ADMINISTRATIVE APPEAL DECISION FOR PERMIT DENIAL FOR THE HEAD PROPERTY

CRAIG, ALASKA

ARMY CORPS OF ENGINEERS FILE 2-2001-0477

ALASKA DISTRICT

14 July 2003

Review Officer: Douglas R. Pomeroy, U.S. Army Corps of Engineers, South Pacific Division, San Francisco, California

District Representative: Jan Stuart, U.S. Army Corps of Engineers, Alaska District

Appellant Representative: Jim Costales, R and M Engineering, Ketchikan, Alaska

Authority: Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. 401)

Receipt of Request For Appeal (RFA): January 26, 2003

Appeal Conference Date: May 15, 2003 **Site Visit Date:** May 15, 2003

Background Information: The property is located in southeast Alaska, in the City of Craig, Alaska, on Prince of Wales Island, about 55 miles west of Ketchikan, Alaska. The Appellant and property owner, Mr. Greg Head, proposed to establish a commercial and recreational vessel haul-out facility with associated repair and maintenance facility, marine fuel facility, navigation channel deep enough to allow access for large vessels, and vessel storage area. Mr. Head proposes to dredge approximately 22,600 cubic yards of substrate from approximately 1.84 subtidal acres of North Cove Harbor, in the City of Craig, Alaska, and deposit the dredge material behind approximately 500 linear feet of sheet pile bulkhead to create upland from approximately 1.47 intertidal acres. The proposed dredging would disturb an estimated 1.84 acres of subtidal eelgrass beds and the fill would cover a shallow sand/gravel/cobble substrate populated with algal species. The District concluded that less damaging practicable alternatives meet the project purposes were available, and therefore denied the permit request because it concluded the project did not comply with the Environmental Protection Agency, Clean Water Act, Section 404 (b) (1) Guidelines and would adversely affect navigation. The Appellant disagreed and appealed.

Summary of Decision: The District reasonably denied the Appellant's permit request because the proposed project was not the least damaging practicable alternative. However, I identified flaws in the District's analysis of several other factors supporting its conclusion to deny this permit. If the Appellant should submit new information regarding practicable alternatives, that information and these other factors should be further evaluated.

Reason 1: The Appellant asserted that he had provided sufficient evidence that the proposed activity was the least damaging practicable alternative and should therefore be permitted by the District.

FINDING: The appeal did not have merit.

ACTION: None required at the present time. If the Appellant submits new information regarding the practicability of his proposed project and alternatives that allows a more detailed analysis of alternatives than the information currently available, the District should consider that new information and reevaluate whether the Appellant's project is the least damaging practicable alternative.

DISCUSSION: The Appellant's project involves several interrelated components. The Appellant currently owns property on the North Cove Harbor in Craig, Alaska. The Appellant has built a machine shop on an upland portion of the property, and wants to expand his business by developing a commercial and recreational vessel haul-out facility, marine fuel facility, sheetpile fill bulkhead for a associated vessel repair, maintenance, and storage facility with access to the City of Craig North Cove Harbor, all located on the same site. The Appellant believes his project as proposed is the least damaging practicable alternative and that he has provided sufficient information to demonstrate that conclusion. The District does not believe the Appellant has demonstrated his proposal is the least damaging practicable alternative. Under the CWA 404 (b) (1) Guidelines it is the Appellant's responsibility to demonstrate that his project is the least damaging practicable alternative.

The CWA 404 (b) (1) Guidelines at 40 CFR 230.10 (a) also state that:

> "Except as provided under § 404 (b) (2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences."
>
> (Note: § 404 (b) (2) did not apply in this situation).

And 40 CFR 230.10 (a) (3) states:

> "...where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise."

The CWA 404 (b) (1) guidelines at 40 CFR 230.10 (a) (2) define a practical alternative as:

"An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."

The developed area of the City of Craig is located on an approximately oblong peninsula on the western shore of Prince of Wales Island. The District proposed alternatives for all or part of the project that included the Appellant's property and the Ford property in North Cove Harbor, the Ward Cove Cannery Site, and the False Island site. The Appellant's property is on the east shore of the North Cove Harbor. The Ford property is on the west side of North Cove Harbor and is separated from the Appellant's property by the vessel berthing slips, approximately a ¼ mile distance by water and a ½ mile distance by land along the main highway and through a residential area. The Ward Cove Cannery site is located on the northern shoreline of the City of Craig in the downtown business district, and is approximately ½ mile west of the Appellant's property by either water or road. The False Island site is about ¼ mile north of the Appellant's property by water, but approximately 1 ½ miles away road, and can only be reached by traveling the only local highway. The Appellant believed that keeping all components of the project on a contiguous site and constructing the project as he initially proposed (except for a minor reduction in dredging depth) was the only practicable alternative.

The District, the Appellant, and the City of Craig (the owner of the local tidelands from which the Appellant would have to obtain a lease if the project was approved) all agree that there is limited waterfront property in the City of Craig suitable for water-dependent industrial or commercial development. The federally approved Craig Coastal Management Plan (July 1984, revised through 1990 and approved in accordance with the Coastal Zone Management Act), page 85, identified the Ward Fisheries Parcel (Ward Cove Cannery Site) (industrial/commercial uses), Craig North Cove (commercial moorage uses), Craig South Cove (recreational moorage uses) and False Island (industrial uses) as the areas that provide adequate water depths close to shore to support water-dependent and water related uses.

On November 12, 2001, at the District's request, the Appellant's consultant did provide an alternative configuration to the District for the Appellant's property that would have reduced the extent of intertidal fill. The Appellant stated that he considered that the available area for industrial activity proposed under this alternative was inadequate, but did not specifically explain why that was the case.

At a March 25, 2002 meeting (documented by memo in the District's administrative record) between the District's representatives and the Appellant's consultant, the District requested that a comparison of site alternatives be done between three sites the District considered to be practicable. These sites were: the Appellant's property, the Ward Cove Cannery Site in the western part of Craig, and the Ford property located on the west shore of the Craig North Cove Harbor. According to the March 25, 2002 memo, the District requested that:

"...realistic cost estimates for the project should be determined, including the cost of acquiring, leasing, renting, managing, or otherwise obtaining the rights to use the property, the cost associated with site assessment, the cost of construction, differences in cost of operation, i.e. transport of parts to machine shop, etc."

The Appellant's letter of July 2, 2001 indicates that the False Island Site had been discussed earlier as a possible alternative site, but the District did not request it be considered a project alternative during the March 25, 2002 meeting. Based on the administrative record, the Appellant never submitted a written comparison of sites. Therefore, the District had limited information regarding the practicality of alternative site configurations of the Appellant's property, and alternative project locations on other properties. The District's decision document (pages 2 – 4) identified both alternative project designs and alternative locations that they believe would be less damaging practicable alternatives.

The District proposed that the Appellant could construct a pile-supported structure that would minimize the amount of intertidal fill while providing the same amount of area for the Appellant to conduct his non-water dependent activities on the property. The District stated that there are many pile-supported structures in Southeast Alaska, and that this appeared to be a practicable alternative. The Appellant stated that although there may be many pile-supported structures, this project required an area for storage and maintenance which could support vessels up to 100 tons, and that a pile-supported structure to support that weight would be cost prohibitive. The Appellant did not provide any detailed cost information to support that conclusion.

The District also proposed that the Appellant could use a sheetpile fill above Mean High Water, and then dredge a channel to a vessel haul-out facility at that location. The Appellant stated that this would require approximately twice as much dredging as his proposed project. However, based on the administrative record, it appears that the additional dredging would mostly be in the intertidal area, and so would not directly disturb existing eelgrass beds. The Appellant stated that this design provided approximately 1 acre of area for vessel lift maneuvering, maintenance activities, and large vessel staging. The Appellant considered this insufficient area for his proposed activities, but only explained the logistical constraints of this limited size in very general terms, and did not discuss specific cost issues associated with this design.

The District proposed that the non-water dependent portions of the project, the vessel storage and maintenance areas, might be accommodated at an alternate location. The District identified that this could be done by having a haul-out and storage facility at a separate location and transporting parts for repair to the machine shop. The District also identified as a possible alternative that the haul out facility could be on the Appellant's property, and vessels then towed to a remote storage and maintenance location.

The District emphasized that the Appellant's project as proposed identified that the slope was likely too steep to move vessels from the new storage area to be created on 1.47 acres of fill (approximately elevation 16 – 18 feet at finished grade) to the Appellant's

existing machine shop at elevation 45 feet. Therefore, even under the Appellant's proposed design, vessel components would have to be removed from the vessels and transported to the machine shop.

The Appellant asserted that he had demonstrated that the alternatives proposed by the District were not practicable even though he only provided very general logistical and cost information refuting the District's position. The Appellant in his request for appeal, page 4 stated:

> "If the reviewer had suggested that this (a more detailed cost analysis) would be an acceptable refutation for construction alternatives a more detailed analysis would have been performed. Instead, the reviewer responded that cost alone would not be sufficient to dismiss an alternative as impracticable; a "cost vs. scope" of criteria would be used."

As a result, the Appellant did not submit more detailed cost information although it appears that the District would have used such information had it been available. The District requested no information regarding the potential revenue that might be generated by the project. The Appellant's consultant's request for appeal letter of January 26, 2003 states that he provided specific cost information to the District's regulatory project manager in telephone conversations, to show that a pile-supported structure that could support 100-ton vessels was cost-prohibitive. There is no mention of such specific cost information in the District's administrative record for this action and no record of telephone conversations between the District and the Appellant's representative discussing specific cost information. Based on the information available in the administrative record, it appears that cost information was not submitted in writing prior to submittal of the request for appeal.

I determined the District reasonably concluded, based on the information available to it in the administrative record at the time of the decision, that on and off-site alternatives were available that would be less damaging than the project as proposed. The District's decision to deny the permit as a result of this conclusion is consistent with the requirements of the CWA Section 404 (b) (1) Guidelines at 40 CFR 230.10 (a) and 40 CFR 230.10 (d). This conclusion does not preclude the Appellant from reconsidering and accepting some of the avoidance, minimization, and mitigation measures identified by the District and/or submitting additional information regarding the practicality of alternative site locations or construction methods.

I also conclude based on the administrative record, that the comparative costs of sheet-pile structure and pile-supported structure that would support a 100-ton vessel provided in the Appellant's January 26, 2003 were not previously provided to the District. Therefore, those cost comparisons are considered new information and I cannot consider them in this administrative appeal in accordance with 33 CFR 331.7 (e) (6).

Reason 2: The Appellant asserts that he is being subjected to a different evaluation standard than three nearby projects, which the Alaska District permitted to use sheetpile solid upland fills.

FINDING: The appeal did not have merit.

ACTION: None required.

DISCUSSION: The Appellant has objected that he is being subjected to a different evaluation standard than three nearby projects, which were all allowed to use a solid sheetpile fill rather than a pile-supported fill. These projects included the Kanen family Crystal Sea Charters permit (Alaska District File # 2-950981) located on property immediately east of the Head property and permitted in 1996, the City of Craig False Island Industrial Area Project (Alaska District File #-2-940806) permit that established a new marine vessel fueling facility and industrial area on False Island in 1996, and the City of Craig False Island Fish Processing facility (Alaska District File # S-1994-0806 issued in 2002, that provided additional upland area for a fish processing facility. The Review Officer for this action reviewed the decision documents for those actions and found that they all had identifiable differences from this project.

The Kanen permit, while located adjacent to the Head property, was for a smaller fill and dredging activity of a smaller scope. The decision document for that action also identifies that avoidance, minimization, and compensatory mitigation measures were undertaken for that action and so does not provide evidence that the District has acted in an arbitrary or capricious manner in this action.

The City of Craig False Island Industrial Area project appears to be the most similar in scope to this action. The decision document for that action included substantial information on project scope and cost issues including the estimated cost of alternative construction methods, such as pile-supported vs solid fill construction, other associated costs of development, and the projected rental revenue to be received from the developed industrial space. Collectively, that information allowed the District to the work with the permit applicant to identify avoidance, minimization, and compensatory mitigation measures that resulted in the District being able to document that it was issuing a permit for the least damaging practicable alternative. The administrative record for this action did not provide a similar level of detail.

The City of Craig False Island Fish Processing Facility permit involved a relatively small area of fill located above the mean high tide line in an area of relatively low aquatic resource values. The permit applicant for that project also provided comparative cost information regarding different construction techniques.

I conclude that the other Corps permits action in the vicinity allowing sheetpile fills were clearly based on different avoidance, minimization, and mitigation measures, and in each case had documentation that the project permitted by the Corps was the least damaging practicable alternative. The Appellant in this case did not demonstrate his project was the

least damaging practicable alternative and the District reasonably denied his permit request.

Reason 3: The Appellant asserts that the District incorrectly determined that the project would adversely affect navigation and that the District should have contacted the local authority on that issue, the City of Craig Harbormaster.

FINDING: The District's evaluation of the effect of the Appellant's project on navigation was flawed, but the flaws currently represent harmless errors.

ACTION: The District had sufficient basis to deny this permit based on its determination that the project did not meet the requirements of the Clean Water Act, Section 404 (b) (1) Guidelines as described under Reason 1. Therefore, the District's flaws in evaluating the navigation issues currently constitute harmless errors. However, should the Appellant submit new information regarding what would constitute this least damaging practicable alternative, the District should reconsider its analysis of navigation issues, including discussing the issues with the Appellant and the City of Craig Harbormaster.

DISCUSSION: The Appellant stated that he had coordinated his project with the City of Craig Harbormaster before submitting the project to the District, and that the Harbormaster had determined that navigation would not be adversely affected by the project. In the City of Craig's January 8, 2003 letter included with the request for appeal, the City states that in addition to not affecting existing navigation in the North Cove Harbor, the proposed dredging would improve navigation in North Cove Harbor, as the deeper channel would allow navigation where it is now too shallow for some vessels. The Appellant asserts that the District's choice not to consult the City of Craig Harbormaster was inappropriate, and led to a flawed conclusion regarding the affect of the proposed project on navigation.

The District stated that it had provided the public notice for this action to several departments in the City of Craig. The District received no comments on the public notice regarding navigation from anyone, including the City of Craig Harbormaster.

The District was asked to explain its evaluation of navigation at the appeal conference. The District stated it completed a general evaluation of navigation issues by determining that an unencumbered turning basin in North Cove Harbor with a diameter of 1 ½ to 2 times the length of the largest vessel using the area must be available to prevent navigation hazards. The District stated that the specific length of vessel used in this analysis, and the results of the analysis, were not written down. The District then stated in its decision document that it had not been clearly demonstrated that mooring large seiners (large fishing vessels) next to the proposed sheet pile fill bulkhead would not be a hazard to navigation. The District also stated in its decision document that if the Appellant's project contributed to encouraging more large fishing vessels to come to Craig, that it would require more vessels be rafted at the entrance to the harbor, which the District appeared to also consider a potential navigation hazard.

The District's memo for file of a telephone conversation between the District's Regulatory Project Manager and the Appellant's consultant of October 22, 2001 discussed the potential for the project to affect navigation. That memo also stated that the District anticipated it would need to coordinate further with the City of Craig regarding that issue.

Based on the information in the administrative record, it appears that the District and the Appellant did not discuss potential navigation hazard issues in any detail between October 22, 2001, and the date of the permit denial on November 14, 2002. The District's March 25, 2002 Memorandum for Record of a meeting with the consultant on March 25, 2002 makes no mention of navigation issues. Also, the District's decision document page 21 stated that District and Appellant representatives met in March 2002 (presumably the March 25, 2002 meeting), and:

> "At that time, Mr. Costales (the Appellant's representative) was told that we (the District) felt that a permit could be issued, if the project impacts were to be minimized by not filling past MHW (mean high water) and by dredging a channel to the haul-out only, and provide a mitigation plan to compensate for unavoidable impacts."
>
> (Note: items in parentheses added for clarity).

The Appellant apparently was not advised that adverse effects on navigation were still a substantial concern of the District before the permit denial was issued and had no opportunity to resolve those issues.

I find the District's conclusion that navigation was adversely affected was capricious in that the Appellant had no opportunity to address the District's concerns regarding adverse effects of the project on navigation; the District did not contact the City of Craig Harbormaster, the local navigation authority regarding this issue; and the District did not document the size of the turning basin it used in evaluating the potential navigation hazards.

If this permit denial had been based solely on adverse effects on navigation, I would remand this action to the District for reconsideration. However, in this case I find the District had reasonably concluded that the Appellant's project did not comply with the Clean Water Act, Section 404 (b) (1) guidelines as described under Reason 1, and that was an appropriate and sufficient basis for the District to deny this permit. I therefore conclude that although the District's analysis of whether there was a significant impact on navigation was flawed, this currently represents a harmless error. The District need only reconsider this issue if the Appellant submits new information regarding the alternatives analysis for evaluation.

Reason 4: The Appellant asserted that the vessel staging area should be considered a water-dependent use under the Clean Water Act, Section 404, (b) (1) Guidelines.

FINDING: The appeal did not have merit.

ACTION: None required.

DISCUSSION: The Appellant's position in his request for appeal was that the areas identified by the District as vessel maintenance and storage areas should be considered a water-dependent use for purposes of analysis of compliance of the proposed project with the CWA Section 404 (b) (1) Guidelines. After hearing the District's explanation at the appeal conference that the vessel storage and maintenance areas did not require access, proximity, or siting in the water to meet their basic project purpose, the Appellant's representative agreed that "strictly speaking" the District's conclusion was correct. The Appellant disagreed that the separation of the vessel maintenance and storage areas from other aspects of the project was practicable. That issue was discussed under Reason 1 above.

Reason 5: The Appellant asserted that the District had incorrectly concluded that the 1.84 acres of eelgrass to be removed by the proposed dredging would not naturally revegetate, and therefore incorrectly concluded that compensatory mitigation for the loss of the eelgrass bed was necessary.

FINDING: The appeal did not have merit.

ACTION: No action required.

DISCUSSION: The District's decision document (page 6) concluded that the combination of lower water clarity (due to increased turbidity from vessel operations) and a dredging depth of –14 feet would limit light penetration to an extent that natural eelgrass repopulation was unlikely to reoccur in the 1.84 acre area to be dredged in the North Cove Harbor. The District also identified that with regular mooring of vessels at the new sheetpile bulkhead, that regular shading of the bottom would occur that would affect eelgrass growth.

The District's March 25, 2002 memo to file states eelgrass was growing within the harbor at a depth of –12 feet, and that it was reasonable to assume that eelgrass would grow at that depth with adequate light. The District's January 3, 2002 memo states that a nearby site (Catch-A-King) had been dredged to –12 feet and had greater water circulation than the proposed site, but that eelgrass had not repopulated that dredged area even though other eelgrass beds were nearby.

The Appellant stated that the City of Craig eelgrass survey had found eelgrass to –20 feet in certain areas within the City of Craig. However the District identified that such sites were in undisturbed areas of good water circulation and high water clarity. The City of Craig's eelgrass survey maps are consistent with the District's conclusion that the deeper eelgrass beds are in relatively undisturbed areas. The available information provides a reasonable basis for the District to conclude that natural eelgrass repopulation of the area

the Appellant was proposing to dredge was unlikely and that compensatory mitigation for the destruction of the existing eelgrass bed would be required.

Reason 6: The District incorrectly concluded that the proposed project would result in significant degradation of the aquatic environment under the CWA Section 404 (b) (1) guidelines under 40 CFR 230.10 (b) or 40 CFR 230.10 (c).

FINDING: The District's evaluation that the Appellant's project would result in significant degradation of the aquatic environment was flawed, but the flaws currently represent harmless errors.

ACTION: The District had sufficient basis to deny this permit based on its determination that the project did not meet the requirements of the Clean Water Act, Section 404 (b) (1) Guidelines as described under Reason 1. Therefore, the District's flaws in evaluating the whether the project would result in significant degradation of the aquatic environment currently constitute harmless errors. However, should the Appellant submit new information regarding the what would constitute the least damaging practicable alternative, the District should reconsider its analysis of whether significant degradation of the aquatic environment would occur as a result of the proposed project.

DISCUSSION: The District's decision document identified that one of the reasons that it denied this permit was that the proposed discharge would result in a significant degradation of the aquatic environment. The District stated such significant degradation was inconsistent with the CWA Section 404 (b) (1) Guidelines at 40 CFR 230.10 (b) or 40 CFR 230.10 (c). In reviewing this appeal, the Review Officer requested clarification from the District regarding this conclusion.

The District's Project Manager provided as clarifying information a Memorandum for Record dated June 20, 2003. In this Memorandum the District stated that significant degradation of the aquatic environment would occur based on the effects described under 40 CFR 230.10 (c) (3) of the CWA Section 404 (b) (1) Guidelines which states that no discharge of dredged or fill material that causes or contribute to significant degradation of the waters of the United States includes:

> "Significantly adverse effects of discharge of pollutants on aquatic ecosystem diversity, productivity, and stability. Such effects may include but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy..."

However, elsewhere in the decision document the District identified alternative projects using pile-supported bulkheads, a solid sheetpile bulkhead of a reduced size, and/or a modified amount of dredging as being options that could likely be permitted.

The District did not explain why these slightly smaller, but similar alternative projects would not result in significant degradation of the aquatic environmental, while the

Appellant's similar, but only slightly larger project would result in significant degradation of the aquatic environment. I conclude the District's determination that the Appellant's project would result in significant degradation of the aquatic environment was arbitrary.

If this permit denial had been based solely on the determination that it would result in significant degradation of the aquatic environment, I would remand this action to the District for reconsideration. However, in this case I find the District had reasonably concluded that the Appellant's project did not comply with the Clean Water Act, Section 404 (b) (1) guidelines regarding only permitting the least damaging practicable alternative, as described under Reason 1 above, and that was an appropriate basis for the District to deny this permit.

I therefore conclude that although the District's analysis of whether significant degradation of the aquatic environment would occur was flawed, that this currently represents a harmless error because the District had identified a sufficient basis to deny the permit as described under Reason 1 above. The District need only reconsider this issue if the Appellant submits new information regarding the alternatives analysis for evaluation.

Reason 7: In his request for appeal the Appellant described what he considered to be a variety of faulty conclusions in the District's decision document that collectively resulted in an incorrect decision to deny this permit.

FINDING: The appeal did not have merit.

ACTION: None required.

DISCUSSION: The Appellant's comments regarding the numerous errors in the decision document are addressed below. None of the issues described below resulted in substantial flaw in the District's decision to deny this permit.

The Appellant stated that the District had not appropriately considered the City of Craig Coastal Management Plan and the Craig Comprehensive Plan because the Appellant was proposing an activity that was in a location consistent with those plans. As described under Reason 1 above, all the alternative project sites the District identified as potentially practicable alternatives for all or a portion of the proposed project are identified for similar activities in the Craig Coastal Management Plan. Also, the District has the requirement to specifically determine whether the proposed project was in compliance with the CWA Section 404 (b) (1) Guidelines as explained in the Preamble to the Final Rule publishing the CWA Section 404 (b) (1) Guidelines on Federal Register Vol. 45. No. 249, page 85338, December 24, 1980 which states:

> "...a number of commenters were concerned that the Guidelines ensure coordination with planning processes under the Coastal Zone Management Act, § 208 of the CWA (Clean Water Act), and other programs. We agree that where an

adequate alternatives analysis has already been developed, it would be wasteful not to incorporate it into the (Clean Water Act) 404 process. New (40 Code of Federal Regulations) § 230.10 (a) (5) makes it clear that where alternatives have been reviewed under another process, the permitting authority shall consider such analysis. However, if the prior analysis is not as complete as the alternatives analysis required under the Guidelines, he must supplement it as needed to determine whether the proposed discharge complies with the Guidelines."

(Note: items in parentheses added for clarity).

The District reasonably identified project alternatives that were consistent with past planning efforts under the Coastal Zone Management Act, and supplemented those analyses with more specific information necessary to conduct an analysis of compliance with the CWA Section 404 (b) (1) Guidelines.

The Appellant asserted that the District incorrectly evaluated the effect of the proposed project on eelgrass. The Appellant asserted that the District incorrectly evaluated the potential cumulative effects on eelgrass, that the District incorrectly considered how shading from vessels moored in the project area would affect eelgrass, and that the District incorrectly identified the extent of filling in the intertidal areas of Craig.

The Appellant and the District agree that there are extensive eelgrass beds in the vicinity of the City of Craig, but disagree how significant the environmental effects of the proposed project are on those eelgrass beds. The District's overall conclusions regarding cumulative effects of this project on eelgrass were that a combination of changes in shading, water circulation, and water clarity could reduce the vitality of the eelgrass beds in the North Cove Harbor. Although the Appellant argued those effects were insignificant, the District considered the effects more substantial. Based on the administrative record, the District's conclusion was reasonable.

The Appellant asserted that the District's conclusion regarding several factors that were briefly addressed in the decision document for this action were incorrect. These included the aesthetic analysis, the economic analysis, and the adequacy of the current City of Craig water supply system. The District's evaluation that the proposed project would have an incremental adverse aesthetic effect on the Craig shoreline, even though the project was in an industrial area was reasonable. The Appellant's request for appeal correctly identified that there would likely be a minor increase in tax revenue from the project, which was not identified in the District's decision document. The Appellant also stated that the District's information on the City of Craig water supply was outdated. These issues and other minor disagreements in analysis identified by the Appellant were not substantial factors in the District's permit denial decision. Even if all these issues were modified as suggested by the Appellant, the District's conclusion that the Appellant's project had not been demonstrated to be the least damaging practicable alternative would still be reasonable. These issues do not require a reconsideration of the District's permit denial decision

Information Received and its Disposition During the Appeal Review: In addition to the administrative record, the following information was reviewed during the appeal.

1) The Appellant submitted the comparative costs of sheet-pile structure and pile-supported structure that would support a 100-ton vessel provided in his January 26, 2003 letter. Based on the administrative record, this information was not previously provided to the District. Therefore, these cost comparisons were considered new information and I did not consider them in this administrative appeal in accordance with 33 CFR 331.7 (e) (6).

2) The District provided a full set of the City of Craig eelgrass survey maps. These maps had been previously identified as part of the administrative record. Initially, only the areas near the project site were provided to the Review Officer. The Review Officer reviewed the full set of maps when he determined it was necessary to do so.

3) Based on a request by the Review Officer, the District submitted a Memorandum for Record on June 20, 2003, clarifying how it determined that the 1.84 acres of eelgrass beds to be disturbed by the proposed dredging were, "high value, medium density" eelgrass beds. This was considered clarifying information and a copy of this memo was provided to the Appellant's representative prior to finalizing this appeal decision.

4) Based on a request by the Review Officer, the District submitted a Memorandum for Record on June 20, 2003, clarifying how it determined that the Appellant's proposed project would result in significant degradation of the aquatic environment. This was considered clarifying information and a copy of this memo was provided to the Appellant's representative prior to finalizing this appeal decision.

Conclusion: The District identified less damaging practicable alternatives to avoid and minimize adverse impacts on aquatic resources, and therefore denied the Appellant's permit request because it did not comply with the Environmental Protection Agency Clean Water Act, Section 404 (b) (1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material) 40 CFR 230. That conclusion was reasonable and a sufficient basis to deny the Appellant's permit. However, I identified flaws in the District's analysis of several other factors supporting its conclusion to deny this permit.

If the Appellant should submit new information and/or project modifications regarding whether practicable alternatives to his proposed project are available, the District should review that material and as well as reconsider its conclusions in those areas where I identified flaws in the District's analysis. Such a submittal by the Appellant would be considered a new permit application in accordance with 33 CFR 331.7 (e) (6).

Terry R. Youngbluth
Colonel, U.S. Army
Acting Division Engineer