

DEPARTMENT OF THE ARMY PERMIT
(SECTION 404)

NOTICE OF PROVISIONAL VERIFICATION
NATIONWIDE PERMIT #13 (BANK STABILIZATION)

File No. POH-2008-00256-2



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, HONOLULU
FORT SHAFTER, HAWAII 96858-5440

April 20, 2012

REPLY TO
ATTENTION OF:

Regulatory Branch

File No. POH-2008-00256-2

Glenn Okimoto, P.E.
Director
Hawaii Department of Transportation
Aliiaimoku Building
869 Punchbowl Street
Honolulu, HI 96813

NOTICE OF PROVISIONAL VERIFICATION
NATIONWIDE PERMIT #13 (Bank Stabilization)
Proposed Honoapi`ilani Highway Bank Stabilization Project,
20.819 °N -156.629 °W
Olowalu, Maui Island

Dear Mr. Okimoto:

This letter confirms that the work provisionally verified by the former NWP#13 was not under contract and was not started by March 18, 2012. This letter is to inform you that although the Corps has completed its review of your application, we cannot issue a final verification of the above-referenced NWP until the Clean Water Branch, Hawaii State Department of Health issues a Section 401 Water Quality Certification (WQC), or waiver, for your proposed bank stabilization project. Therefore, your application is a **Provisional NWP#13 Verification** until a valid WQC, or waiver, is issued and received by the Corps. **Upon receipt of the WQC issued by the Clean Water Branch, DOH, the proposed work will be considered verified and will expire on March 18, 2017.**

DO NOT begin the work until documentation of receipt of the WQC is received by this office. You are cautioned that commencement of the proposed work prior to DA NWP#13 verification would constitute a violation of Federal laws and subject you to possible enforcement action. Receipt of a permit from other government agencies does not waive or exempt you from the requirement to have a DA permit prior to commencing the proposed work.

All nationwide permits expire on March 18, 2017. It is incumbent upon you to remain informed of changes to the nationwide permits. If the Corps modifies, reissues, or revokes any nationwide permit at an earlier date, we will issue a public notice announcing the changes.

The proposed work is to stabilize 900 feet of eroding shoreline between Honoapi`ilani Highway and ocean waters at Olowalu, Maui by construction of a rock revetment within a boulder beach backshore. About 200 feet of the total proposed revetment will be constructed in nearshore intertidal waters and will be excavated to establish a conventional boulder-toed foundation. The entire revetment is about 2090 cy of cobbles and boulders. The work will take

place over a 10 week period. Appurtenant work will include the extension of an existing stormwater drainline under Honoapiʻilani Highway (Attachment 1).

The Corps has determined that the proposed work can be authorized under Nationwide Permit (NWP) #13 (Bank Stabilization) and shall be conducted in accordance with the Corps Nationwide Permit (NWP) authority at 33 CFR Part 330, Appendix A, the March 12, 2007 (72 FR 11092) Notice of Issuance of Nationwide Permits, Paragraph B. 13 (Bank Stabilization), Paragraph C (General Conditions), the Honolulu Engineer District Regional General Conditions for Nationwide Permits (approved May 14, 2007) (Enclosures 1, 2). Additional Special Conditions are stipulated in accordance with the Pac-SLOPES programmatic consultation between the Honolulu District and Protected Resources Division, National Marine Fisheries Service, NOAA, which became effective August 6, 2010 (Attachment 2).

As the Permittee and in accordance with NWP General Condition #30, please sign and return the compliance certification sheet upon completion of final in water activities (Enclosure 3).

The following **SPECIAL CONDITIONS** shall apply to the work to be performed.

SPECIAL CONDITIONS:

1. The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. The Construction Contractor selected by the Highways Division, Hawaii Department of Transportation shall submit and follow the provisions of an approved Site-Specific Best Management Practices Plan (BMPP). The name and contact information of the designated Construction Contractor POC for all in water activities shall be provided to the Regulatory Branch POC 48 hours before in-water work is to commence. The Construction Contractor POC shall ensure that daily visual inspection of the work site and its environs are conducted to verify that the permitted activities do not result in uncontrolled adverse environmental impacts and that where environmental harm occurs, is minimized to the maximum extent practicable. Visual inspections will be documented with photographs and written descriptions, if necessary. The BMPP shall include the measures itemized in the draft mitigation and restoration plan for activities in and above nearshore waters that included recommendations from the U.S. Fish & Wildlife Service and NOAA Fisheries shall include the following measures that are subject to compliance and enforcement inspections:

a. The specific area for the placement of armorstone should be surveyed prior to installation to avoid placement close to live, aggregate reef structures. Appropriate silt containment devices must be used and properly installed to avoid degradation of adjacent coral reefs, and aquatic vegetation.

b. With the exception of the actual dredging apparatus (e.g. clamshell buckets, or the scoop and articulated arm of a backhoe, etc.), heavy equipment will be operated from above and out of

SPECIAL CONDITIONS (cont)

the water to remove boulders from the supralittoral splash zone from landside/UPLAND areas. In water access and transit through nearshore waters is prohibited.

c. Mechanized equipment and construction materials shall be clean, uncontaminated, and free of deleterious substances, including toxic chemicals and clay-coated material;

d. An Oil Spill Response Plan (OSRP) shall be in place for landside platforms and all in-mechanized equipment which are associated with the installation of the revetment. The OSRP shall detail procedures for managing the accidental release of petroleum products to the aquatic environment during construction. No contamination of the marine environment shall result from the permitted activities. No petroleum products, trash, or other debris shall enter nearshore waters. When such material is found within the operating area, the Construction Contractor POC or its designated agent shall collect and dispose of the material at an approved upland disposal site;

e. Preventive measures to avoid and minimize interactions with green sea and hawksbill turtles and other protected species in active, mechanized equipment areas of operation shall incorporate the following site-specific avoidance and minimization measures:

i. Surveys shall be made prior to the start of work each day, and periodically during the day, including prior to resumption of work following any break of more than one half hour.

ii. All in-water work shall be postponed or halted when ESA-listed marine species are within 50 yards of the proposed work, and will only begin/resume after the animals have voluntarily departed the area. If ESA-listed marine species are noticed after work has already begun, that work may continue only after the animals have voluntarily departed the area.

iii. If approached by a marine mammal or turtle, the equipment operator shall put the engine in neutral and allow the animal to pass.

iv. Marine mammals and sea turtles shall not be encircled or trapped between multiple mechanized equipment or between mechanized equipment and the shore.

v. Do not attempt to feed, touch, ride, or otherwise intentionally interact with any ESA-listed marine species,

vi. The site of excavation or discharge will contain no known forage or resting habitat for ESA-listed marine species.

f. All on-site project personnel must be apprised of the status of any listed species potentially present in the project area and the protections afforded to those species under Federal laws. Information explaining laws and regulations for listed species in Hawaii may be downloaded at http://www.nmfs.noaa.gov/prot_res/MMWatch/hawaii.htm. The Construction Contractor POC shall ensure that protocols to avoid the potential for contact or harassment with ESA species of record are followed during all periods of in-water work.

SPECIAL CONDITIONS (cont)

g. For the duration of authorized work, the Construction Contractor POC shall maintain records of observations of sea turtles and other protected species in the project area. Upon completion of the authorized work, the POC shall submit the observation records to Mr. Farley Watanabe, Regulatory Branch, U.S. Army Corps of Engineers and Mr. Donald Hubner, <Donald.Hubner@noaa.gov>, Protected Resources Division, NMFS, PIRO.

h. The Construction Contractor POC shall immediately notify Mr. Farley Watanabe, Regulatory Branch, U.S. Army Corps of Engineers if: 1) a take occurs; 2) new information reveals the action has affected listed species in a manner or to an extent not previously evaluated; 3) if the action is subsequently modified such that it may cause effects to listed species in a manner or to an extent not previously considered or evaluated; or 4) a new species is listed or critical habitat is designated that may be affected by the authorized work.

3a. The Construction Contractor shall ensure that the provisions of the approved archaeological monitoring plan are understood and respected by employed field personnel.

3b. In the event that any previously unknown historic properties or skeletal remains are inadvertently discovered during project construction, the Permittee and his designated Construction Contractor shall immediately notify the Corps POC, the State Historic Preservation Division and the Maui Island Burial Council.

You are advised a nationwide permit does not grant any property rights or exclusive privileges. Also, it does not authorize any injury to the property or rights of others, nor any interference with any existing or proposed Federal projects. This authorization does not relieve you, the Permittee, of any need to obtain other Federal, State, or local authorizations required by law.

File No. **POH-2008-00256-2** is assigned to this project. Please refer to this number in any correspondence with us. Please contact Mr. Farley Watanabe at 438-7701 (FAX 438-4060), or Farley.K.Watanabe@usace.army.mil if you have any questions.

Sincerely,



George P. Young, P.E.
Chief, Regulatory Branch

2 Attchmnts and 3 Enclosures

Copy furnished (w/out enclosures):

Dr. Loyal Mehrhoff, Ecological Svcs., U.S. Fish and Wildlife Service< Loyal_Mehrhoff@fws.gov; PIFWO_ESA@fws.gov'>

Gerry Davis, ARA, Habitat Conservation Division, NOAA Fisheries< gerry.davis@noaa.gov>

Patrick Opay, ARA, Protected Resources Division, NOAA Fisheries< patrick.opay@noaa.gov>

Dr. Wendy Wiltse, U.S.E.P.A., Region IX, Honolulu Branch< Wiltse.Wendy@epamail.epa.gov>

Karen Chun, HDOT < Karen.Chun@hawaii.gov>

John Nakagawa, Office of Planning, CZM Program, <jnakagawa@hawaii.gov>

Darryl, Chief, Clean Water Branch, State DOH<darryl.lum@doh.hawaii.gov>

William Aila, Jr., Chairman, DLNR, State of Hawaii, < william.j.aila@hawaii.gov>

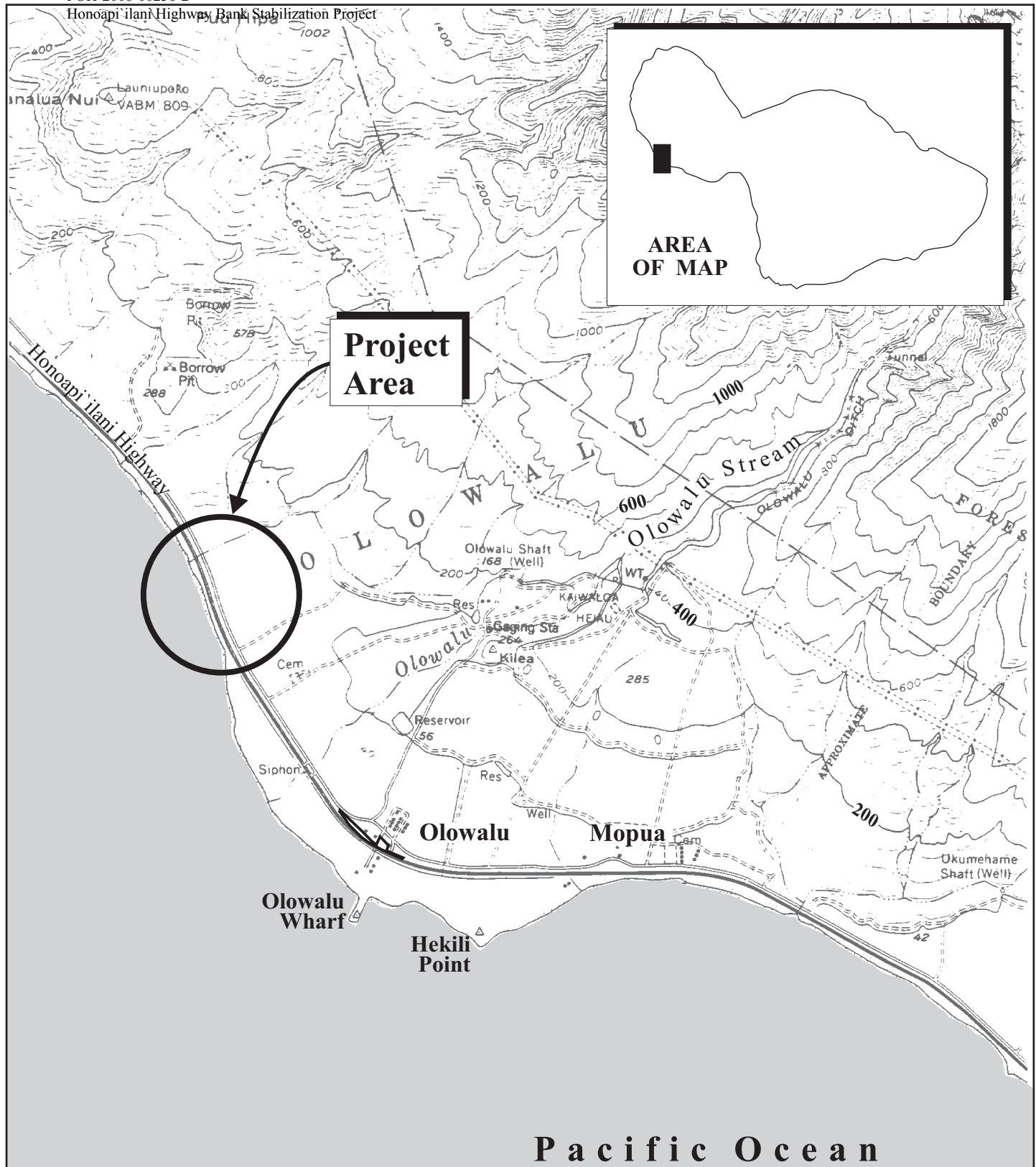
Dr. Pua Aiu, Deputy State Historic Preservation Officer, 601 Kamokila Blvd., Suite 555, Kapolei, HI 96707

CEO, Office of Hawaiian Affairs, 711 Kapiolani Blvd., Suite 500, Honolulu, HI 96813-3249

David C. Goode, Director, Department of Public Works, 200 South High Street, Wailuku, HI 96793

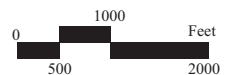
Nancy Nishikawa, Kimura International< nnishikawa@kimurainternational.com>

Richard Sato, Sato Engineers< rsato@satoandassociates.com>



Source: U.S. Geological Survey

Figure 1 Proposed Honoapi'ilani Highway
Shoreline Protection
Regional Location Map



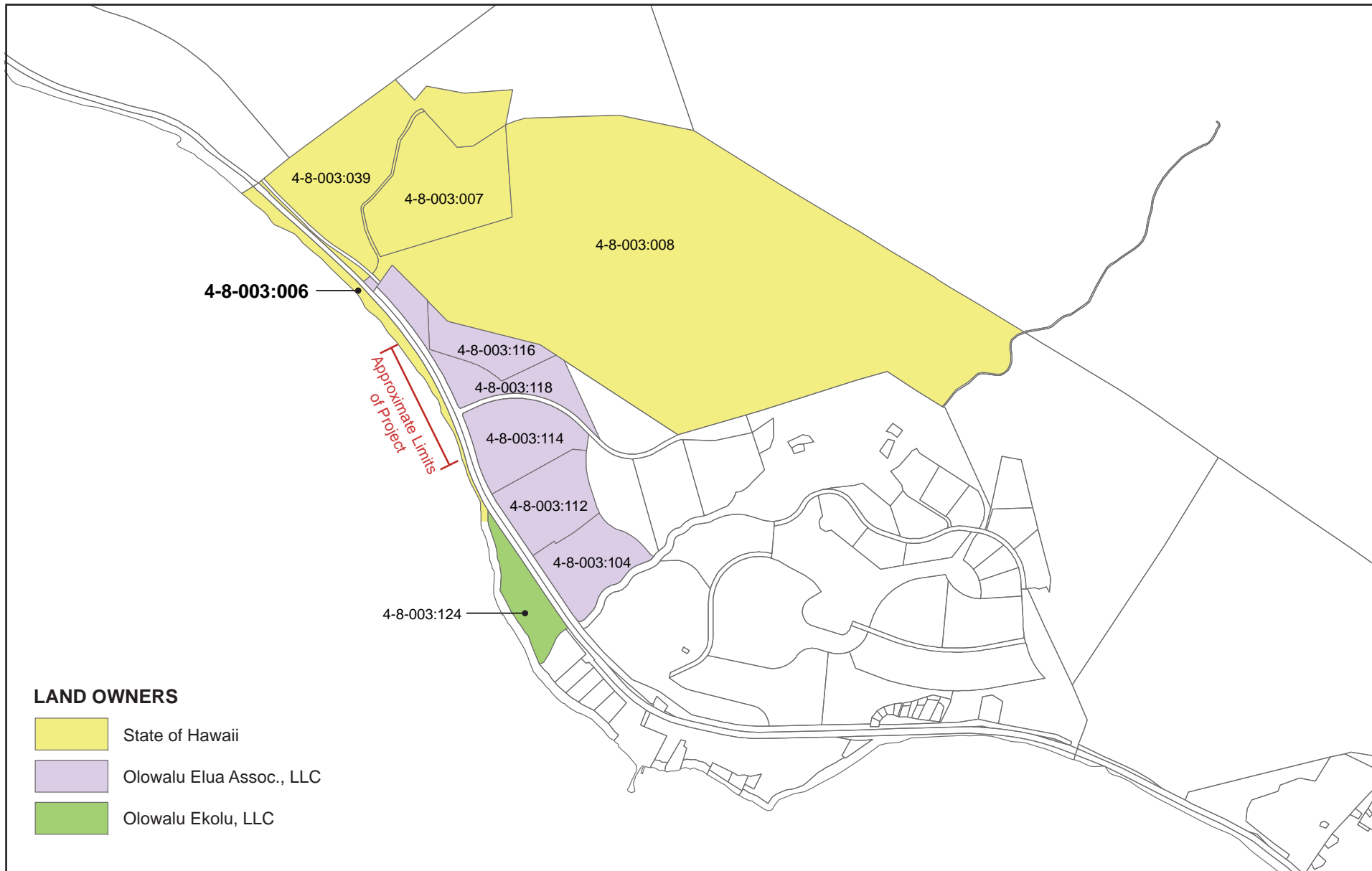
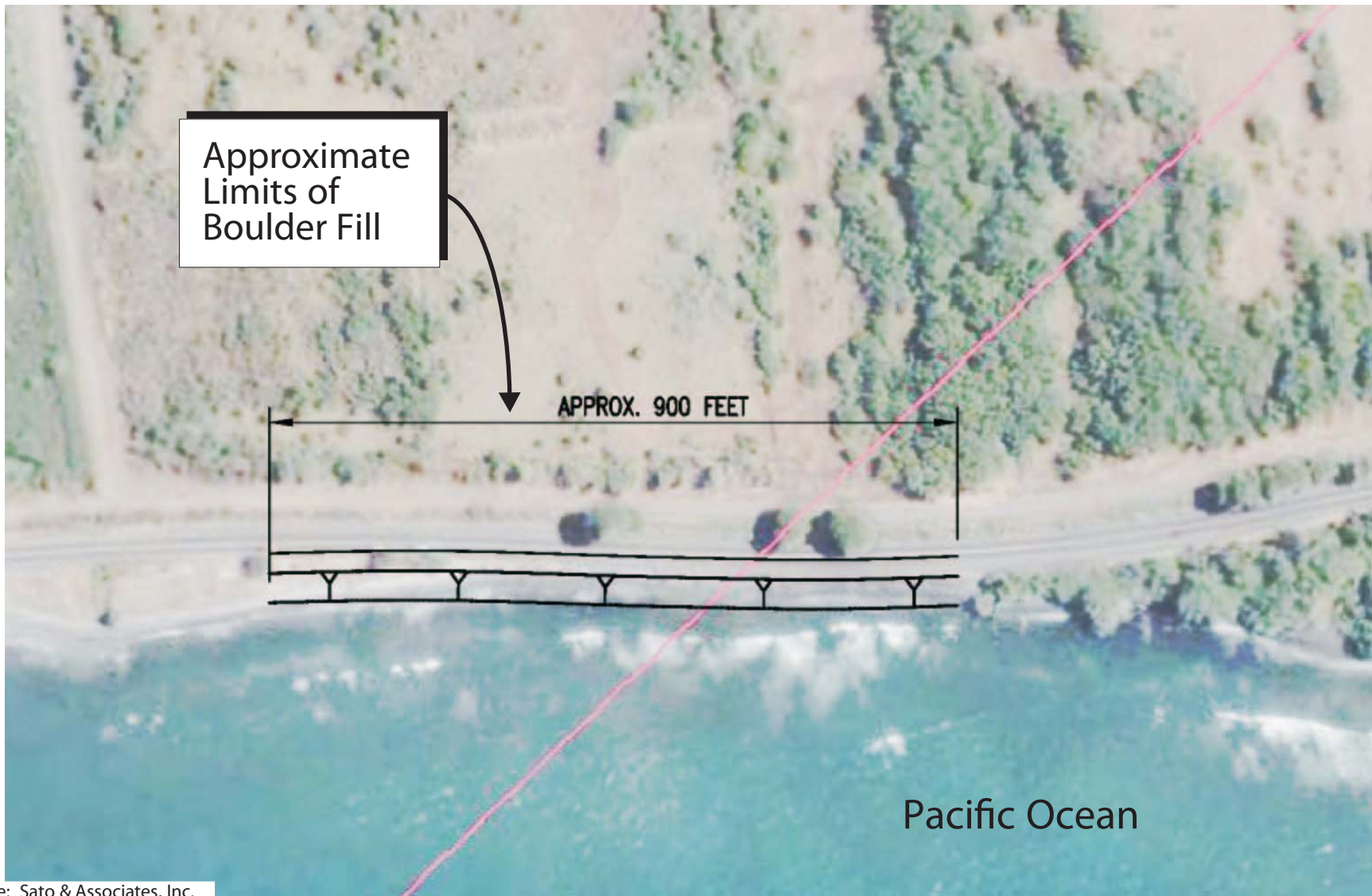


Figure 2



Proposed Honoapiʻilani Highway Shoreline Protection Tax Parcel Map

0 900 1800 Feet



Source: Sato & Associates, Inc.

Figure 3



Proposed Honoapiʻilani Highway Shoreline Protection Aerial Photograph of Project Area

NOT TO SCALE

Prepared for: State of Hawaiʻi, Department of Transportation

SATO\Olowalu Erosion\AerialPhotograph

TRUE NORTH
SCALE: 1 IN. = 60 FT.

Grant 4973 to Walter M. Giffard

Kamehameha IV Deed to 2. Nohokolehu

TMK (2)4-8-03:118

TMK (2)4-8-03:124

EROSION AREA = 8,195 SQ. FT.

HONOAPIʻILANI HIGHWAY F.A.P. NO. 30-A

SHORELINE AS SURVEYED ON JULY 27, 2002
AND CERTIFIED BY THE STATE OF HAWAII
ON OCTOBER 10, 2002

BOUNDARY FOLLOWS ALONG
HIGH WATER LINE AS SHOWN ON
FEDERAL AID PROJECT NO. 30-A

SHORELINE SURVEY
PARCEL 7A, PORTION PARCEL 8-A AND
PORTION REMNANT 4
AS SHOWN ON F.A.P. NO. 30-A
Being a portion of Grant 4973 to Walter
M. Giffard

PORTION TAX MAP KEY (2) 4-8-03: 06
OLOWALU, LAHAINA, MAUI, HAWAII

Owner: State of Hawaii
1151 Punchbowl Street
Honolulu, HI 96813

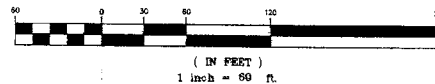
Date: April 16, 2008
Revised: September 22, 2008
Revised: June 9, 2009
Revised: August 28, 2009

The shoreline as delineated in red is
hereby certified as the shoreline as of

OCT 10 2002

[Signature]
Chairperson, Board of Land and Natural Resources

GRAPHIC SCALE



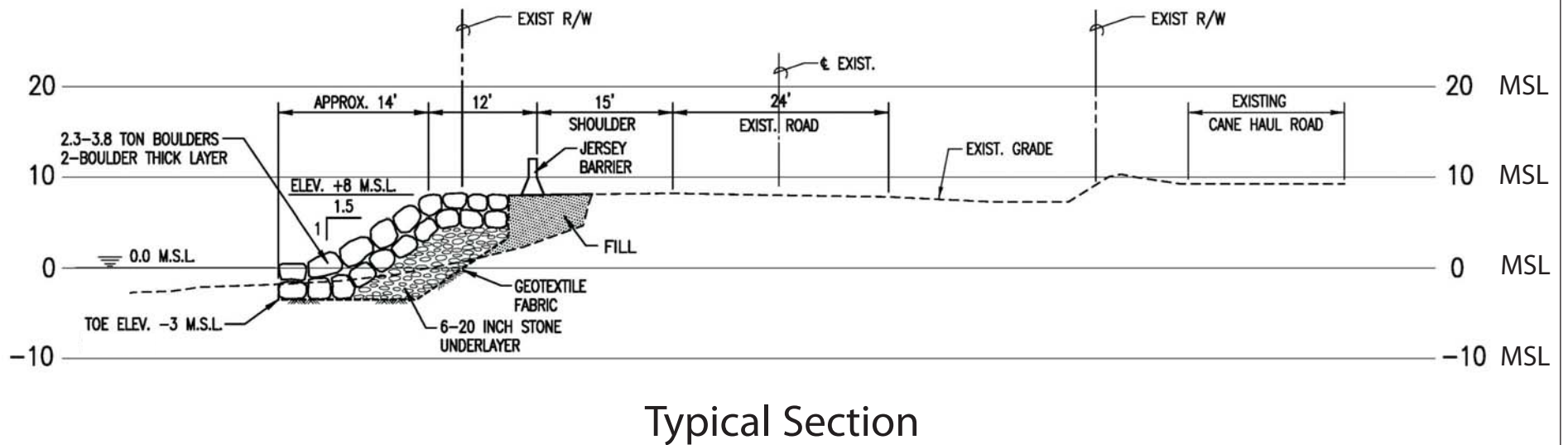
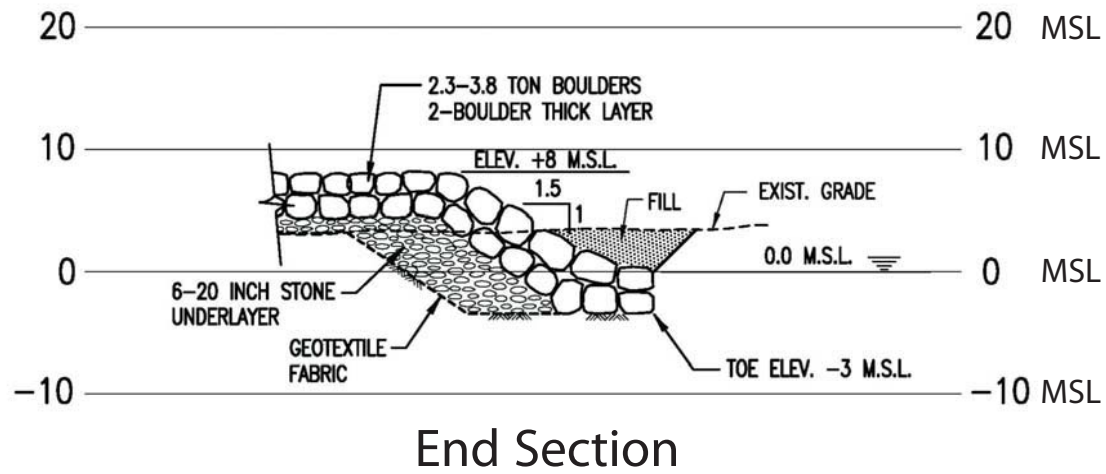
Notes:

1. indicates number and direction of photograph.
2. Boundary lines are referenced to the Highway Monument found at P.T. Sta. 533+73.66 as shown on construction plans for Lahaina - Wailuku Road, Olowalu Section F.A.P. No. 30-A.
3. Azimuths are referred to Government Triangulation Station "KILEA".
4. Shoreline survey performed on June 5, 2009.



ControlPoint Surveying, Inc.
1129 Lower Main Street, Suite 102
Honolulu, HI 96813

This work was prepared by me or under my supervision.
[Signature]
Norman K. Murakami
Licensed Professional Land Surveyor
Certificate No. 15-5824, Exp. 4/30/10

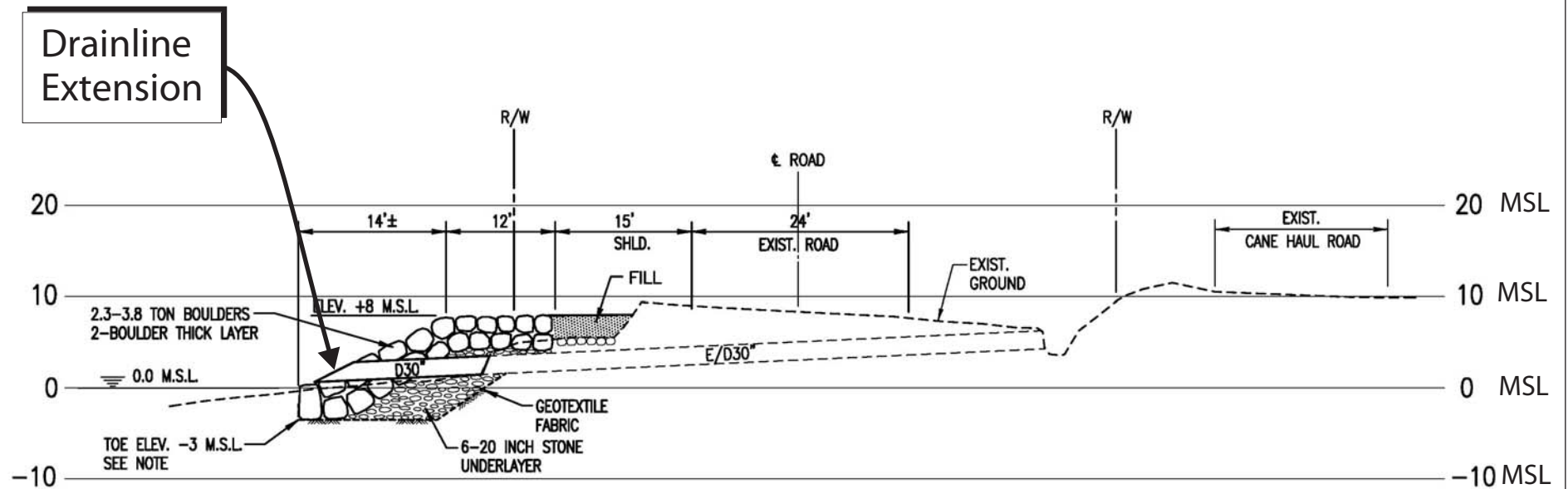


Source: Sato & Associates, Inc.

Figure 5

Proposed Honoapiʻilani Highway Shoreline Protection Typical and End Sections

NOT TO SCALE



Source: Sato & Associates, Inc.

Figure 6

Proposed Honoapiʻilani Highway Shoreline Protection Drain Line Section

NOT TO SCALE

Prepared for: State of Hawaiʻi, Department of Transportation

SATO\Olowalu Erosion\Drain Line Section

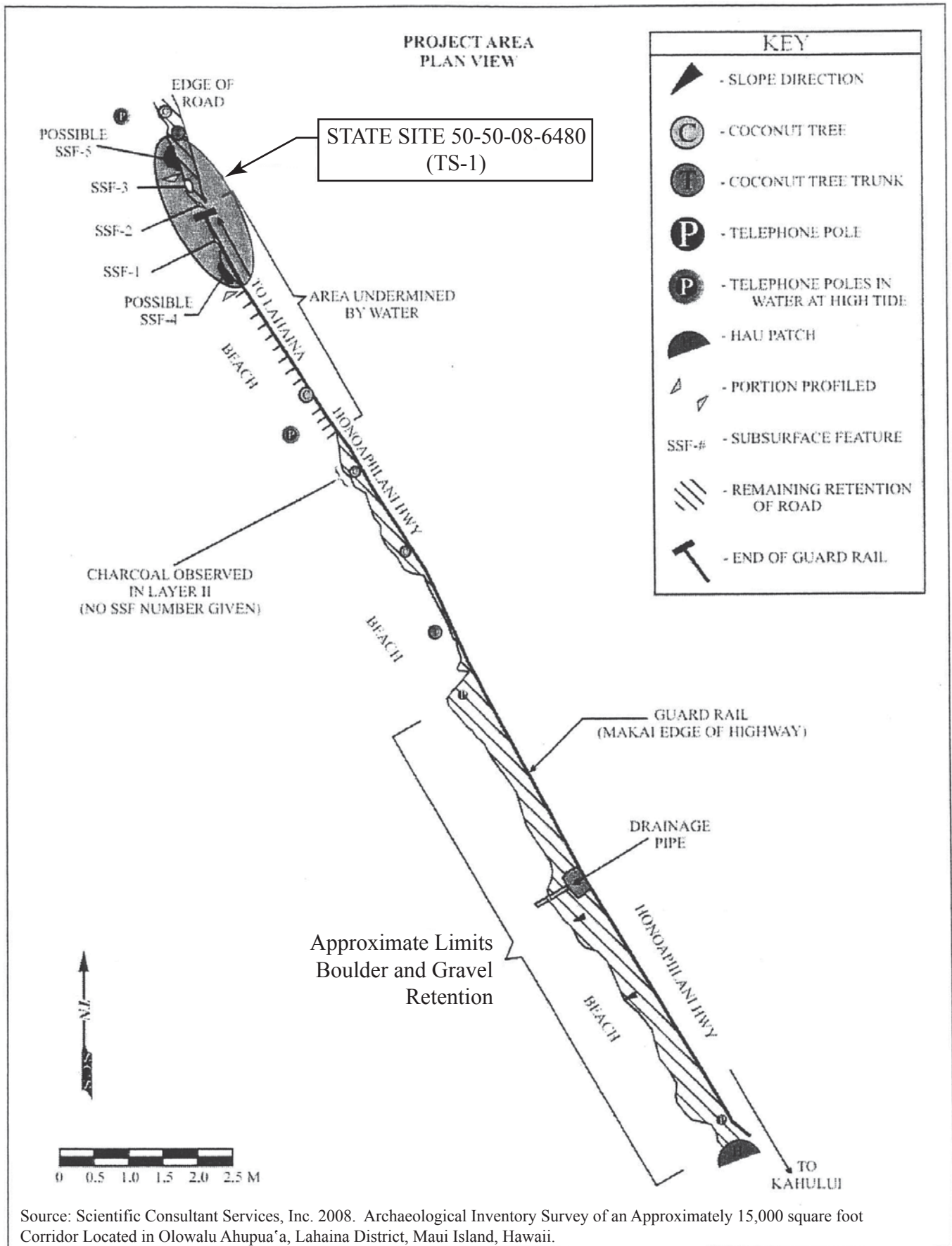


Figure 7: Project Plan View Map Depicting Location of State Site 50-50-08-6480 (TS-1)

Photos of Project Area: Honoapi'ilani Highway at Olowalu









U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1110
Honolulu, Hawaii 96814-4700
(808) 944-2200 • Fax (808) 973-2941

AUG - 6 2010

Mr. George P. Young, P.E.
Chief, Regulatory Branch
Department of the Army
U.S. Army Engineer District, Honolulu
Building 230
Ft. Shafter, Hawaii 96858-5440

Dear Mr. Young:

This letter responds to your July 23, 2010 letter regarding the implementation of Standard Local Operating Procedures for Endangered Species in the Central and Western Pacific Region (Pac-SLOPES). In your letter, you requested our concurrence under section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. §1531 *et seq.*), with your determination that issuing Department of the Army (DOA) authorizations for activities that comply with Pac-SLOPES is not likely to adversely affect ESA-listed sea turtles and marine mammals.

Proposed Action/Action Area: As described in your letter and the enclosed biological evaluation (BE) (DOA 2010), the DOA has identified a suite of frequently repeated activity types with standardized conditions and best management practices (BMPs), collectively referred to as Pac-SLOPES, that would consistently and predictably result in insignificant or discountable impacts on ESA-listed sea turtles and marine mammals. The DOA is requesting a 5-year programmatic consultation under the ESA for the implementation of Pac-SLOPES to authorize actions that comply with its requirements. The DOA and NMFS PRD would meet annually to summarize the actions permitted under Pac-SLOPES and to make recommendations to improve the effectiveness of the program. If the Corps chooses to continue programmatic coverage for Pac-SLOPES, it will reinstate consultation with NMFS PRD within five years of the date of completion of the requested programmatic consultation.

Briefly, Pac-SLOPES includes a concise set of guidelines that would be used to determine whether or not proposed actions fit under the programmatic consultation. It also includes implementation procedures that require review and feedback by NMFS Protected Resources Division (PRD) to confirm that the proposed action complies with the programmatic. The DOA would: 1) Determine if ESA-listed marine species or designated critical habitat may be affected; 2) If the determination is other than "no effect", review the project for applicability under Pac-SLOPES based on the following criteria: a) The proposed project conforms with all applicable requirements and limitations; b) The general conditions can be applied; and c) All potential effects on ESA-listed marine species or critical habitats are within the range of effects considered in the programmatic consultation with NMFS; and 3) Before or during the comment period for the action, the DOA would inform NMFS PRD of its intention to permit the proposed action under Pac-SLOPES and request concurrence.



For actions that fall under this programmatic consultation, NMFS review would be followed with a brief confirmation electronic mail (e-mail) to the DOA. The DOA's obligation to consult under the ESA with NMFS would be satisfied by this programmatic, and no further consultation would be required for that action. Actions that do not initially fit would require individual consultations if they cannot be brought into compliance with the programmatic through technical assistance and pre-consultation between the DOA, NMFS, and the applicant.

Under the proposed programmatic consultation, the DOA would use Pac-SLOPES to issue permits for the following types of actions: 1) Site preparation for above- or over-water construction; 2) Survey activities; 3) Marina or harbor repair & improvement; 4) Piling repair & removal; 5) Buoy installation & repair; 6) Maintenance dredging; 7) Other minor discharges and dredging/excavation; 8) Utility line installation & repair; 9) Outfall structure repair & replacement; 10) Bank stabilization; 11) Stream clearing; 12) Road construction, repair, and improvement; 13) Bridge repair & replacement; and 14) Vessel removal.

Projects that are explicitly excluded from authorization under Pac-SLOPES, and as such would require individual consultation, are those projects in or near the marine environment that include any of the following: 1) Blasting; 2) Pile-driving, pre-drilling for pile-driving; 3) New construction dredging or in-water trenching; 4) Construction of new or expanded effluent discharge systems; 5) Construction of new bank stabilization structures; 6) Exploration or construction within estuaries or the marine environment that cannot be conducted from a work vessel or an existing bridge, dock, or wharf; and 7) Any use of treated wood in marine or aquatic habitats (other than pressure-treated).

The action area for this programmatic consultation is limited to in-water areas around actions that would take place, on nearshore lands and outward to within 3 miles of shore, on and around the Main Hawaiian Islands (MHI), the Northwest Hawaiian Islands (NWHI), American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and the Pacific Remote Island Areas (PRIA)¹. With the exception of acoustic impacts, action-specific action areas are estimated to be the in-water area within 50-yard (46 m) radius arcs around the project sites, including around any work vessels. For actions that include an in-water acoustic footprint, the action areas are estimated to be the in-water area within a 1,500-yard (1,372 m) radius arcs around a project site, including around project related vessels as they transit to and from the site. The action area also includes the down-current extent of any plumes that may result from discharges of wastes or toxic chemicals such as fuels and/or lubricants associated with the machinery used for these covered activity types.

Species That May Be Affected: Based on the preferred habitats and sighting information, green sea turtles (*Chelonia mydas*), hawksbill sea turtles (*Eretmochelys imbricata*), Hawaiian monk seals (*Monachus schauinslandi*), and humpback whales (*Megaptera novaeangliae*) are the only ESA-listed species under NMFS jurisdiction that are known to occur, or could reasonably be

¹ The PRIA comprise Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Wake Island, Palmyra Atoll, and Midway Atoll. Although physically located in the Hawaiian Archipelago, administratively, Midway is considered part of the PRIA because it is not a part of the State of Hawaii. However, for the purposes of this document, the PRIA do not include Midway Atoll. Midway is considered as part of the Northwest Hawaiian Islands.

expected to occur in the vicinity of the proposed action area. Detailed information to describe the biology, habitat, and conservation status for sea turtles can be found in the recovery plans and other sources at <http://www.nmfs.noaa.gov/pr/species/turtles/>, and at <http://www.nmfs.noaa.gov/pr/species/mammals/> for marine mammals.

Critical Habitat: Critical habitat was designated under the ESA for the Hawaiian monk seal on May 26, 1988. Designated critical habitat extends from shore to a depth of 20 fathoms in ten areas of the NWHI. This is the only designated critical habitat within the action area. In response to a petition, NMFS issued a 12 month finding intent to undertake rulemaking to revise critical habitat in the NWHI and to designate critical habitat in the MHI. The potential impacts of Pac-SLOPES on designated critical habitat will be analyzed, as appropriate, following issuance of a final rule revising critical habitat.

Analysis of Effects: In order to concur that a proposed action is not likely to adversely affect listed species, NMFS must find that the effects of the proposed action are expected to be insignificant, discountable, or beneficial as defined in the joint USFWS-NMFS Endangered Species Consultation Handbook: (1) insignificant effects relate to the size of the impact and should never reach the scale where take occurs; (2) discountable effects are those that are extremely unlikely to occur; and (3) beneficial effects are positive effects without any adverse effects (USFWS & NMFS 1998). This standard, as well as consideration of the probable duration, frequency, and severity of potential interactions between the marine listed species and action types covered under the proposed programmatic, were applied during the analysis of effects of those action types on ESA-listed marine species, as is described in detail in the DOA BE. The analysis considered potential stressors and impacts to marine listed species, the most likely of which are:

1. Collision with vessels;
2. Direct physical impact;
3. Entanglement (w/moorings, cable, associated lines, etc.);
4. Disturbance from human activity and equipment operation;
5. Exposure to elevated noise levels;
6. Exposure to elevated turbidity;
7. Exposure to wastes and discharges; and
8. Loss of forage habitat.

The DOA specifically addressed all eight of these stressors in their BE (DOA 2010), providing detailed impact analyses to justify their determination. Based on the description of the covered activity types, the required conditions and BMPs, and the effects analyses provided in the BE, NMFS agrees that authorizing proposed actions that comply with Pac-SLOPES would result in insignificant impacts on ESA-listed sea turtles, marine mammals, and designated critical habitat, or the likelihood of impacts would be discountable.

Conclusion: NMFS concurs with your determination that implementation of Pac-SLOPES to authorize actions that comply with its requirements, in the Central and Western Pacific Region, is not likely to adversely affect ESA-listed marine species or their designated critical habitat. Our concurrence is based on the finding that the effects of the proposed action are expected to be

insignificant, discountable, or beneficial as defined in the joint USFWS-NMFS Endangered Species Consultation Handbook (USFWS-NMFS 1998) and summarized at the beginning of the Analysis of Effects section above. This programmatic consultation focused solely on compliance with the ESA. Additional compliance review that may be required of NMFS for actions covered under this programmatic (such as assessing impacts on Essential Fish Habitat) would be completed by NMFS Habitat Conservation Division in separate communications, if applicable.

This concludes your consultation responsibilities under the ESA for species under NMFS's jurisdiction. Consultation must be reinitiated if: 1) a take occurs; 2) new information reveals effects of the action that may affect listed species or designated critical habitat in a manner or to an extent not previously considered; 3) the identified action is subsequently modified in a manner causing effects to listed species or designated critical habitat not previously considered; 4) a new species is listed or critical habitat designated that may be affected by the identified action; or 5) the 5-year life of this programmatic consultation is exceeded.

If you have further questions please contact Donald Hubner on my staff at (808) 944-2233. Thank you for working with NMFS to protect our nation's living marine resources.

Sincerely,



Michael D. Tosatto
Acting Regional Administrator

Cc: Gerry Davis, Assistant Regional Administrator, Habitat Conservation Division,
NMFS/PIRO
Valerie Brown, Habitat Conservation Division, NMFS/PIRO, Guam Field Office
Andrew Torres, Sustainable Fisheries Division, NMFS/PIRO, Guam Field Office
Patrice Ashfield, ESA Section 7 Program Coordinator, USFWS, Honolulu
Paula Levin, Coastal Conservation, USFWS, Honolulu

NMFS File No. (PCTS): I/PIR/2010/03501
PIRO Reference No.: I-PI-10-835-LVA

References

Department of the Army (DOA). 2010. Letter from Honolulu District Regulatory Branch regarding the implementation of Standard Local Operating Procedures for Endangered Species in the Central and Western Pacific Region (Pac-SLOPES), including the enclosed Biological Evaluation – Effects of Implementing [Pac-SLOPES] on ESA-Listed Sea Turtles and Marine Mammals. July 23, 2010.