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

CEMP-POD

JUN 29 2009

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

SUBJECT: Implementation Guidance for Section 5032 of the Water Resources Development Act of 2007 (WRDA 2007) – Lowell Creek Tunnel, Seward, Alaska

1. Section 5032 directs the Secretary to assume responsibility for the long-term maintenance and repair of the Lowell Creek tunnel, Seward, Alaska until an alternative method of flood diversion is constructed and operational, or 15 years after the date of enactment of WRDA 2007 (8 November 2007), whichever is earlier. In addition, the Secretary is authorized to conduct a study to determine whether an alternative method of flood diversion in Lowell Canyon is feasible. Further, if the Secretary determines an alternative method of flood diversion in Lowell Canyon is feasible, the alternative method shall be constructed and the Federal share of the cost of carrying out such alternative method will be the same as the Federal share of the cost of the construction of the Lowell Creek tunnel. A copy of Section 5032 is enclosed for information.

2. Construction was completed in 1940 of the existing Lowell Creek project to protect the city of Seward from the floodwaters of Lowell Creek. The project consists of a diversion dam and a concrete lined tunnel 10 feet in diameter and 2,070 feet long through Bear Mountain. The construction was performed at Federal expense and the City of Seward provided, at no cost to the Government, all lands, easements, and rights-of-way necessary for construction. The City of Seward assumed responsibility for operation and maintenance of the existing project upon completion of construction.

3. The Alaska District will assume long-term maintenance and repair responsibility of the concrete lined tunnel (and tunnel inlet and outlet structures) until completion of construction of an alternative method of flood diversion or until 8 November 2022 (15 years after the date of enactment of WRDA 2007), whichever is earlier. Funding to accomplish the long-term maintenance and repair will be budgeted in the O&M account in accordance with existing budgetary policies and procedures. In advance of the budget request, a letter report that details the extent and cost of the operations and maintenance must be submitted for review and approval by the ASA(CW). Long-term maintenance and repair activities of the concrete lined tunnel (and tunnel inlet and outlet structures) will be limited to those that meet the definitions for "replacement" and "rehabilitation" in Section 12 of ER 1110-2-401, "Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual for Projects and Separable Elements Managed by Project Sponsors" such as replacement of worn out portions of the concrete lined tunnel (and

tunnel inlet and outlet structures) or returning a deteriorated feature of the concrete lined tunnel (and tunnel inlet and outlet structures) back to its original condition. The need to rehabilitate the concrete lined tunnel (and tunnel inlet and outlet structures) also could result from unusual damage incurred during a flood event. Long-term maintenance and repair activities typically require multiple seasons to plan, design, and execute. If no alternative method of flood diversion is constructed before 8 November 2022, the responsibility for long-term maintenance and repair of the concrete lined tunnel (and tunnel inlet and outlet structures) shall revert back to the City of Seward.

4. Annual maintenance and repair of the concrete lined tunnel (and tunnel inlet and outlet structures) will remain the responsibility of the City of Seward. Annual maintenance and repair is defined in Section 12 of ER 1110-2-401 as "those activities of a routine nature that maintain the project in a well kept condition." Examples of such activities include annual removal of sediments and debris from the stilling basin at the outfall of the tunnel and repairs necessary to fences and ladders. Inspections are also part of the annual operations and maintenance responsibilities of the City of Seward and should continue in accordance with state regulatory authority. The District may accompany the city or state on the inspections and should obtain a copy of the final inspection reports.

5. Operation, maintenance, repair, replacement, and rehabilitation of the diversion dam will remain the responsibility of the City of Seward.

6. At such time as funds are appropriated for such work, the District should conduct a reconnaissance study to determine whether an alternative method of flood diversion in Lowell Canyon is feasible in accordance with procedural guidance contained in ER 1105-2-100. If the reconnaissance study determines that there is at least one feasible solution, once funds are appropriated for such work, the District should conduct a feasibility study in accordance with current budgetary policy and procedural guidance contained in ER 1105-2-100 for projects authorized without a report. The costs of the feasibility study will be shared 50 percent Federal and 50 percent non-Federal pursuant to a Feasibility Cost Sharing Agreement. The feasibility report will be submitted to the POD RIT for policy compliance review by HQUSACE and approval by the Secretary.

7. Upon approval of a report that documents a feasible alternative to flood diversion in Lowell Canyon and receipt of Federal funding for construction of such alternative, a project partnership agreement (PPA) addressing design and construction of the approved plan may be executed in accordance with the current guidance on preparation of, approval, and execution of PPAs. The design and construction of the approved plan shall be accomplished at Federal expense and the non-Federal sponsor shall provide, at no cost to the Government, all lands, easements, and rights-

of-way necessary for the construction. Further, upon completion of construction the non-Federal sponsor shall operate, maintain, repair, replace, and rehabilitate the new project. Contact the POD RIT for direction on drafting the PPA.

FOR THE COMMANDER:

Encl

LLOYD D. PIKE
Chief, Pacific Ocean Division
Regional Integration Team
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SEC. 5032. LOWELL CREEK TUNNEL, SEWARD, ALASKA.

(a) LONG-TERM MAINTENANCE AND REPAIR.—

(1) MAINTENANCE AND REPAIR.—The Secretary shall assume responsibility for the long-term maintenance and repair of the Lowell Creek tunnel, Seward, Alaska.

(2) DURATION OF RESPONSIBILITIES.—The responsibility of the Secretary for long-term maintenance and repair of the tunnel shall continue until an alternative method of flood diversion is constructed and operational under this section, or 15 years after the date of enactment of this Act, whichever is earlier.

(b) STUDY.—The Secretary shall conduct a study to determine whether an alternative method of flood diversion in Lowell Canyon is feasible.

(c) CONSTRUCTION.—

(1) ALTERNATIVE METHODS.—If the Secretary determines under the study conducted under subsection (b) that an alternative method of flood diversion in Lowell Canyon is feasible, the Secretary shall carry out the alternative method.

(2) FEDERAL SHARE.—The Federal share of the cost of carrying out an alternative method under paragraph (1) shall be the same as the Federal share of the cost of the construction of the Lowell Creek tunnel.

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