



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

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