Notice to Proceed, such notification will be provided after the fact at the earliest date possible. The Contracting Officer will, in good faith, consider the comments of the Local Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

b. The Government shall operate and maintain the general navigation features of the Project.

c. The Local Sponsor shall provide and maintain, at its own expense, all Project features other than those for general navigation.

d. The Local Sponsor shall provide to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, perform or assure performance of, all relocations of facilities and utilities (excluding existing railroad bridges and approaches thereto), determined by the Government to be necessary for construction, operation, or maintenance of the Project.

e. The Local Sponsor shall provide, during the period of construction, a cash contribution equal to 10 percent of the total cost of construction of the general navigation features of the project.

*f. As further specified in Article VI of this Agreement, the Local Sponsor shall repay with interest, over a period not to exceed 30 years following completion of the period of construction, an additional 0 to 10 percent of the total cost of construction of the general navigation features assigned to commercial navigation, depending on the value of the credit, as calculated under Article IV of this Agreement, of items provided pursuant to Article II.d. of this Agreement. If the credit allowed for such items is less than 10 percent of the total cost of construction of the general navigation features, the Local Sponsor shall repay a percentage of said total cost equal to the difference between 10 percent of said total cost and the percentage of said total cost represented by the value of such items. If the credit allowed for such items is equal to or greater than 10 percent of said total cost, the Local Sponsor shall not be required to repay any additional percentage of said total cost.

g. The Local Sponsor may request the Government to acquire lands, easements, or rights-of-way, or perform relocations on behalf of the Local Sponsor. Such services as the Government may

elect to provide shall be performed in accordance with terms or conditions of separate agreements and all such work shall be paid for in advance by the Local Sponsor.

h. The Local Sponsor may request the Government to accomplish betterments. The Local Sponsor will be solely responsible for any increase in costs resulting from the betterments, and all such increased costs will be paid in advance by the Local Sponsor in accordance with Article VI of this Agreement.

i. No Federal funds may be used to meet the Local Sponsor's share of the total cost of construction of the general navigation features of the project under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

j. The Local Sponsor shall initiate construction and installation of all non-Federal project features within one year of the completion of the general navigation features of the project, including appurtenant facilities and services. All non-Federal features shall be completed in not more than three construction seasons (years) following the completion of the general navigation features of the project.

k. The Local Sponsor shall provide and maintain adequate berthing areas, to include not less than a 315 vessel float system as described in House Document 103-37. The improvement shall include floats, piers, slips, and similar marina and mooring facilities as needed for transient and local vessels, as well as necessary access roads, public use shore facilities, terminals, and transfer facilities open to all on equal terms and provide and maintain adequate depths in these areas and their access channels.

l. The Local Sponsor shall prohibit erection of any structures that would encroach on the general navigation features of the project.

ARTICLE III - LANDS, RELOCATIONS, AND PUBLIC LAW 91-646

a. The Government shall provide, in coordination with the Local Sponsor, a written description of the anticipated real estate requirements for the Project. Thereafter, the Local Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, as may be determined by the Government in that description, or in any subsequent description coordinated with the Local Sponsor, to be necessary for the construction, operation, and maintenance of the Project, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights-of-entry to such lands. The necessary

lands, easements, and rights-of-way for the Project may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

b. The Local Sponsor shall provide, or pay to the Government the cost of providing, all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged material disposal areas required for the construction, operation, and maintenance of the Project.

c. Upon notification from the Government, the Local Sponsor shall accomplish or arrange for accomplishment at no cost to the Government of all relocations of buildings, highways, railroads, storm drains, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation, and maintenance of the general navigation features of the Project.

d. Upon notification from the Government, the Local Sponsor shall perform or assure performance of all necessary relocations of pipelines, cables, and other utilities. Nothing in this Agreement shall be deemed to affect the ability of the Local Sponsor to seek compensation from other non-Federal entities for costs it incurs under this paragraph.

e. The Local Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, operation, and maintenance, of the Project, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS AND RELOCATIONS

a. The Local Sponsor shall not receive any credit for lands, easements, and rights-of-way, including borrow and dredged or excavated material disposal areas, previously provided as an item of cooperation for another Federal project. The value of the lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, that will be credited toward the additional 10 percent of total costs the Local Sponsor must repay pursuant to Article II.f. of this Agreement shall be determined in accordance with the following procedures:

1. If the lands, easements, or rights-of-way are owned by the Local Sponsor as of the date the first construction contract for the Project is awarded, the credit shall be the fair market value of the interest at the time of such award or in exceptional circumstances, upon request of the Local Sponsor and in the sole discretion of the Assistant Secretary of the Army (Civil Works), the actual purchase price paid by the Local Sponsor. The fair market value, if used, shall be determined by an appraisal, to be obtained by the Local Sponsor, that has been prepared by a qualified appraiser who is acceptable to both the Local Sponsor and the Government. The appraisal shall be reviewed and approved by the Local Sponsor and the Government.

2. If the lands, easements, or rights-of-way are acquired by the Local Sponsor after the date of award of the first construction contract for the Project, the credit shall be the fair market value of the interest at the time such interest is acquired. The fair market value shall be determined as specified in Article IV.a.1. of this Agreement. If the Local Sponsor pays an amount in excess of the approved appraised fair market value, the Local Sponsor may be entitled to a credit for the actual purchase price paid provided that the purchase price is approved by the Government in writing.

3. If the Local Sponsor acquires more lands, easements, or rights-of-way than the Government determines are necessary for construction, operation, and maintenance of the Project, then only the value of such portions of those acquisitions as have been determined by the Government to be necessary for the construction, operation, and maintenance of the Project shall be credited toward the Local Sponsor's required contribution under Article II.f of this agreement.

4. Credit for lands, easements, and rights-of-way acquired through eminent domain proceedings occurring after the date of this Agreement will be based on court awards for the real property interests taken, or on stipulated settlements or portions of stipulated settlements that have received written Government approval. The fair market value for the purposes of filing an eminent domain proceeding in court shall be based on an appraisal prepared and approved as specified in Article IV a.1. of this Agreement.

5. Credit for lands, easements, or rights-of-way acquired by the Local Sponsor within a five-year period preceding the date of this Agreement, or at any time after this Agreement is signed, will also include the reasonable documented incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with the obligations under this Agreement.

b. The Government shall provide the Local Sponsor with a written description of required relocations. The value of relocations incurred by the Local Sponsor that will be credited toward the additional 10 percent of the total cost of the general navigation features that the Local Sponsor must repay pursuant to Article II.f. of this Agreement shall be that portion of the actual costs determined as set forth below and approved by the Government:

1. Highways: Only that portion of the cost as would be necessary to construct substitute highways to the design standard that the State of Alaska would use in constructing a new highway under similar conditions of geography and traffic loads.

2. Utilities and Facilities, Structures and Improvements (including railroads): Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the increased cost of betterments. New materials shall not be used in any alteration or relocation if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be credited toward the Local Sponsor's share.

ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication, the Local Sponsor and the Government shall, prior to the advertisement of the first construction contract, appoint representatives to coordinate on all facets of Project development, including Project design, scheduling, plans, specifications, real estate requirements, award of contracts, contract modifications and change orders, contract costs, claims and other related matters.

b. These representatives shall generally oversee the Project construction and shall be identified as the Project Coordination Team. They shall meet regularly during the period of construction and will be informed of all changes in total cost of construction of the general navigation features of the project. The Project Coordination Team shall make recommendations concerning construction as it deems are warranted to the Contracting Officer, including suggestions to avoid potential sources of dispute.

c. The Contracting Officer shall, in good faith, consider the recommendations of the Project Coordination Team on all matters relating to construction and anticipated requirements for operation, maintenance, repair, replacement, and rehabilitation

of the Project. The Contracting Officer, having the legal authority and responsibility for construction of the Project, has discretion to accept, reject, or modify the recommendations of such representatives.

ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, the percentages of the total cost of construction of the general navigation features specified in Article II.e. of this Agreement. The total cost of construction of the general navigation features assigned to commercial navigation is currently estimated to be \$ 11,501,000, and the Local Sponsor's share is currently estimated to be \$ 2,300,200. In order to meet its share of the said total cost, the Local Sponsor must provide a cash contribution currently estimated to be \$ 1,150,100. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The Local Sponsor shall provide the Local Sponsor's required cash contribution during the period of construction in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Local Sponsor by 1 August of each year of the estimated funds that will be required from the Local Sponsor to meet the Local Sponsor's share of the total cost of construction of the general navigation features for the upcoming fiscal year.

2. No later than 60 calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's share of the total cost of construction of the general navigation features required for the first fiscal year of construction, including the Local Sponsor's share of costs attributable to the Project incurred prior to the initiation of construction. No later than 30 calendar days thereafter, the Local Sponsor shall verify to the satisfaction of the Government that the Local Sponsor has deposited the requisite amount in an escrow or other account acceptable to the Government, with interest accruing to the Local Sponsor.

3. For the second and subsequent fiscal years of Project construction, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Local Sponsor of the Local Sponsor's share of the total cost of construction of the general navigation features for that fiscal year. No later than 30 calendar days prior to the

beginning of the fiscal year, the Local Sponsor shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2. of this Agreement.

4. As construction of the Project proceeds, the Government shall, on a regular basis each year, adjust the amounts required to be provided under this paragraph to reflect actual costs to date. If at any time during the period of construction the Government determines that additional funds will be needed from the Local Sponsor, the Government shall so notify the Local Sponsor, and the Local Sponsor, no later than 60 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.b.2. of this Agreement.

c. The Government will draw on the escrow or other account provided by the Local Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as Project costs incurred by the Government prior to the initiation of construction.

d. During the period of construction, the Government shall provide quarterly financial reports on the status of the total cost of construction of the general navigation features and the status of contributions made by the Local Sponsor. Upon completion of the Project and resolution of all relevant contract claims and appeals, the Government shall compute the total cost of construction of the general navigation features and tender to the Local Sponsor a final accounting of the Local Sponsor's share.

1. In the event the total contribution by the Local Sponsor is less than the Local Sponsor's required share, the Local Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Local Sponsor's required share.

2. In the event the Local Sponsor has made excess cash contributions which result in the Local Sponsor's having provided more than its initial required share of project costs, the Government shall first credit the excess to the additional amount the Local Sponsor must repay pursuant to Article II.f. of this Agreement. In the event the excess cash contribution exceeds the additional amount the Local Sponsor must repay pursuant to Article II.f., the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return said excess to the Local Sponsor. In the event existing funds are not available to repay the Local Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Local Sponsor for excess contributions provided.

e. The Local Sponsor shall repay the additional amount required pursuant to Article II.f. of this Agreement in equal annual installments over a period of 30 years from the completion of the period of construction of the general navigation features. Such repayment shall include interest at a rate to be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the repayment period, during the month preceding the fiscal year in which costs for construction of the Project are first incurred, or, in the case of recalculating, the fiscal year in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The interest rate shall be recalculated by the Secretary of the Treasury at five-year intervals. Nothing in this Agreement shall preclude the Local Sponsor from repaying this additional amount in full upon receipt of the final accounting. Should this full repayment be made within 90 days from receipt of the final accounting, there shall be no charges for interest or transaction costs.

ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

a. The Local Sponsor shall operate, maintain, repair, replace, and rehabilitate all Project features other than the general navigation features of the Project in accordance with regulations or directions prescribed by the Government.

b. The Government shall operate and maintain the general navigation features of the Project.

c. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Local Sponsor owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Local Sponsor for any reason is failing to fulfill the Local Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If after 30 calendar days from receipt of notice, the Local Sponsor continues to fail to perform, then the Government shall have the right to enter, at

reasonable times and in a reasonable manner, upon lands the Local Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Local Sponsor of responsibility to meet the Local Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy as law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE IX - RELEASE OF CLAIMS

The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

ARTICLE X - MAINTENANCE OF RECORDS

Within 60 days of the date of this Agreement, the Government and the Local Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total cost of construction of the general navigation features of the project. The Government and the Local Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after completion of construction of the general navigation features of the project and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

ARTICLE XI - GOVERNMENT AUDIT

The Government shall conduct an audit, when appropriate, of the Local Sponsor's records for the Project to ascertain the allowability, reasonableness, and allocability of the Local Sponsor's costs for inclusion as credit against the Local Sponsor's share of total cost of construction of the general navigation features of the project.

ARTICLE XII - FEDERAL AND STATE LAWS

In the exercise of the Local Sponsor's rights and obligations under this Agreement, the Local Sponsor agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.II issued pursuant thereto and published in Part 300 of Title 32, case of Federal Regulations, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE XIII - RELATIONSHIP OF PARTIES

The Government and the Local Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

ARTICLE XIV - OFFICIALS NOT TO BENEFIT

No member of, or delegate to, the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XV - COVENANT AGAINST CONTINGENT FEES

The Local Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Local Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XVI - TERMINATION OR SUSPENSION

a. If at any time the Local Sponsor fails to make the payments required under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate or suspend work on the Project until the Local Sponsor is no longer in arrears, unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with

any other non-Federal interests in connection with the Project. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

b. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor. After 60 calendar days either party may elect without penalty to terminate this Agreement pursuant to this Article or to defer future performance under this Agreement; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Local Sponsor elects to terminate this Agreement.

ARTICLE XVII - HAZARDOUS SUBSTANCES

a. After execution of this Agreement and upon direction by the Contracting Officer, the Local Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government or the Local Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the Local Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total cost of construction of the general navigation features of the project and cost shared as a construction cost in accordance with Section 101 of Public Law 99-662.

b. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under CERCLA, the Local Sponsor and the Government shall provide prompt notice to each other, and the Local Sponsor

shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

c. The Government and the Local Sponsor shall determine whether to initiate construction of the Project, or if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government and the Local Sponsor determine to proceed or continue with construction after considering any liability that may arise under CERCLA, the Local Sponsor shall be responsible, as between the Government and the Local Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total cost of construction of the general navigation features of the project as defined in this Agreement. In the event the Local Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Local Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article XVI of this Agreement.

d. The Local Sponsor and the Government shall consult with each other under Article V of this Agreement to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to Article XVIII.c. of this Agreement shall not relieve any party from any liability that may arise under CERCLA.

e. To the maximum extent practicable, the Local Sponsor shall perform its responsibilities under this Agreement, including the dredging of berthing areas or access channels, and operation and maintenance of any required disposal facilities, in a manner so that liability will not arise under CERCLA.

ARTICLE XVIII - NOTICES

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Sponsor:

City and Borough of Sitka
304 Lake Street
Sitka, Alaska

If to the Government:

District Engineer
U.S. Army Engineer District, Alaska
Post Office Box 898
Anchorage, Alaska

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered or seven calendar days after it is mailed, as the case may be.

ARTICLE XIX - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XX - SECTION 902 PROJECT COST LIMITS

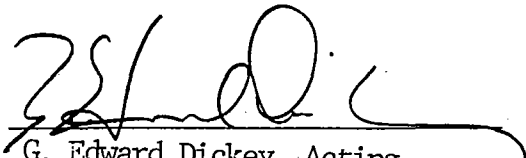
The Local Sponsor has reviewed the provisions set forth in Section 902 of P.L. 99-662, as amended, and understands that Section 902 establishes the maximum total project cost. For purposes of this Agreement, the Section 902 cost limit is \$20,505,600, as calculated on 9 April, 1993. This amount is calculated using procedures set forth in Appendix P of ER 1105-2-100. It shall be adjusted to allow for appropriate increases for inflation and changes in total cost of construction of the general navigation features of the project as provided in Section 902. Should this cost maximum be reached, no additional funds may be expended on the Project until additional authority is obtained from Congress.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

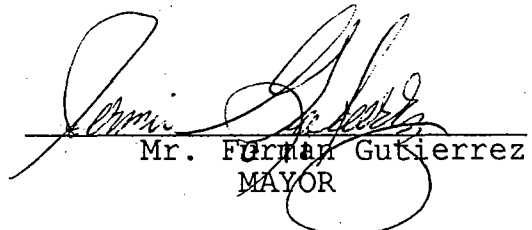
THE DEPARTMENT OF THE ARMY

THE CITY AND BOROUGH OF SITKA

BY:


G. Edward Dickey, Acting
Assistant Secretary of the
Army (Civil Works)

BY:


Mr. Fernan Gutierrez
MAYOR

DATE:

7 DEC 1993

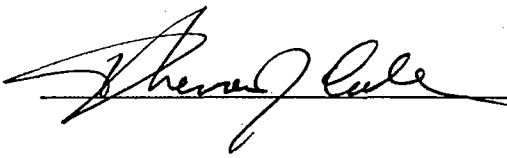
DATE:

November 23, 1993

CERTIFICATE OF AUTHORITY

I, Theron J. Cole do hereby certify that I am the principal legal officer of the City and Borough of Sitka, that the City and Borough of Sitka is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City and Borough of Sitka in connection with the Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed this Agreement on behalf of the City and Borough of Sitka have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 23rd day of November 1993.



[SIGNED] Municipal Attorney Title

CERTIFICATION REGARDING LOBBYING

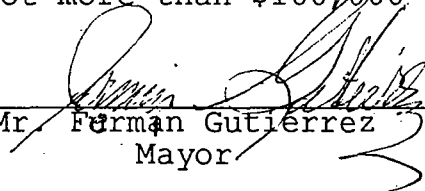
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Mr. Ferman Gutierrez
Mayor

DATE: November 23, 1993



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

MAY 15 2009

CEMP-POD

MEMORANDUM FOR COMMANDER, Pacific Ocean Division (CEPOD-PDC)

SUBJECT: Implementation Guidance for Section 3005 of the Water Resources Development Act of 2007 (WRDA 2007) – Sitka, Alaska

1. Section 3005 directs the Secretary to take such action as is necessary to correct design deficiencies in the Sitka Harbor Breakwater at Federal expense. The estimated cost of such work is \$6,300,000. A copy of Section 3005 is enclosed for information.
2. The Sitka, Alaska project was authorized in Section 101(1) of WRDA 1992, Public Law 102-580. A Project Cooperation Agreement (PCA) between the Department of the Army and the City and Borough of Sitka, Alaska was executed 7 December 1993 to construct general navigation features consisting of three breakwaters with lengths of 480 feet, 1,200 feet, and 320 feet. Construction was completed in 1995. In May 2002, HQUSACE approved a Section 905(b) report that directed the district to proceed with pre-construction engineering and design work to prepare a deficiency correction evaluation report. The Consolidated Appropriations Act, 2005, provided funding of \$1,000,000 that was used to perform hydraulic modeling to better understand the problem and for the evaluation report preparation at Federal expense.
3. At such time as funds are appropriated for such work, the Alaska District will complete the deficiency correction evaluation report in accordance with current policies, budgetary guidance, and ER 1165-2-119, Modifications to Completed Projects, except that the deficiency correction evaluation report will be completed at Federal expense. The deficiency correction evaluation report will include, at a minimum, a discussion of existing conditions; identification of the problem; the recommended corrective action; impacts of such corrective action on prior environmental concerns and commitments; documentation of any mitigation requirements resulting from implementing the corrective action; and documentation of coordination of the corrective action with applicable Federal and State agencies. The evaluation report will be submitted to the POD RIT for policy compliance review and approval by HQUSACE, located in Washington. Final plans and specifications for the corrective action should be prepared, at Federal expense, in accordance with requirements in ER 1110-2-1150, reviewed in accordance with ER 1110-1-12, and subject to the applicable peer review guidance.
4. Upon approval of the deficiency correction evaluation report, approval of the plans and specifications, and appropriation of funds for construction of the corrective action, the district will prepare an amendment to the December 1993 PCA that modifies the description of the general navigation features to include the approved corrective action. In addition, the amendment should separate the prior (cost shared) work and the new (Federal expense) work. The sponsor will provide any lands, easements, rights-of-way, and relocations required for the

CEMP-POD

SUBJECT: Implementation Guidance for Section 3005 of the Water Resources Development Act of 2007 – Sitka, Alaska

corrective action, at no cost to the Government. The amendment will be submitted through POD to the POD RIT for review and approval following current Corps procedures for processing amendments. Construction of the corrective action will be accomplished at Federal expense. Close coordination with the Vertical Team should be maintained during development of the amendment.

FOR THE COMMANDER:

Encl



LLOYD D. PIKE
Chief, Pacific Ocean Division
Regional Integration Team
Directorate of Military Programs

SEC. 3005. SITKA, ALASKA

The Sitka, Alaska, element of the project for navigation, Southeast Alaska Harbors of Refuge, Alaska, authorized by section 101(1) of the Water Resources Development Act of 1992 (106 Stat. 4801), is modified to direct the Secretary to take such action as is necessary to correct design deficiencies in the Sitka Harbor Breakwater at Federal expense. The estimated cost is \$6,300,000.

June 25, 2009

MEMORANDUM FOR: Commander, Pacific Ocean Division,
Attn: CEPOD-PDC (Linda Hihara-Endo), Building 525, Fort Shafter, HI 96858-5440

SUBJECT: Sitka, Alaska – RIT Teleconference on Content of Deficiency Correction Evaluation Report

1. Reference:

a. Section 3005 of the Water Resources Act of 2007 (WRDA 2007)

b. CEMP-POD Memorandum, dated May 15, 2009, Subject: Implementation Guidance for Section 3005 of the Water Resources Development Act of 2007 (WRDA 2007) – Sitka, Alaska

c. ER 1165-2-119, Modifications to Completed Projects

d. Issue Paper prepared by Alaska District, Subject: Sitka, Alaska, Design Correction Evaluation Report

2. Reference a. directs the Secretary to take such action as is necessary to correct design deficiencies in the Sitka Harbor Breakwater at Federal expense. Reference b. provided implementation guidance which directed the Alaska District to complete the Deficiency Correction Evaluation (DCE) Report at Federal expense in accordance with current policies, budgetary guidance, and Reference c. guidance. Reference d. provides background on additional issues which Alaska District requests guidance from the POD-RIT prior to preparing the requested DCE Report.

3. On 16 June 2009, the POD-RIT held an IPR teleconference to address the issues raised in reference d. The following personnel participated in the teleconference: HQUSACE (Andrea Walker, Bob Bank, Kim Smith); POD (Linda Hihara-Endo); POA (Clarke Hemphill (EN-CW-PF), Dennis Hardy (EN-CW-HH), Lorraine Cordova (EN-CW-EC), Guy McConnell (EN-CW-ER), Forest Brooks (EN-CW-PF), and Bruce Sexauer (EN-CW-PF). The following paragraphs discuss the conclusions reached and/or action required as a result of the teleconference.

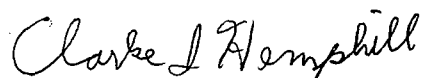
4. The first issue discussed was, “What information and depth of analysis is necessary to recommend a deficiency correction measure on the basis of safety considerations?” Since Congress directed the Corps to correct the design deficiency, HQUSACE previously determined in following reference c., the District would not be developing a traditional economic analysis,

but would be basing the correction solution on some sort of incremental consideration of the increases in safety provided by potential modifications. Data collection to date and modeling of the harbor failed to replicate the wave action at the docks reported by the locals. At this time a solution would be based on engineering judgment that it would reduce wave energy at the docks. HQ has a concern the District is unable to verify the proposed action will solve the reported problem. At a minimum, the District will need to technically define the problem at the docks, clearly show the nexus between the breakwater and defined problem with the docks, and clearly demonstrate the recommended solution will solve the defined problem. Since monitoring and modeling to date have not developed a full definition of the problem, additional data must be gathered and studies conducted before continuing with alternative analysis. The level of effort for economics has been deferred as the technical uncertainty must be addressed first.

5. The second issue discussed was, "Could the project deficiency correction be part or all associated with improvements to local service facilities (docks and floats) at full Federal expense?" The District's additional studies and data gathering should consider the problem from a total systems approach. The deficiency correction to be proposed by the District can include changes to the floats as part or all of the solution. If a fix to the docks and floats is recommended as the most cost-effective, that fix might be at full federal expense. However, who would pay how much for what type of feature is a separate question, which HQUSACE will consider and provide guidance to the District.

6. The third question discussed was whether the deficiency correction had a "902 total project cost limit?" The HQUSACE legal opinion has been that, if the legislation states a specific cost, then it is considered a "hard cap" and the applicable cost limit is the specific, single dollar figure stated in the legislation. In this case, the legislation indicates that the estimated cost has a certain value. Therefore, since the cost is "estimated" and not a single value, it is considered a "soft cap", which means that it performs like a project with a formal "902 limit" (Federal cost limit = estimated cost + 20% + inflation). Alaska District raised the question during the teleconference as to whether the determination of the "902 limit" was restricted only to the \$6.3 million identified in the 2007 WRDA or could unexpended portions of the "902 limit" from the 1992 authorization be considered with the 2007 authorization. HQ will review this further and provide guidance to the District.

FOR THE COMMANDER:



CLARKE I. HEMPHILL
Chief, Project Formulation Section
Alaska District, Corps of Engineers

From: [Hihara-Endo, Linda M@ POD](#)
To: [Boardman, Stephen C POA](#); [Martinson, David A POA](#); [Eisses, Kenneth J POA](#);
[Borash, Carl E POA](#);
cc: [Lau, David A@ POD](#); [Stupplebeen, Helen E@ POD](#); [Wagner, Sharon HQ02](#);
[Iwamura, Russell K@ POD](#); [Hemphill, Clarke I POA](#);
[Cordova, Lorraine A POA](#); [Sexauer, Bruce R POA](#); [McConnell, Guy R POA](#);
[Hardy, Dennis L POA](#); [Brooks, Forest C POA](#);
Subject: RE: Sikta Design Deficiency
Date: Thursday, October 08, 2009 11:38:41 AM
Attachments: [FW Memo16 June 2009Sitka AlaskaPOD-RIT Teleconference.msg](#)

Here is the original memo that was sent to HQUSACE for background on the questions/issues asked of HQUSACE. Am also copying those from POA that participated in the June telecon.

Linda M. Hihara-Endo, Ph.D., P.E.
Team Leader, Planning and Policy
Corps of Engineers, Pacific Ocean
(808)438-6977 fax (808)438-7045

-----Original Message-----

From: Wagner, Sharon HQ02
Sent: Thursday, October 08, 2009 8:56 AM
To: Boardman, Stephen C POA; Martinson, David A POA; Eisses, Kenneth J POA;
Borash, Carl E POA
Cc: Lau, David A@ POD; Stupplebeen, Helen E@ POD; Hihara-Endo, Linda M@
POD
Subject: FW: Sikta Design Deficiency

Steve, David, Kenneth, Carl, please respond to me regarding Ken Claseman's comments below. Thanks Sharon

-----Original Message-----

From: Claseman, Kenneth G HQ02
Sent: Wednesday, October 07, 2009 9:04 AM
To: Wagner, Sharon HQ02
Cc: Walker, Andrea E HQ02; Bank, Robert HQ02
Subject: Sikta Design Deficiency

Sharon,

I did not attend the meeting on this project and am not familiar with the specifics, however I have provided some input below which I hope is helpful.

1. Level of Analysis for Public Safety - I would think that a feasibility level of

analysis is appropriate for a design deficiency because it is a decision document. Of course the amount of documentation required depends on the situation. For example, in the case of a potential levee or dam failure, the risk to public safety might be obvious. In other cases the risk may be more obscure, and more thorough documentation would be needed. The key is to tell a convincing story that there is a public safety issue based on the situation.

2. Fixing Local Service Facilities - Under WRDA '86, construction and O&M of local service facilities are 100% non-Federal. Typically the Federal government would not participate in costs associated with local service facilities. If it is a question of Corps liability for damages to local service facilities caused by the Corps project, that would probably be a legal question; I don't know the answer. Susan Nee can identify a POC for you.

3. Calculating the Section 902 Limit - If there is a Section 902 limit to the project, the costs of a design deficiency generally apply to it. Some projects (for example pre-WRDA '86) don't have 902 limits. In this case it appears that the project has a modification required by law. In determining the Section 902 limit, the cost of modifications required by law is to be kept separate and added to the other allowable costs. {see ER 1105-2-100, Appendix G, G-15.a.(3) "The maximum project cost includes the authorized cost (adjusted for inflation), the current cost of any studies, modifications, and action authorized by WRDA '86 or any later law, and 20 percent of the authorized cost (without adjustment for inflation). The cost of modifications required by law is to be kept separate and added to the other allowable costs. These three components equal the maximum project cost allowed by Section 902."}

Let me know if you have any questions

Ken Claseman
Office of Water Project Review
HQUSACE
Office: (202) 761-5451
Cellular: (202) 281-0813

Martinson, David A POA

From: Pike, Lloyd D HQ02
Sent: Wednesday, November 04, 2009 4:58 AM
To: Martinson, David A POA; Wagner, Sharon HQ02
C: Boardman, Stephen C POA; Lau, David A@ POD; Stuppelbeen, Helen E@ POD
Subject: RE: Sitka Harbor

Sharon, I'd like to provide maximum assistance to the district as they try to get modified guidance from HQ to address the correction of this problem. Please work with POA/POD to and let me know how I can assist them in getting the '07 guidance modified. Marlene Campbell and the community are raising this to ever higher levels and when the inquiry comes, my instinct is that we need to be working toward a solution in keeping with the original design----not on a 4 year study.

-----Original Message-----

From: Martinson, David A POA
Sent: Tuesday, November 03, 2009 8:24 PM
To: Wagner, Sharon HQ02; Pike, Lloyd D HQ02
Cc: Boardman, Stephen C POA
Subject: Sitka Harbor

As requested by Sharon here are some bullets on the Sitka Project:

Original Project constructed in 1994 and the moorage basin constructed in 1997-1999.

Sitka notified COE of excessive swell entering the harbor from the vicinity of the "gap" in the breakwater from the west.

Original authorizing document stated " The two breakwaters forming the southern opening will overlap to minimize ocean swell in Thomsen Harbor."

Opening as constructed does not overlap.

2005 Appropriation Act language states " The Secretary of the Army acting through the Chief of Engineers, shall correct the design deficiency at Thomsen Harbor, Sitka, Alaska, by adding to, or extending the existing breakwaters to reduce wave and swell motion within the harbor at an additional cost of \$1,000,000 at full Federal expense..."

Section 3005 of WRDA 2007 states " ...is modified to direct the Secretary to take such action as is necessary to correct design deficiencies in the Sitka Harbor Breakwater at Federal expense."

HQ Implementation guidance issued 15 May 2009 directs the District to complete a deficiency correction evaluation report in accordance with current policies, budgetary guidance, and ER 1165-2-119. Corrective action will be accomplished at Federal expense.

POA estimate to follow the guidance to produce the report is \$4.6M and 4 years.

ER 1165-2-119 General application is for "significant modifications to completed projects... which involve Federal construction... in order to serve new purposes, increase the scope of services... beyond that intended... or to extend services to new beneficiaries... require authorization by Congress."

Corrective action is to achieve original protection that was compromised by opening to alleviate environmental concerns at the time not for new purpose or beneficiaries.

Analysis performed to date has identified an alternative that would reduce wave and swell motion by closing the gap of the two breakwaters forming the southern opening which is less costly than constructing the overlap indicated in the original report. Information from monitoring and coordination with other agencies indicate this would be an acceptable alternative. The cost would be less than that of the existing authority for the modification.

Because it appears no additional authority is needed, the District submits that a Engineering Design Report (EDR) in accordance with Appendix E of ER 1110-2-1150 to include NEPA documentation and an assessment of the benefits be prepared to serve as the decision document for amending the PCA.

The District is developing an issue paper to provide to HQ to get additional or revised guidance for the project.

In case you want to look at it, I have attached the WRDA 07 guidance.

Issue Paper Sitka Alaska Breakwaters

Issue: Revised guidance is needed for implementing Section 3005 WRDA 2007.

Discussion: Pursuant to authority in WRDA 1992, the Corps built general navigation features for Sitka consisting of three breakwaters. Sitka notified the Corps of excessive swell entering the harbor from a gap between breakwaters. This problem prompted Congress to appropriate \$1 million to correct this design deficiency of Thomsen Harbor at Sitka by “adding to, or extending the existing breakwaters to reduce wave and swell motion within the harbor”. These funds were used to study the problem and pay for an evaluation report. Section 3005, WRDA 2007, modifies the original authority by directing that “Secretary...take such action as is necessary to correct design deficiencies in the Sitka Harbor Breakwater at Federal expense.”

Implementation guidance issued 15 May 2009 requires the District to complete a design correction evaluation report following current policies and guidance, as well as the requirements of ER 1165-2-119. Once this process has been successfully completed, the Corps may then prepare final plans and specifications in accordance with ER 1110-2-1150. Before construction can begin, the project cooperation agreement (PCA) would then be amended and approved through current Corps procedures. The District estimates that the design correction evaluation report alone will take four years and \$4.6 million to complete.

The City and Borough of Sitka (CBS) met with the Corps to express its opposition to the Corps’ interpretation of the latest WRDA authorization as permitting more studies of the problem rather than constructing a fix. CBS explicitly asked why the language of the last two authorizations, which appear to direct correction of the deficiencies, not studies, is not sufficient to construct. CBS also states that the Corps should not spend any further funds on internal studies. Further, the local sponsor requested the Corps to “provide guidance on how to permit the COE to complete the design, environmental, and construction for at least closing the gap between the west and central breakwaters.”¹ As a result, the District revisited the implementation guidance and authorization language and determined there is sufficient reason to propose revisions to the Section 3005 implementation guidance.

The District has identified an alternative that would reduce wave energy entering the harbor by closing the gap between the two breakwaters. An engineering design report (EDR) completed in accordance with Appendix E of ER 1110-2-1150 could serve as the decision document for amending the PCA.

The stated purpose of ER 1165-2-119 is to establish when existing, available authorities, as opposed to requiring new project authorization, may be used when existing projects need modification. It provides ways to modify projects without further authorizations to correct project deficiencies. See e.g., Paragraphs 6b and 7, ER 1165-2-119. Paragraph

¹ email from Marlene Campbell, dated 17 October 2009

12 acknowledges that some modifications that cannot proceed under existing authority must seek additional Congressional authorization. In such cases, the Corps must complete the necessary studies and reports to obtain the authorization. In this case, Congress passed two authorizations directing the Corps to fix design deficiencies at Sitka without the requisite studies and reports discussed in ER 1165-2-119. This regulation has limited applicability to the issue at hand.

ER 1110-2-1150 defines on a broad scale the engineering responsibilities, requirements and procedures during civil works projects. Paragraph 6.1 states that “[w]hen the normal authorization process is not followed, one or more of the project phases may be modified or deleted and report titles may change.” In this case, the Congress has twice recognized the need for correction of design deficiencies at Sitka without following the normal authorization phases. Specifically Section 3005 modifies the original construction authority by directing the Corps to take action to correct design deficiencies at Federal expense. Applying ER 1110-2-1150 to this situation, the District may legitimately skip several project phases.

The current implementation guidance requires lengthy, costly studies (4 years and \$4.6 million) followed by various reviews and approvals before construction may begin. The EDR process may be used in lieu of a decision document to permit PCA amendment and the construction of the fix. ER 1110-2-1150, paragraph 14.2 specifically permits preparation of an EDR when an individual project has been authorized by Congress without a feasibility report with certain restrictions. Paragraph 8.3 explains that an EDR can be used in lieu of a decision document for projects authorized by Congress without a feasibility report when only technical decisions are required. In this case, only technical decisions are required, thus, an EDR may be used as the decision document to move this project closer to actual construction. The Sitka Harbormaster identified this gap as where the wave energy was coming from. Physical model results show that wave energy entering the harbor would be reduced by constructing a breakwater in the gap.

The ability to use an EDR vice the more complex processes does not obviate the need for a design documentation report (DDR) though. The requirement for DDRs cannot be waived, but the content may be reduced “if the project is not complex, sufficient engineering detail is contained in the feasibility report engineering appendix, and no further detailed documentation is necessary.” Paragraph 14.2, ER 1110-2-1105. The fix is not complex and the model study confirmed a reduction in wave energy will be attained. The information from the original report is sufficient to design the breakwater cross section proposed to close the gap. An EDR, per ER 1110-2-1150, is approved at the District level².

Clarification provided by HQUSACE via a 16 June 2009 teleconference and subsequent email dated 8 October 2009 defined the economic justification. The economic analysis will not require a traditional BCR rather the selection of the corrective measure will be based upon an incremental cost analysis.

² Ibid

Suggested Revisions to Guidance: The District suggests the following changes to the Section 3005 guidance be provided.

- a. The term “deficiency correction evaluation report” be replaced throughout the guidance with “Engineering Documentation Report”.
- b. The first three sentences of paragraph 3 are modified to read.

At such time as funds are appropriated for such work, the Alaska District will complete the Engineering Documentation Report in accordance with current policies, budgetary guidance, and ER 1110-2-1150, Engineering and Design for Civil Works Projects, except that the Engineering Documentation Report will be completed at Federal expense and that the project justification will be based upon an incremental analysis of the costs rather than identification of the plan with greatest net National Economic Development benefits. The report will be approved at the District in accordance with ER 1110-2-1150.

From: [Martinson, David A POA](#)
To: [Sexauer, Bruce R POA](#); [Brooks, Forest C POA](#);
[Hemphill, Clarke I POA](#);
Subject: FW: Sitka Breakwater Issue Paper
Date: Thursday, January 07, 2010 9:38:17 AM

fyi

-----Original Message-----

From: Owen, Gib A HQ02
Sent: Thursday, January 07, 2010 3:29 AM
To: Hihara-Endo, Linda M@ POD; Iwamura, Russell K@ POD; Martinson, David A POA; Boardman, Stephen C POA
Cc: Wagner, Sharon HQ02
Subject: Sitka Breakwater Issue Paper

All

Recap of HQ staff meeting in December 09 concerning Sitka. Not sure if you got this already, since I was out for a few days completing PCS. We would like to work with you to help reduce projected study time and cost as much as possible.

Gib

POD-RIT staff met with HQ Policy and Engineering staff on 10 December 09 to discuss the Sitka Breakwater issue paper provided by POA. The outcome of the meeting is:

1. ER 1110-2-1150 paragraph 14.2 does not apply to the Sitka Breakwater project since the project is classified as a completed Federal project. ER 1110-2-1150 Section 14 is applicable to Corps projects during the Preconstruction/PED phase of the project.

2. HQ guidance, 15 May 2009 states that POA will complete a Deficiency Correction Evaluation report (DCER) in accordance with ER 1165-2-119. ER 1165-2-119 is applicable to completed Corps projects, such as the Sitka Breakwater project. DCER should include a discussion of the existing conditions; identification of the problem; the recommended corrective action; impacts of such corrective action on prior environmental concerns and commitments; documentation of any mitigation requirements resulting from the implementation of the corrective action; and documentation of coordination of the corrective action with applicable Federal and state agencies. Approval authority of report resides at HQUSACE.

3. Sitka Breakwater project is an acknowledged completed Federal project with

design deficiencies, as such DCER does not need to discussed a justification for declaring the project design deficient.

4. Any additional applicable environmental compliance investigations/ documentations required in support of the corrective action should be completed in parallel with the DCER.

POD-RIT is prepared to assist POD/POA with completion of the DCER in the most expeditious manner possible.

Gib Owen
Planner/Biologist
US Army Corps of Engineers
Pacific Ocean Division
Regional Integration Team
Washington DC
202 761-1934 Office
202 570-0079 Mobile

Suggested Modifications to 1993 Project Cooperation Agreement between the Corps of Engineers and the City and Borough of Sitka

Prior to the start of construction, the existing 1993 Project Cooperation Agreement (PCA) must be amended and the non-Federal sponsor must agree to changed provisions. The suggested revisions to the 1993 PCA are provided, as follows. Other PCA changes may be appropriate as determined by the Chief of Engineers to be necessary due to changes in law. Text shown {{between brackets}} should be deleted. Text shown as *Shaded Italic* should be added.

TITLE:

PROJECT {{COOPERATION}} *PARTNERSHIP* AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

THE CITY AND BOROUGH OF SITKA, ALASKA

FOR CONSTRUCTION OF THE

SOUTHEAST ALASKA HARBORS OF REFUGE PROJECT

(including CHANNEL ROCK BREAKWATERS DEFICIENCY CORRECTION MEASURE)

PREAMBLE – Second WHEREAS:

WHEREAS, the Government and the Local Sponsor {{desire to enter}} *entered* into a Project Cooperation Agreement on *7 December, 1993* for construction of Southeast Harbors of Refuge at Sitka, Alaska (hereinafter the “*original* Project” and defined in Article I.a. of this Agreement);

PREAMBLE - Third WHEREAS:

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the *original* Project;

PREAMBLE – Add four new WHEREAS clauses after the existing third WHEREAS.

WHEREAS, design and construction of modifications to the Federal navigation project at Thomsen Harbor, Sitka, Alaska (Southeast Alaska Harbors of Refuge Project) to correct the design deficiency by adding to, or extending, the existing breakwaters to reduce wave and swell motion within the harbor at full Federal expense was authorized and directed by Congress through Division C of P.L. 108-447, 8 December 2004;

WHEREAS, modification of the original Project by such actions as necessary to correct design deficiencies at Federal expense was authorized and directed by Congress through Section 3005 of P. L. 110-114 (WRDA 2007), 8 November 2007;

WHEREAS, The Government and the Local Sponsor desire to enter into a Project Partnership Agreement for construction of the Channel Rock Breakwaters Deficiency Correction Measure (hereinafter the “Project modification” as defined in Article I.a. of this Agreement;

WHEREAS, this new Project Partnership Agreement is agreed to completely replace and update the previously agreed to Project Cooperation Agreement;

ARTICLE I – Section b.

b. The term “*original* general navigation features of the Project” shall mean the construction of three breakwaters with lengths of 480 feet, 1200 feet, and 320 feet that would partially close off Western Anchorage in Sitka, and the monitoring and mitigation, if necessary, of the herring spawning habitat, as generally described in the Southeast Alaska Harbors Interim Feasibility Report with Engineering Appendix and Environmental Impact Statement for Sitka, Alaska, dated April 1992 and approved by the Chief of Engineers on 29 June, 1992. *The term “Project modification” shall mean the deficiency correction measure, a new breakwater segment of 315 feet that would close off the opening between the south and middle breakwaters, as generally described in the Deficiency Correction Evaluation Report, dated ??????2011, and approved by ?????????? on ??????2011. The Project modification shall be considered part of the overall general navigation features of the project for all provisions of this agreement, except that its construction, operation, and maintenance shall be at full Federal expense, except for any lands, easements, rights-of-way, and relocations required for construction and/or operation of the deficiency correction measure, which will be a local sponsor responsibility.*

ARTICLE I – Section c.

c. The term “total cost of the construction of the general navigation features” shall mean all costs incurred by the Local Sponsor and the Government directly related to the construction of the *original* Project *and all costs incurred by the Government directly related to construction of the Project modification.* Such costs shall.....

ARTICLE II – Section e.

e. The local sponsor shall provide, during the period of construction, a cash contribution equal to 10 percent of the total cost of construction of the *original* general navigation features of the project.

ARTICLE II – Section f.

f. As further specified in Article VI of this Agreement, the local sponsor shall repay with interest, over a period not to exceed 30 years following completion of the period of construction, and additional 0 to 10 percent of the total cost of the *original* general navigation features assigned to commercial navigation

ARTICLE VI – Section a.

a. The local sponsor shall provide, during the period of construction, the percentages of the total cost of the *original* general navigation features specified in Article II.e. of this Agreement. The total cost of construction of the *original* general navigation features assigned to commercial navigation is currently estimated to be \$11,501,000, and the Local Sponsor’s share is currently estimated to be \$2,300,000. In order to meet its share of the said total cost, the Local Sponsor must provide a cash contribution currently estimated to be \$1,150,100. *The total cost of construction of the Project modification is currently estimated at \$10,359,200 at full Federal expense.* The dollar amounts set forth in this Article.....

ARTICLE XX -

The Local Sponsor has reviewed the provisions set forth in Section 902 of P.L. 99-662, as amended, and understands that Section 902 establishes the maximum total project cost. For the purposes of this Agreement, the Section 902 cost limit *for the original project* is \$20,505,600, as calculated on 9 April 1993. *The Section 902 cost limit for the project modification is \$12,431,040, as calculated on 1 October 2011 [NOTE: this total is based upon a reset of the authorized estimated total project modification cost to the amount specified in ARTICLE VI-Section a. and 20 percent without inflation. The 902 limit will be recalculated on the day the PPA is signed to set the new project cost limit].* *These* amounts *are* calculated using procedures set forth in Appendix *G* of ER 1105-2-100. *They* shall be adjusted to allow for appropriate increases for inflation and changes in total cost of construction of the general navigation features of the project as provided in Section 902. Should *the* cost maximum be reached, no additional funds may be expended on the Project until additional authority is obtained from Congress.

From: [Marlene Campbell](#)
To: [Groom, William M \(DNR\)](#);
Subject: RE: Sitka Sound (USACE Channel Rock Breakwaters MOD) - AK 1104-03J: ACMP Consistency Review Start
Date: Monday, May 16, 2011 5:02:08 PM

Dear Mr. Groom:

I have reviewed this project for consistency with the Sitka Coastal Management Program. The City and Borough of Sitka is the local sponsor of this project, which will upgrade the existing Corps of Engineers Sitka Channel Rock Breakwaters to reduce the wave action which is causing harm to existing inner harbor facilities and limiting development in the inner harbor area. There is an error in the Environmental Assessment in that rock for the breakwater construction will not be obtained from the quarry on Kasiana Island unless it becomes permitted as a conditional use, which is not currently the case. There are several uplands rock sources available for this project.

When the original breakwater project was completed in 1995, the west and central breakwaters were left unconnected to provide more circulation and reduce environmental impacts from fill. Ironically, dive studies have shown the colonization of the breakwaters has resulted in major increases to habitat environments and is heavily used by herring and other creatures, resulting in much additional habitat. The closure of the two breakwaters will just increase the habitat opportunities, with recolonization expected within two years.

This project is very important to Sitka's long-term marine development, is not expected to have long-term adverse impacts to the environment, and is strongly supported by the City and Borough of Sitka. This project is consistent with the Sitka Coastal Management Program, which supports this project. Thank you for the opportunity to comment.

Marlene Campbell, Government Relations Director
(Coastal Management Coordinator)
City and Borough of Sitka
907-747-1855 phone
campbell@cityofsitka.com e-mail

From: Groom, William M (DNR) [mailto:william.groom@alaska.gov]
Sent: Friday, April 15, 2011 3:46 PM
To: Carter, Marla M (DFG); Deats, Theodore A (DNR); Dirks, Kristin L (DNR); DNR,

Parks OHA Review Compliance (DNR sponsored); juneau@fws.gov; Kelley, David L (DNR); mary.goode@noaa.gov; Palmer, Sean P (DEC); Roche, Frances E (DEC); Timothy, Jackie L (DFG); campbell@cityofsitka.com; Crayton, Wayne POA; USCG District 17

Cc: Taylor, Jill A (DNR); DNR, DCOM Juneau PRA (DNR sponsored); Groom, William M (DNR)

Subject: Sitka Sound (USACE Channel Rock Breakwaters MOD) - AK 1104-03J: ACMP Consistency Review Start

Hello All,

Please find attached an electronic copy of the ACMP consistency Startup Packet for the project identified as "**Sitka Sound (USACE Channel Rock Breakwaters MOD)**", AK 1104-03J: U. S. Army Corps of Engineers – Applicant, Mr. Wayne Crayton - Agent.

The consistency review deadlines are:

Day 1

04/15/11

Request for additional information

05/10/11

Comment deadline

05/16/11

Proposed Determination drafted

05/30/11

Final Determination issued

06/06/11

If you have questions concerning this packet in particular or the ACMP consistency review process in general, please contact me.

Thanks,

William Groom

Project Specialist

Ph: (907)-465-3563

E-Mail: william.groom@alaska.gov

STATE OF ALASKA

SEAN PARNELL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF COASTAL AND OCEAN MANAGEMENT
<http://www.alaskacoast.state.ak.us>

□ SOUTHCENTRAL REGIONAL OFFICE
550 W 7th AVENUE SUITE 705
ANCHORAGE, ALASKA 99501
PH: (907) 269-7470 FAX: (907) 269-3891

× CENTRAL OFFICE
P.O. BOX 111030
JUNEAU, ALASKA 99811-1030
PH: (907) 465-3562 FAX: (907) 465-3075

May 23, 2011

U. S. Army Corps of Engineers
Environmental Resources Section
c/o Mr. Wayne Crayton
PO Box 898
Joint Base Elmendorf-Richardson, Alaska 99506-0898

SUBJECT: Final Consistency Response - Concurrence
Sitka Sound (USACE Channel Rock Breakwaters MOD)
ACMP I.D. # AK 1104-03J

Dear Mr. Crayton:

The Division of Coastal and Ocean Management (DCOM) has completed coordinating the State's review of your proposed activities for consistency with the Alaska Coastal Management Program (ACMP). This is the State's final response to the federal consistency determination you submitted under 15 CFR 930, Subpart C.

Based on an evaluation of your proposed activities by the Alaska Departments of Environmental Conservation (DEC), Fish and Game (DFG), Natural Resources (DNR) and the Sitka Coastal District, DCOM concurs with your determination that your activities are consistent with the ACMP to the maximum extent practicable.

This is the State's final consistency response regarding your proposed activities. By copy of this letter, I am informing review participants and the U.S. Army Corps of Engineers of DCOM's proposed response. If you have any questions regarding this process, please contact me at 907-465-3563 or william.groom@alaska.gov.

Sincerely,



William Groom
Project Review Coordinator

Enclosures

cc: Fran Roche - ADEC, Juneau
William Ashton – ADEC, Anchorage
David Kelley - ADNR/DMLW, Juneau
Kristin Dirks - ADNR/DMLW, Juneau
Ted Deats - ADNR/DMLW, Juneau
Jackie Timothy - ADFG/Habitat, Juneau
Marla Carter – ADFG, Anchorage
State Historical Preservation Office - ADNR/SHPO, Anchorage
Marlene Campbell – Coastal District Coordinator, Sitka
Heidi Firstencel – USACE Regulatory, Juneau

**ALASKA COASTAL MANAGEMENT PROGRAM
FINAL CONSISTENCY RESPONSE
CONCURRENCE**

PROJECT TITLE: Sitka Sound (USACE Channel Rock Breakwaters MOD)

DCOM Id. No.: AK 1104-03J

APPLICANT/AGENT: U. S. Army Corps of Engineers – Environmental Resources Section
Mr. Wayne Crayton

ACTIVITY LOCATION:

Your proposed project is located within Section 35 of Township 55S., Range 63E., Copper River Meridian, near Thomsen Harbor, in Sitka, Alaska.

ACTIVITY DESCRIPTION:

The US Army Corps of Engineers (USACE) is proposing to perform a corrective action to a design deficiency in the Channel Rock Breakwaters in Sitka, Alaska. On June 2, 1992, the ACMP issued a concurrence for the construction of the three existing Channel Rock Breakwaters under AK 920513-16J. These breakwaters were constructed in 1995 to provide protection to Thomsen Harbor and other moorage and anchorage structures between Sitka and Japonski Island. After the construction of the breakwaters in 1995, users of Sitka Harbor reported that excessive wave energy was entering through openings in the breakwaters during high tide and swell conditions, damaging boats, and harbor facilities.

To correct this issue, the USACE has performed an Environmental Assessment (EA) and issued a Finding of No Significant Impacts (FONSI) for Alternative 4 listed within the EA. Alternative 4 would connect the southern breakwater, located near Japonski Island with the central breakwater structure. The proposed work associated with this alternative would require the placement of 9,000 cy of armor stone, 13,000 cy of B-type rock and 30,000 cy of core material to connect these two breakwater structures. Approximately 3,000 cy of armor stone and 1,100 cy of B-type rock would be removed from the southern end of the main breakwater and used in the construction of this project. The USACE will require the contractor for this project acquire the fill material from a quarry site that has already been approved and permitted. The USACE has asserted that the proposed project is Consistent to the Maximum Extent Practicable (CMEP) with the ACMP under 15 CFR 930.32.

In order to minimize impacts to the competing commercial, subsistence and recreational uses of herring and salmon within the area, the USACE is proposing to not conduct construction activities between March 15 and June 1 to avoid peak herring spawn activities and juvenile salmon outmigration and rearing activities.

PROJECT SCOPE TO BE REVIEWED:

Inside the scope of this review are the effects to coastal uses and resources of the coastal zone resulting from the placement of approximately 52,000 cy of fill into coastal waters to connect the southern and main Channel Rock Breakwaters.

AUTHORIZATIONS:

Your proposed activities may require authorizations from the Department of Fish and Game – Division of Habitat, the Department of Natural Resources – Division of Mining, Land and Water, and the U.S. Army Corps of Engineers.

Please note that, in addition to their consistency review, State agencies with permitting responsibilities will evaluate your activity according to their specific permitting authorities. Agencies will issue permits and authorizations only if they find the proposed project complies with their statutes and regulations in addition to being consistent with the ACMP.

CONSISTENCY STATEMENT:

Based on an evaluation of your project by Alaska Departments of Environmental Conservation (DEC), Fish and Game (DFG) and Natural Resources (DNR), and the Sitka Coastal District, I concur with your consistency determination.

APPEALS:

This final consistency determination is a final order and decision under the ACMP for purposes of Alaska Appellate Rules 601-612. Any appeal of this decision to the Alaska Superior Court must be made within 30 days of the date I issued this determination. OCRM mediation may be available under 15 C.F.R. 930.44.

MODIFICATIONS:

This consistency response is only for your activities as described above. If, after I issue this final consistency response, you propose any changes to the approved activities, including its intended use, prior to or during its siting, construction, or operation, you must contact this office immediately to determine if further review and approval of your modified activities is necessary. Changes may require amendments to the authorizations listed in this response, or may require additional authorizations.

FINAL CONSISTENCY RESPONSE PREPARED BY:

William Groom, Project Review Coordinator
Division of Coastal and Ocean Management
P.O. Box 111030
Juneau, Alaska 99811-1030
(907) 465-3563



May 23, 2011

ACMP CONSISTENCY EVALUATION
Sitka Sound (USACE Channel Rock Breakwaters MOD)
ACMP I.D. # AK 1104-03J

Pursuant to the following evaluation, the project as proposed is consistent with applicable ACMP statewide and affected coastal resource district enforceable policies (copies of the policies are available on the ACMP web site at <http://www.alaskacoast.state.ak.us>).

STATEWIDE STANDARDS
<p>11 AAC 112.200. Coastal Development</p> <p>Evaluation: The proposed project involves the placement of approximately 52,000 cy of fill into coastal waters to connect the southern and main Channel Rock Breakwaters. The installation of these facilities is water-dependent. During the course of this review, ACMP review participants did not identify a higher priority water-dependent use or activity. Therefore, this project as proposed and described meets the intent of this standard.</p>
<p>11 AAC 112.210. Natural Hazard Areas</p> <p>Evaluation: This project is not located in a designated natural hazard area and ACMP review participants did not identify any natural hazard areas at this site. Therefore, this standard does not apply to the project as proposed and described.</p>
<p>11 AAC 112.220. Coastal Access</p> <p>Evaluation: The proposed project involves the placement of approximately 52,000 cy of fill into coastal waters to connect the southern and main Channel Rock Breakwaters. The proposed breakwater will not impede public access to, from or along coastal waters as proposed and ACMP review participants have not identified any additional measures to maintain or increase public access, therefore, this project as proposed and described meets the intent of this standard.</p>
<p>11 AAC 112.230. Energy Facilities</p> <p>Evaluation: The proposed project will not involve the development of an energy facility; therefore, this standard does not apply to the project as proposed.</p>
<p>11 AAC 112.240. Utility Routes and Facilities</p> <p>Evaluation: The proposed project will not involve the placing of utility routes or facilities; therefore, this standard does not apply to the project as proposed.</p>
<p>11 AAC 112.250. Timber Harvest and Processing</p> <p>Evaluation: The proposed project will not involve timber harvest or processing activities; therefore, this standard does not apply to the project as proposed.</p>
<p>11 AAC 112.260. Sand and Gravel Extraction</p> <p>Evaluation: The proposed project will not involve sand or gravel extraction from coastal waters; therefore, this standard does not apply to the project as proposed.</p>

11 AAC 112.270. Subsistence

Evaluation: This project is not located in a designated subsistence area; therefore, this standard does not apply to the project as proposed and described.

11 AAC 112.280. Transportation Routes and Facilities

Evaluation: The proposed project will involve the placement of approximately 52,000 cy of fill into coastal waters to connect the southern and main Channel Rock Breakwaters, which is a facility associated with the protection of Thomsen and Sitka Harbor. Transportation facilities must avoid, minimize or mitigate for alterations in surface and ground water drainage patterns, disruption in known and reasonably foreseeable wildlife transit and blockage of existing or traditional access. The project as proposed is designed to improve the safety and protection to the existing transportation facilities at Thomsen and Sitka Harbor from wave actions. As proposed, the project is located offshore and will not alter ground or surface water drainage patterns on tideflats. The USACE has proposed that the project will not disrupt any known or reasonably foreseeable wildlife transit routes or block any existing or traditional access routes. ACMP review participants have not identified any additional measures to meet this standard, therefore, this project as proposed and described meets the intent of this standard.

11 AAC 112.300. Habitats

Evaluation: On May 5, 2011, DCOM received the following comments from Habitat:

“11 AAC 112.300 HABITATS STANDARD

Coastal area habitats within the proposed project that are subject to the statewide Habitats Standard include *offshore areas*.

Offshore areas must be managed to avoid, minimize, or mitigate significant adverse impacts to competing uses such as commercial, recreational, or subsistence fishing, to the extent that those uses are determined to be in competition with the proposed use.

Considering the location of the Channel Rock Breakwaters, complete avoidance of adverse impacts to offshore areas is not practicable given the scope of the project. Area Management Biologists have identified the breakwater structure as herring spawn habitat. Herring also pass through openings in the structure prior to spawning, to access other habitat. Outmigrating salmonids may also be using the near shore habitat adjacent to the project site during outmigration in the spring. The FONSI outlines how the applicant will avoid and/or minimize these adverse impacts.

Avoidance/ Minimization

The applicant proposes to not conduct construction activities between March 15th and June 1st. This timing window will avoid peak herring spawn activities and juvenile salmonid outmigration. Connecting the main breakwater with the south breakwater may impede the movement of herring through this area, however the majority herring pass through the opening between Japonski Island and the south

breakwater. Because of this, Alternate #4 will minimize adverse impacts to this resource. Therefore, I concur that the applicant has designed the project to avoid and minimize adverse impacts to offshore areas, and that the project is consistent with the Habitats Standard within the Alaska Coastal Management Program.”

The proposed project involves the placement of approximately 52,000 cy of fill into coastal waters to connect the southern and main Channel Rock Breakwaters in the offshore area, which must be managed to avoid, minimize, or mitigate significant adverse impacts to competing uses. The USACE is proposing to avoid in-water work between March 15th and June 1st to minimize impacts to competing uses of the area by herring spawn activities and juvenile salmon outmigration and rearing activities.. ACMP review participants have not identified any additional measures to meet this standard, therefore, this project as proposed and described meets the intent of this standard.

11 AAC 112.310. Air, Land & Water Quality

Evaluation: The ADEC statutes and regulations with respect to air, land and water quality are incorporated into the ACMP. The issuance of an ADEC authorization constitutes consistency with the ACMP for the authorized activity and this standard. Consistency with this standard will be established when the ADEC issues or waives the required authorizations.

11 AAC 112.320. Historic, Prehistoric, and Archaeological Resources

Evaluation: Comments from the district and the State did not identify the proposed project location as an area, which is important to the study, understanding, or illustration of national, state, or local history or prehistory. The applicant has been advised to contact DNR/SHPO and the U.S. Army Corps of Engineers should a site of cultural or historical significance be suspected or revealed and to stop any work that would disturb any resources.

COASTAL DISTRICT ENFORCEABLE POLICIES

Coastal District Evaluation: On May 16, 2011, DCOM received the following comments from the Sitka Coastal District:

“I have reviewed this project for consistency with the Sitka Coastal Management Program. The City and Borough of Sitka is the local sponsor of this project, which will upgrade the existing Corps of Engineers Sitka Channel Rock Breakwaters to reduce the wave action which is causing harm to existing inner harbor facilities and limiting development in the inner harbor area. There is an error in the Environmental Assessment in that rock for the breakwater construction will not be obtained from the quarry on Kasiana Island unless it becomes permitted as a conditional use, which is not currently the case. There are several uplands rock sources available for this project.

When the original breakwater project was completed in 1995, the west and central breakwaters were left unconnected to provide more circulation and reduce environmental impacts from fill. Ironically, dive studies have shown the colonization of the breakwaters has resulted in major increases to habitat environments and is heavily used by herring and other creatures, resulting in

much additional habitat. The closure of the two breakwaters will just increase the habitat opportunities, with recolonization expected within two years.

This project is very important to Sitka's long-term marine development, is not expected to have long-term adverse impacts to the environment, and is strongly supported by the City and Borough of Sitka. This project is consistent with the Sitka Coastal Management Program, which supports this project.”

This project, as proposed and described, meets the intent of the Sitka Coastal Management Plan based on the comments provided by the Sitka Coastal District.



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

June 22, 2011

Michael R. Salyer
Chief, Environmental Resources Section
Department of the Army
U.S. Army Engineer District, Alaska
P.O. Box 6898
JBER, Alaska 99506-0898

Dear Mr. Salyer:

NOAA Fisheries has received your letter dated 24 February 2011 requesting consultation under section 7 of the Endangered Species Act (ESA) on the U.S. Army Corps of Engineers (Corps) Channel Rock Breakwaters Navigation Improvements Project for the Sitka Harbor in Sitka, Alaska. We understand that the proposed project would correct breakwater design deficiencies by adding to, or extending, the existing breakwaters to reduce wave and swell motion.

Accompanying your letter, we also received the Corps' Biological Assessment (BA) which concludes that the proposed action *may affect, but is not likely to adversely affect*, the following species which may occur in the project area: Steller sea lion, eastern Distinct Population Segment (DPS); Steller sea lion, western DPS; humpback whale; and Pacific herring (candidate). The Corps further determined that *no effect* is expected to occur to critical habitat for the eastern DPS of Steller sea lion.

An agency action is considered not likely to adversely affect listed species or designated critical habitat when its effects are expected to be completely beneficial, discountable, or insignificant. Beneficial effects are synchronous positive effects without any adverse effects to the species or critical habitat. Discountable effects are those extremely unlikely to occur. Insignificant effects relate to the size of the impact and may not reach the scale where take occurs. Based on best judgment, a person would not expect discountable effects to occur; or be able to meaningfully measure, detect or evaluate insignificant effects.

Discussion

As stated in the BA, the project action seeks to close a gap between two existing Channel Rock Breakwaters to reduce excessive wave and swell motion which have damaged boats and harbor facilities during high tide and swell conditions. The Environmental Impact Statement for the project was prepared in 1992 and features were constructed in 1995. All rock for the project will be obtained from an existing quarry on Kasiana Island, 2 miles north of the breakwaters. Fifty round-trips are expected by barges from the quarry to the project site. Rubble mound construction methods will be used, and no dredging is expected to be required. Construction will total 315 feet of breakwater extension.



Direct effects of the Channel Rock Breakwaters Navigation Improvements Project for the Sitka Harbor to humpback whales and Steller sea lions may include an increased risk of boat strikes, in-water acoustic disturbance and brief disruption of foraging along barging or boating routes. The probability of these events depends upon the local distribution of these species as well as the frequency, speed and route of the marine transportation. Although no critical habitat has been designated within the project area for either of these species, individuals from these populations may be present in the action area.

However, with the mitigation measures included into the project—no construction between March 15 and June 1; vessel speed limits of 8 knots or less; no intentional grounding of vessels or barges; preparation of an oil spill plan; construction material free of invasive species; and no transit of vessels within 3,000 feet of Steller sea lion critical habitat—impacts are expected to be negligible to the listed species under consultation. Avoiding in-water construction during the time of year when herring are actively spawning and marine mammal predators are abundant in Sitka Sound will minimize impacts to listed species such that they are considered insignificant.

Although there may be short-term impact to spawning Pacific herring based on alterations of habitat, no long-term change in the amount of intertidal and littoral habitat used by herring is anticipated, as re-colonization of bare rock to ecologically functional levels is expected within 1-2 years of construction. Given that additional rocky substrate will be added by constructing an extended breakwater, the BA determines that there will be a net beneficial impact to Pacific herring by adding spawning habitat (eliminating 37,000 sq ft and placing new substrate totaling 59,000 sq ft). NOAA Fisheries concurs that the impact is likely to be beneficial over time, once revegetated by marine algal species, by supporting spawning Pacific herring with additional habitat.

Finally, while no critical habitat is present in the action area for either the western or eastern DPS of Steller sea lion, barges may transit past the critical habitat sites of Lull Point, Graves Rock and Biali Rocks. If the Corps maintains the distance from critical habitat proposed in the mitigation measures, NOAA Fisheries anticipates that adverse effects to critical habitat for the eastern DPS of Steller sea lion will be discountable.

Conclusion

Based on the information provided in your February 2011 BA and a review of best available science, NOAA Fisheries concurs with the Corps' determination that the proposed action is not likely to adversely affect threatened Steller sea lions from the eastern DPS or their critical habitat, endangered Steller sea lions from the western DPS, endangered humpback whales, or Pacific herring as a candidate species under the ESA. While the action may indirectly affect these species, our assessment finds any such effects are insignificant (such effects could not be meaningfully measured or detected) or discountable (such effects would not reasonably be expected to occur). This concludes our consultation for this action.

Reinitiating consultation is required where discretionary federal agency involvement or control over the action has been retained (or is authorized by law) and if: 1) take of a listed species occurs, 2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, 3) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not previously considered, or 4) a new species is listed or critical habitat is designated that may be affected by the action.

If there are any questions, please contact Aleria Jensen by email at Aleria.Jensen@noaa.gov, or by telephone at (907) 586-7248.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Balsiger', with a stylized flourish at the end.

James W. Balsiger, Ph.D.
Administrator, Alaska Region



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
P.O. BOX 6898
Joint Base Elmendorf Richardson, Alaska 99506-0898

JUL 11 2011

CEPOA-EN-CW-ER

James W. Balsiger, Ph. D.
Administrator, Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

Dear Dr. Balsiger:

The Alaska District, U.S. Army Corps of Engineers (Corps) has been directed by Congressional legislation to design and construct modifications to the Channel Rock Breakwaters navigation project at Sitka Harbor, Alaska. The modifications are to correct design deficiencies by adding to, or extending, the existing breakwaters to reduce wave and swell motion. In conjunction with the Civil Works Program project planning process, the Corps prepared an environmental assessment of the project and submitted it for review by the public and State, Federal and local government agencies. The Corps also, per the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), coordinated with the National Marine Fisheries Service (NMFS) pertaining to the project's potential impacts on essential fish habitat (EFH).

The Corps initiated EFH coordination with your office by submitting an August 3, 2010, letter requesting both EFH and threatened and endangered species information. Your August 24, 2010, written response provided us valuable information and references, which we used to help prepare our February 17, 2011, EFH evaluation. We concluded in our EFH evaluation that the project's potential impacts would be highly localized, temporary, minimal and not likely to adversely affect EFH and EFH-managed species/species complexes for Gulf of Alaska groundfish and Alaska stocks of Pacific salmon. The Corps' EFH evaluation also included the following project-related mitigation measures:

- The proposed action shall cease in-water construction between March 15 and June 1 during peak herring spawning activities, juvenile salmon outmigration and rearing activities, and when Steller sea lion and humpback whale feeding and abundance is expected to be greatest in the project area.
- To minimize the danger to marine mammals from project-related vessels, speed limits (e.g. less than 8 knots) shall be imposed on vessels moving in and around the project area.
- Project-related vessels and barges shall not be permitted to ground themselves on the bottom during low tide periods, unless there is a human safety issue requiring it.

- A construction oil spill prevention plan shall be prepared.
- Breakwater construction shall use core material, B rock, and armor stone clean of organic debris and invasive species.
- Project-related vessels shall not travel within 3,000 feet of designated Steller sea lion critical habitat (haulouts or rookeries).

An April 27, 2011, response from your office stated that the Corps' proposed action would not adequately compensate for the loss of 0.57 acre of soft substrate benthic habitat and a time delay for recovery of the 0.45 acre of newly placed breakwater to become fully functioning rocky-substrate breakwater habitat; therefore, additional mitigation should be developed to compensate these losses. The NMFS also suggested that the Corps use the Habitat Equivalency Analysis (HEA) model for estimating how much restoration is needed to compensate for the loss of subtidal habitat. Per section 305(b)(4) of the MSFCMA, the Corps responded May 2, 2011, via email, stating that based on breakwater recolonization study findings and our best professional judgment (which properly weighed all data collected regarding habitat usage for the various life history stages of the NMFS managed species), the "habitat shift" of soft substrate benthic habitat to the net-gain of rocky substrate habitat would in the long term provide the Sitka Sound area with high value EFH and not require compensatory mitigation.

The Corps' Civil Works Program water resources planning guidance and associated environmental regulations require mitigation planning to be an integral part of the overall project planning process. Of the four project alternatives the Corps evaluated in further detail, the selected alternative has the least physical impact on mixed soft-bottom habitat. The shift of mixed soft-bottom habitat to rocky subtidal habitat would transform EFH for primarily flatfish complex species to EFH for primarily rockfish and sculpin species complexes, including habitat for Pacific herring (a candidate threatened species) spawning. Overall only 0.12 acre (0.57 acre of mixed soft-bottom minus the 0.45 acre of rocky substrate created) of EFH would be unavoidably lost. This unavoidable loss would have a minor and unmeasurable effect on flatfish population stocks in Sitka Sound.

The Corps would like to address NMFS's concern about the time required for the new breakwater rock to become fully vegetated and ecologically functional, and that this time delay requires compensatory mitigation. Based on previous Corps field studies in Southeast Alaska, including those in Sitka, and ongoing field observations at newly constructed breakwaters in Sand Point and False Pass, the Corps expects the majority of the new breakwater's tidally influenced surface to be revegetated with *Fucus sp.* and other algal species within 2 years. When placed into the marine environment, the Corps also expects the breakwater's crevices to immediately provide protective cover for juvenile fish species and invertebrates. However, to more fully address NMFS's concern, the Corps will add the following stipulation to the project's mitigation plan:

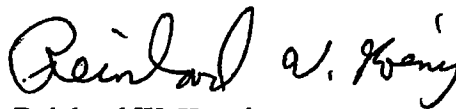
- To accelerate recolonization of the new breakwater segment, all armor rock removed from the existing breakwaters that have established colonies of sessile or attached adapted marine organisms and marine algae shall be used in constructing the new breakwater face.

The Corps has incorporated compensatory mitigation into many of its Civil Works projects, and in each case, the compensatory mitigation complied with Civil Works standards and mitigation policy. The Corps' Civil Works Program requires compensatory mitigation to be practical, justified, scientifically defensible, cost-effective, and cost-shared with the project sponsor(s). In this case, the Corps believes that the NMFS-requested compensatory mitigation does not meet the Corps' compensatory mitigation requirements as described above. The Corps does believe, however, that the beneficial environmental tradeoffs summarized in this letter and previously described in the Corps' EFH evaluation will provide long-term environmental benefits for EFH species and EFH species complexes in Sitka Sound.

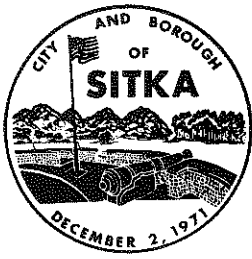
Recent conversations and correspondence between our respective staff appear to indicate that NMFS believes that the HEA model alone would determine the need for compensatory mitigation for water resource projects associated with the Civil Works Program. The Corps believes that the HEA model may have value after the aforementioned Corps Civil Works Program compensatory mitigation requirements have been met. However, the Corps has not verified the HEA model as a valid tool to calculate and enumerate compensatory mitigation for water resources projects associated with the Corps' Civil Works Program. Because of the HEA model's possible value and recently received guidance on assuring the quality of Corps planning models, the Alaska District will seek authority and funds to have the HEA model evaluated and possibly verified so that it might be used in future compensatory mitigation Civil Works planning efforts.

In closing, the Corps believes that our proposed mitigation plan represents responsible measures within our statutory authority and to the maximum extent practicable, avoids and minimizes impacts to the marine environment. The Corps also believes it has fulfilled its EFH consultation requirements and looks forward to continued EFH coordination with your office on other Corps water resource projects in Southeast Alaska and the HEA model verification process.

Sincerely,



Reinhard W. Koenig
Colonel, Corps of Engineers
District Commander



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

August 12, 2011

District Engineer
U.S. Army Corps of Engineers
Alaska District
ATTN: CEPOA-PM-C (Martinson)
P.O. Box 6898
Elmendorf AFB 99506-6898

Dear Sir:

This letter is in reference to the Corps of Engineers' Deficiency Correction Evaluation Report and Environmental Assessment with Finding Of No Significant Impact. As Coastal Management Coordinator for the City and Borough of Sitka, I have reviewed this project and support the findings described within.

The City and Borough of Sitka is the local sponsor of this project, which will upgrade the existing Corps of Engineers Sitka Channel Rock Breakwaters to reduce the wave action which is causing harm to existing inner harbor facilities and limiting development in the inner harbor area. The efforts by the Corps of Engineers to complete this report and environmental assessment are greatly appreciated.

This project is very important to Sitka's long-term marine development, is not expected to have long-term adverse impacts to the environment, and is strongly supported by the City and Borough of Sitka. This project is consistent with the Sitka Coastal Management Program, which supports this project.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marlene Campbell".

Marlene Campbell, Government Relations Director
(Coastal Management Coordinator)
City and Borough of Sitka
907-747-1855 phone
campbell@cityofsitka.com e-mail

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF WATER

Wastewater Discharge Authorization Program

SEAN PARNELL, GOVERNOR

555 Cordova Street
Anchorage, AK 99501-2617
Phone: (907) 269-6283

Fax: (907) 334-2415

TTY: (907) 269-7511

<http://www.state.ak.us/dec/>

December 13, 2011

Certified Mail 7009-2820-0001-7169-2592

Mr. Michael R. Salyer
U.S. Army Corps of Engineers
Environmental Resources Section
PO Box 898
Joint Base Elmendorf-Richardson, AK 99506-0898

Subject: Sitka Sound (USACE Channel Rock Breakwaters MOD)
Reference No. ER-11-04

Dear Mr. Salyer:

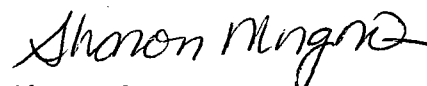
In accordance with Section 401 of the Federal Clean Water Act of 1977 and provisions of the Alaska Water Quality Standards, the Department of Environmental Conservation is issuing the enclosed Certificate of Reasonable Assurance for the construction of a modification to the Channel Rock Breakwater in Sitka, Alaska.

Department of Environmental Conservation (DEC) regulations provide that any person who disagrees with this decision may request an informal review by the Division Director in accordance with 18 AAC 15.185 or an adjudicatory hearing in accordance with 18 AAC 15.195 – 18 AAC 15.340. An informal review request must be delivered to the Director, Division of Water, 555 Cordova Street, Anchorage, AK 99501, within 15 days of the permit decision. Visit <http://www.dec.state.ak.us/commish/ReviewGuidance.htm> for information on Administrative Appeals of Department decisions.

An adjudicatory hearing request must be delivered to the Commissioner of the Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, PO Box 111800, Juneau, AK 99811-1800, within 30 days of the permit decision. If a hearing is not requested within 30 days, the right to appeal is waived.

By copy of this letter we are advising the U.S. Army Corps of Engineers of our actions and enclosing a copy of the certification for their use.

Sincerely,



Sharon Morgan, Manager
Wastewater Discharge Authorization Program

Enclosure
cc: (with encl.)
William Ashton, ADEC, Anch.

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CERTIFICATE OF REASONABLE ASSURANCE

A Certificate of Reasonable Assurance (CRA), in accordance with Section 401 of the Federal Clean Water Act and the Alaska Water Quality Standards is issued to the U.S. Army Corps of Engineers, PO Box 898, Joint Base Elmendorf-Richardson, AK 99506-0898 to perform corrective action to a design deficiency in the Channel Rock Breakwaters in Sitka, AK. The proposed work associated with the selected alternative would require the placement of 9,000 cubic yards (cy) of armor stone, 13,000 cy of B-type rock and 30,000 cy of core material to connect two breakwater structures. Approximately 3,000 cy of armor stone and 1,100 cy of B-type rock would be removed from the southern end of the main breakwater and used in the construction of this project. The U.S. Army Corps of Engineers (USACE) will require that the contractor for this project acquires the required fill material from a quarry site that has already been approved and permitted. In order to minimize impacts to commercial, subsistence and recreational uses of herring and salmon within the area, the USACE is proposing to not conduct construction activities between March 15 and June 1 to avoid peak herring spawn activities and juvenile salmon outmigration and rearing times.

The proposed activity is located within Section 35 T. 55 S., R. 63 E. Copper River Meridian in Sitka, Alaska.

Public notice of the application for this certification was given as required by 18 AAC 15.180.

A State Water Quality Certification is required under Section 401 because the proposed activity will be authorized by a U.S. Army Corps of Engineers permit, reference number ER-11-04 and a discharge may result from the proposed activity.

The DEC reviewed the application and certifies that there is reasonable assurance that the proposed activity, as well as any discharge which may result, will comply with applicable provisions of Section 401 of the Clean Water Act and the Alaska Water Quality Standards, 18 AAC 70, provided that the following alternative measures are adhered to.

1. Reasonable precautions and controls must be used to prevent incidental and accidental discharge of petroleum products or other hazardous substances. Fuel storage and handling activities for equipment must be sited and conducted so there is no petroleum contamination of the ground, surface runoff or water bodies.
2. During construction, spill response equipment and supplies such as sorbent pads shall be available and used immediately to contain and cleanup oil, fuel, hydraulic fluid, antifreeze, or other pollutant spills. Any spill amount must be reported in accordance with Discharge Notification and Reporting

Requirements (AS 46.03.755 and 18 AAC 75 Article 3). Most importantly, the applicant must contact by telephone the DEC Area Response Team for Central Alaska at (907) 269-3063 during work hours or 1-800-478-9300 after hours. Also, the applicant must contact by telephone the National Response Center at 1-800-424-8802. Report all spills.

3. The quarry for this project shall apply for coverage under DEC's APDES Multi-Sector General Permit (AKR050000). This permit requires that a Storm Water Pollution Prevention Plan (SWPPP) describing best management practices to control erosion and runoff during facility operation be prepared and implemented. Please refer to ADEC's website for information concerning the APDES storm water permit.

This certification expires five (5) years after the date the certification is signed. If your project is not completed by then and work will continue, you must submit an application for renewal of this certification no later than 30 days before the expiration date (18 AAC 15.100).

Date 12.13.11

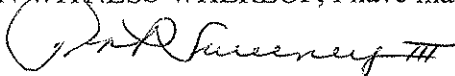
Sharon Morgan
Sharon Morgan, Manager
Wastewater Discharge Authorization Program

NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS

John P. SWEENEY III

I, _____, do hereby certify that I am the Chief Financial Officer for the City and Borough of Sitka (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Navigation Improvements Project for Sitka Channel Rock Breakwaters; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Project Cooperation Agreement for the construction of the Southeast Alaska Harbors of Refuge Project (Channel Rock Breakwaters) including the Channel Rock Breakwaters Deficiency Correction Measure, Sitka, Alaska.

IN WITNESS WHEREOF, I have made and executed this certification this 12th day of March, 2012.



BY: John P. Sweeney III
TITLE: FINANCE DIRECTOR
DATE: MARCH 12, 2012