

MEMORANDUM FOR THE RECORD

SUBJECT: Compliance Review of Final Report, Pebble Project Compensatory Mitigation Plan in accordance with 33 CFR 332, POA-2017-00271

On 4 November 2020, Pebble Limited Partnership submitted a Final Compensatory Mitigation Plan (Final Plan) in order to satisfy the standards and criteria established in 33 CFR 332. This Memorandum summarizes USACE's findings as it relates to compliance with 33 CFR 332. More detailed findings are contained in the Final Plan Review and Determination of Compliance dated 09Nov20. The items listed below are elements required to be included in a complete compensatory mitigation plan, in accordance with 33 CFR 332.4(c).

1. **Lacks Sufficient Detail-Not Compliant:** The level of detail of the mitigation plan is not commensurate with the scale and scope of the impacts. [33 CFR 332.4(c)(1)]
2. **Preservation Waiver-Not Compliant:** Preservation shall be done in conjunction with aquatic resource restoration, establishment, and/or enhancement activities. This requirement may be waived by the district engineer where preservation has been identified as a high priority using a watershed approach. No restoration, establishment, and/or enhancement were proposed and justification identifying the proposed preservation as a high priority using a watershed approach was not submitted. [33 CFR 332.3(h)(2)]
3. **Amount of Compensatory Mitigation-Not Compliant:** No compensatory mitigation was proposed by the applicant to offset impacts from the port site. [33 CFR 332.3(f)]
4. **Site Protection-Not Compliant:** Deed restrictions proposed for 99 years. The goal of 33 CFR 332 is to ensure permanent protection of all compensatory mitigation project sites. Justification not provided as to why a perpetual conservation easement with third-party holder is not practicable. A site protection instrument was not provided; therefore, could not be evaluated. The Final Plan did provide partial deed restriction language; however, the site protection information was not complete, e.g. the Final Plan did not provide the required 60-day advance notification language. No supporting real estate information was submitted; therefore, could not review title insurance, reserved rights, rights-of-way, etc. Baseline information was also not submitted; therefore, could not determine existing disturbances such as roads, culverts, trails, fill pads, etc. USACE cannot enforce the deed restrictions since third-party enforcement rights were not given to USACE. [33 CFR 332.7(a)]
5. **Maintenance Plan-Not Compliant:** No maintenance plan was submitted. [33 CFR 332.4(c)(8)]
6. **Performance Standards-Not Compliant:** No ecological performance standards were submitted. Submitted performance standards are administrative in nature, such as the act of monitoring, the act of enforcement, and the act of documentation of the deed restriction requirements. [33 CFR 332.4(c)(9) and 33 CFR 332.5]
7. **Monitoring-Not Compliant:** One monitoring event is proposed. One event is not sufficient to demonstrate that the compensatory mitigation project has met and maintained performance standards. [33 CFR 332.6]
8. **Long-Term Management-Not Compliant:** No long-term endowment mechanism was submitted. No supporting information was submitted for cost estimate. Cost estimate did

not include items such as capitalization rate, inflationary adjustments, legal defense costs, etc.; therefore, could not determine sufficiency. Long-term manager unclear and unsupported. [33 CFR 332.4(c)(11) and 33 CFR 332.7(d)]

9. **Financial Assurances-Not Compliant:** No financial assurances were provided. [33 CFR 332.4(c)(13) and 33 CFR 332.3(n)]

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