



## **RECORD OF DECISION**

### **CORDOVA OIL SPILL RESPONSE FACILITY CORDOVA, ALASKA**

Submitted pursuant to 42 U.S.C. 4332 (2) (c)  
(and where applicable, 49 U.S.C. 303) by the  
U.S. Department of Transportation  
Federal Highway Administration

#### **DECISION**

The Federal Highway Administration (FHWA) has determined that the decision made in the June 2009 *Record of Decision, Cordova Oil Spill Response Facility* (referred to as the FHWA ROD) has changed. The newly selected alternative is the New Oil Spill Response Facility and Deepwater Port at Shepard Point, a new dock variant (Pile-supported Dock), and a new road alignment (2021 Route Alignment). This alternative has been selected given new information and new circumstances identified since the 2006 Final Environmental Impact Statement (FEIS).

#### **BACKGROUND**

Since the 1990s, the Native Village of Eyak (NVE) has led a multigovernmental effort to design, construct, and ultimately manage the Shepard Point Oil Spill Response Facility.

The 2009 FHWA ROD was based on studies and analysis done by the Department of Interior (DOI), Bureau of Indian Affairs (BIA). These included:

- The *Cordova Oil Spill Response Facility Final Environmental Impact Statement* (DOI, October 2006, referred to as the FEIS) and
- The *Record of Decision, Cordova Oil Spill Response Facility* (DOI, November 2007, referred to as the BIA ROD).

At that time, FHWA was a cooperating agency in development of the NEPA documents. Through a program agreement, NVE now works directly with FHWA, rather than BIA, in the administration of their Tribal Transportation Program. Additionally, FHWA has obligated \$5 million of Federal-aid Highway funds and \$40,199,275 of Nationally Significant Federal Lands and Tribal Projects (NSFLTTP) program funds. Consequently, FHWA has taken over as the lead federal agency for the project, with NVE continuing to be responsible for the development and construction of the project.

During the Section 404 permit application process, NVE submitted supplemental information requested by USACE, and made changes to the project design to reduce impacts to Waters of the U.S. These changes included selection of the Pile-supported Dock and other design adjustments to eliminate impacts to eelgrass. The USACE subsequently issued a Department of the Army (DA) permit (POA-1994-1014) and associated ROD on October 16, 2017. Following the 2017 DA permit issuance, the Cordova Electric Cooperative (CEC) contacted NVE and expressed concern regarding the bridge crossing Humpback Creek, as designed in the Selected Alternative from the 2007 BIA ROD, 2009 FHWA ROD, and 2017 DA Permit and ROD. The CEC was concerned that the bridge could cause damage to their infrastructure. This bridge included a north abutment atop a new penstock tunnel, which CEC integrated into its hydropower facility in 2010. The NVE design team adjusted the road alignment to go around Humpback Mountain to the west rather than the east to avoid potential impacts on the penstock tunnel. The realigned road will now cross Humpback Creek via a 200-foot clear span bridge downstream of the CEC infrastructure. This alignment avoids risks to CEC facilities and eliminates the impacts on Humpback Creek. The 2021 Route Alignment, described more fully below, essentially follows a combination of parts of the Primary Route Option, Route Option 1 and Route Option 2 presented in the 2006 FEIS

Since the 2006 FEIS, NVE has conducted numerous supplemental studies to address design changes and to provide additional information needed during the USACE permitting process. Additionally, an environmental report to assess the impacts of changes to the project design and of new information and new circumstances relevant to environmental concerns since the 2006 FEIS was developed. This environmental report incorporates the supplemental studies and is titled:

- *The Shepard Point Oil Spill & Marine Casualty Response Facility Final 2021 Environmental Report* (NVE, November 2021, referred to as 2021 Environmental Report)

Collectively, the FEIS, the BIA ROD, the FHWA ROD, the 2021 Environmental Report, the USACE DA permit (POA-1994-1014) and associated 2017 ROD and 2022 ROD, and supporting documents are referred to as the NEPA Documents.

## **ALTERNATIVES CONSIDERED**

The FEIS assessed the No Action Alternative and four alternatives for the location of an oil spill response facility. A full description of the alternatives are provided in Section 2 of the FEIS and are briefly summarized here:

- **Alternative 1 – No Action Alternative:** No new or improved facilities would be constructed. Oil spill response capability presently exists in Cordova and Prince William Sound (PWS). However, the No Action Alternative would not meet the purpose and need for the project. Furthermore, the No Action Alternative would not fulfill the requirements of the Alyeska Consent Decree.
- **Alternative 2 - New Oil Spill Response Facility and Deepwater Port at Ocean Dock:** Replace the existing Ocean Dock, owned by the City of Cordova and located

immediately north of the state ferry dock, with a new oil spill response facility and deepwater port. This alternative would require regular dredging of a navigation channel.

- Alternative 3 - New Oil Spill Response Facility and Deepwater Port at Fleming Point: Construct a new oil spill response facility and deepwater port at Fleming Point, located approximately 1 mile north/northeast of Ocean Dock along the existing Orca Cannery Road. This alternative would require regular dredging of a navigation channel.
- Alternative 4 - New Oil Spill Response Facility and Deepwater Port at Shepard Point: Construct a new oil spill response facility and deepwater port at Shepard Point, located approximately 6.5 miles north/northeast of Ocean Dock. Water depths exceeding 50 ft are present near to shore at Shepard Point, and therefore this alternative would not require regular dredging of a navigation channel.
- Alternative 5 - New Oil Spill Response Facility and Deepwater Port at Orca: Construct a new oil spill response facility and deepwater port at Orca, located approximately 2.15 miles north/northeast of Ocean Dock along the existing Orca Cannery Road. This alternative would require regular dredging of a navigation channel.

Except for Alternative 1 (No Action Alternative), each Alternative described above included a minimum 3.5 acre upland staging area. Additionally, two dock design variants were evaluated for each alternative:

- Fill Dock - A new fill dock would have an approximate 600-ft-long face and would be constructed using steel sheet piles along the dock face and sides, and armor rock erosion protection along the sides of the fill area in shallower water.
- Pile-supported Dock - A new pile-supported dock would be approximately 350-by-60 ft, and would be constructed using steel piles with a concrete deck.

Additionally, for the Alternative 4 (Shepard Point), there were four road alignment alternatives conceptually designed in accordance with the American Association of State Highway Transportation Officials (AASHTO) *Geometric Design Guidelines for Low Volume Roads*:

- Primary Alignment - The Primary Alignment would begin where the existing Orca Cannery Road ends, at Orca. From this point, the alignment would tend in an easterly direction for approximately 0.8 mile through a road cut behind the cannery, and emerge at the coastline of Orca Inlet. This alignment would then follow the coastline for 3.6 miles to Shepard Point. The road would cross two major drainages used by anadromous fish – Humpback Creek and Unnamed Creek. These two streams would be crossed by bridges. All other small drainages along the route would be crossed using culverts.
- Upland Alternate Route (Road Option 1) - Road Option 1 would follow the Primary Alignment to approximately mile 1.7, where it diverges from the coastline and follows a steep upland route on the west side of Humpback Mountain to approximately mile 3.0 where it returns to the primary coastal route just prior to the Humpback Creek bridge, for the remaining approximately 1.4 miles before reaching Shepard Point.
- Humpback Creek Alternative Bridge Site (Road Option 2) – Road Option 2 would be the same as the Primary Alignment except it would shift inland slightly at approximately mile 2.8, cross Humpback Creek approximately 300 feet northeast of the Primary Alignment, and connect back to the Primary Alignment at approximately mile 3.2. The

total road length compared to the Primary Alignment would change little, but placement of fill in the Humpback Creek estuary would be eliminated.

- Inland Alternative Route (Road Option 3) - Road Option 3 would follow the Primary Alignment to mile 1.68, where it would diverge from the coastline and travel over a saddle on the east side of Humpback Mountain for approximately 2.0 miles, avoiding most of the tidal area near Humpback Creek. This route would return to the primary coastal route just north of the Humpback Creek Delta.

Each of these alternatives, including the design variants and the road alignment alternatives for the Shepard Point Alternative are fully described in Section 2.2, and summarized in the Executive Summary, of the FEIS.

## **SELECTED ALTERNATIVE**

The new selected alternative is the New Oil Spill Response Facility and Deepwater Port at Shepard Point, the Pile-supported Dock variant, and the 2021 Route Alignment, which follows a combination of parts of the Primary, Road Option 1 and Road Option 2 alignments. A summary of the new selected alternative is provided below and a full description is provided in Section 2 of the the 2021 Environmental Report. This is a change from the 2007 BIA ROD and the 2009 FHWA ROD, which selected the New Oil Spill Response Facility and Deepwater Port at Shepard Point, the Fill Dock variant, and Road Option 3. It is also a change from the 2017 USACE ROD, which selected the New Oil Spill Response Facility and Deepwater Port at Shepard Point, the Pile-supported Dock variant, and Road Option 3.

There is no change in the selection of Shepard Point as the location for the oil spill response facility and deepwater port. However, the design of the dock, staging area, and access road has changed to further reduce environmental impacts identified in the 2006 FEIS, and to address new information or changed conditions identified since the 2017 DA Permit and ROD.

As described in the 2017 DA Permit and ROD, the dock design has been changed to the pile-supported dock rather than the fill dock. This pile-supported design reduced impacts on Waters of the U.S. The dock structure would be an approximately 364-foot-long, pile-supported dock and include the wharf, mooring dolphins, and trestle. There have been no changes to the dock design since the issuance of the 2017 DA permit and ROD.

The staging area was increased from 3.5 acres to 5.5 acres after master planning studies completed following the issuance of the 2017 DA permit identified the 3.5-acre pad as insufficient in size to meet spill response requirements. Additionally, an approximately 1,276-linear feet sheet pile sea wall (z-shaped interlocking steel sheet pile) adjacent to the seaward boundary of Shepard Point and at the access road terminus will allow the pad to have a minimum elevation of 26 feet above Mean Lower Low Water. Further, the sea wall will help protect the OSRF infrastructure from anticipated storm events. Incorporating the sea wall into the project design reduced the fill quantities in subtidal areas, and will alleviate the need to place riprap at Shepard Point and increase the usable pad space for spill response activities.

The 2021 Route Alignment is approximately 4.3 miles long, follows the Primary Alignment beginning near the terminus of New England Cannery Road, and proceeds northeast of Orca

Cannery Lodge. At approximately mile 1.7, it then follows Road Option 1, bearing west around Humpback Mountain, to approximately mile 2.5, where it transitions to Road Option 2 to approximately mile 3.25, where it then connects back to the Primary Alignment for the last approximately 1.05 miles to Shepard Point. Excluding a short double lane section of road near the start of the project, the road will be single-lane with a gravel surface. It will include intervisible passing lanes spaced a maximum distance of 1,000 feet and placed as road geometry dictates throughout the corridor. The typical lane width of the roadway will be 16-feet, with an additional width of ten feet at passing lanes. Passing lanes are a minimum of 100 linear feet in length with 50-foot transitions on each end. Additionally, to minimize impacts from potential avalanches, the following has been incorporated into the road design: firing mounts located at crucial locations adjacent to medium to high-risk avalanche areas; increased width of roadway ditches to act as catch points for potential avalanche debris; installation of a gate to restrict access to avalanche-prone areas; and inclusion of a turn-around area at the restricted access gate south of Humpback Creek.

While the new selected alternative was not specifically identified as a separate alternative in the FEIS, the impacts associated with it have been fully analyzed in the NEPA Documents. Changes to the proposed action, new information, and new circumstances were fully analyzed in the 2021 Environmental Report, resulting in a lessening of adverse environmental impacts evaluated in the FEIS without causing other environmental impacts that are significant and not evaluated in the EIS.

## **MEASURES TO MINIMIZE HARM**

This ROD hereby adopts all practicable means to avoid or minimize environmental harm from the selected alternative, as required by CEQ regulations, 40 CFR 1505.2(c). The selected alternative has been adjusted several times over the course of environmental and engineering studies to minimize impacts to various environmental resources. The 2021 Environmental Report contains a complete list of environmental commitments relevant to the project. Below is a summary of those commitments:

1. Adhere to the commitments specified in the U.S. Army Corps of Engineers Department of the Army Permit No. POA-1994-1014, including the following:
  - a. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soils and other fills, as well as any work below the ordinary high-water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tidal stages to the extent practicable.
  - b. Areas disturbed during project construction shall be revegetated as soon as possible, preferably in the same growing season as the disturbance. Revegetation techniques include seeding, planting, replacement of reserved ground cover, and/or fertilizing of re-contoured ground to promote the reestablishment of natural plant communities. Species to be used in order of preference are 1) species native to the site; 2) species native to the area; 3) species native to the state. Revegetated areas eventually shall have enough cover to sufficiently control erosion without silt fences, hay bales, or other mechanical means.

- c. In peat wetlands, the natural vegetative mat shall be systematically removed (with root masses intact) prior to construction, stored in a manner to retain viability (usually frozen or hydrated), then replaced after recontouring of the ground following construction, with final contours to be within one foot of adjacent, undisturbed, soil surfaces after one growing season and one freeze/thaw cycle.
  - d. Restoration and revegetation of streambank and shoreline habitat shall utilize the most up-to-date bioengineering techniques and biodegradable materials. Techniques shall include, but are not limited to, brush layering, brush matting, live siltation, and use of jute matting and coir logs to stabilize soils and reestablish native vegetation.
  - e. Soil from outside the project boundaries will not be imported to the project site. Any soil within the project boundaries identified as containing invasive species will not be transported to other areas of the project.
  - f. Authorized structures shall not impede flood flows. To the extent practicable, equipment shall work from an upland site to minimize adding fill into waters of the U.S. If it is not practicable to work from an upland site, heavy equipment working in wetlands or mudflats must be placed on mats, or other measures (e.g., ice roads, compacted snow, low psi ground bearing weight, etc.) must be taken to prevent soil disturbance.
  - g. The Permittee shall use only clean fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete blocks with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.
  - h. No stockpiling of fill materials shall occur in wetlands or other waters of the U.S. that do not have DA authorization.
  - i. Piles shall be driven during low tide stages in intertidal and shallow subtidal areas. Low tidal stage is defined as a six-hour period beginning three hours before low tide and ending three hours past low tide.
  - j. Sheet pile driving shall occur only when the site is dewatered meaning the tide is lower than the sheet pile point of entry.
2. Adhere to the commitments specified in the AK Department of Environmental Conservation Water Quality Certificate of Reasonable Assurance Section 401, including the following:
- a. Fuel storage and handling activities for equipment must be sited and conducted so there is no petroleum contamination of the ground, subsurface, or surface waterbodies.
  - b. 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.
  - c. Construction equipment shall not be operated below the ordinary high-water mark if equipment is leaking fuel, oil, hydraulic fluid, or any other hazardous material. Equipment shall be inspected and recorded in a log daily for leaks. If leaks are found, the equipment shall not be used and pulled from service until the leak is repaired.

- d. Fill material (including dredge material) must be clean soil, sand, gravel or rock, free from petroleum products and toxic contaminants in toxic amounts.
  - e. Excavated or fill material, including overburden, shall be placed so that it is stable, meaning after placement the material does not show signs of excessive erosion. Indicators of excess erosion include gullyng, head cutting, caving, block slippage, material sloughing, etc. The material must be contained with siltation best management practices (BMPs) to preclude reentry into any waters of the U.S., which includes wetlands.
  - f. Divert storm water from off-site around the site so that it does not flow onto the project site and cause erosion of exposed soils.
  - g. Slow down or contain storm water that may collect and concentrate within a site and cause erosion of exposed soils.
  - h. Place velocity dissipation devices (e.g., check dams, sediment traps, or riprap) along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters.
  - i. Any disturbed ground and exposed soil not covered with fill must be stabilized and re-vegetated with endemic species, grasses, or other suitable vegetation in an appropriate manner to minimize erosion and sedimentation, so that a durable vegetative cover is established in a timely manner.
  - j. All work areas, material access routes, and surrounding wetlands involved in the construction project shall be clearly delineated and marked in such a way that equipment operators do not operate outside of the marked areas.
  - k. Natural drainage patterns shall be maintained, to the extent practicable, without introducing ponding or drying.
3. If cultural or paleontological resources are encountered during project construction, immediately cease work in the area of the discovery and notify FHWA and USACE to determine appropriate action.
  4. Adhere to the commitments specified in the National Marine Fisheries Service Permit No. AKR-2017-9692. Mitigation measures specifically designed to protect Steller sea lions and humpback whales include:
    - a. A certified marine mammal observer (MMO) able to accurately identify and distinguish species of Alaska marine mammals will be present before and during all in-water construction and demolition activities.
    - b. Appropriate exclusion (shutdown) zones will be established prior to pile driving, pile removal, and dry blasting construction activities. For this project, the exclusion zone includes all marine waters within 1,050 meters (m) of pile installation by vibratory driving and pile removal sound sources. If use of an impact hammer is required, a 500 m exclusion zone from the sound source will be implemented. The exclusion distance for dry blasting will be all marine waters within 50 m of the sound source.
    - c. Pile-driving and dry blasting will not be conducted when weather conditions or darkness restrict clear, visible observation of all waters within and surrounding the exclusion zone.

- d. The MMO will be positioned such that the entire exclusion zone is visible to them (e.g., situated on a platform, elevated promontory, boat, or aircraft). The exclusion zone will be delineated by buoy, marker, or other anchored device, where there are no existing objects or landforms present.
  - e. The MMO will have the following equipment to aid in determining the location of observed listed species, to take action if listed species enter the exclusion zone, and to record these events: (1) binoculars, (2) range finder, (3) global positioning system (GPS), (4) compass, (5) two-way radio communication with construction foreman/superintendent, (6) a logbook of all activities that will be available to the USACE and NMFS upon request.
  - f. The MMO will have no other primary duties other than watching for and reporting on events related to marine mammals.
5. Adhere to the commitments specified in the U.S. Fish & Wildlife Service Permit No. MB85122D-0. These include authorization to destroy three inactive bald eagle nests and to disturb seven bald eagles nests; follow avoidance, minimization, or other mitigation measures; and follow monitoring and reporting requirements.
  6. Nesting surveys would be conducted, prior to construction in appropriate habitats, to avoid disturbing nesting activities during the construction period.
  7. Clearing in areas where marbled murrelets and goshawks are likely to nest would be done before or after the nesting season (late spring to early summer, to be determined in consultation with the USFWS,) to avoid impacts to nesting birds.
  8. Planning for any camps necessary during construction of the project would include BMPs for handling food, trash, and other potential wildlife attractants to reduce impacts.
  9. Land clearing and blasting would not occur in the winter, to avoid disruption of mountain goats in low elevation habitat.

## CONCLUSION

The New Oil Spill Response Facility and Deepwater Port at Shepard Point, the Pile-supported Dock variant, and the 2021 Route Alignment is the best alternative in meeting the purpose and need described in the NEPA Documents and given the new information and circumstances provided in the 2021 Environmental Report. This has been determined after thorough review and assessment. The analysis described in this document, together with the analysis previously summarized in the NEPA Documents, adequately and accurately addresses the need, environmental issues and impacts of the proposed project (per 40 CFR 1500-1508; 23 CFR 771.127, et al.). It has also been determined that the NEPA Documents provide a full evaluation of the potential effects of the selected alternative. This revised decision incorporates all practicable measures to minimize environmental harm that could result from implementation of the selected action.



The revised decision has been made in cooperation with the NVE and the USACE. FHWA, NVE, and USACE will continue to work in cooperation to ensure all applicable regulations are met.

Based on the above information, FHWA selects the New Oil Spill Response Facility and Deepwater Port at Shepard Point, the Pile-supported Dock variant, and the 2021 Route Alignment for the project. Per CFR 771.127(b) this revised ROD will be sent to the same parties who received the FEIS.

**RECOMMENDED BY:**

---

Terry Schumann,  
Environmental Protection Specialist  
Office of Tribal Transportation  
Federal Highway Administration

5/31/22  
Date

**RECOMMENDED BY:**

---

Erin Kenley,  
Director  
Office of Tribal Transportation  
Federal Highway Administration

\_\_\_\_\_  
Date

**APPROVED BY:**

---

Timothy Hess,  
Associate Administrator for Federal Lands  
Federal Highway Administration

\_\_\_\_\_  
Date