

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME L. FUKINO, M.D.  
DIRECTOR OF HEALTH

**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P.O. BOX 3378  
HONOLULU, HAWAII 98801-3378

In reply, please refer to:  
EMD / CWB

WQC768.FNL.10

May 21, 2010

The Honorable Brennon T. Morioka, Ph.D., P.E.  
Director  
Department of Transportation  
Aliiimoku Building, Room 509  
869 Punchbowl Street  
Honolulu, Hawaii 96813

Attention: Mr. Edwin Sniffen  
Technical Design Section Head

Dear Dr. Morioka:

**Subject: Section 401 Water Quality Certification (WQC)**  
**Castle Hills Access Road Drainage Improvement**  
**Kapunahala Stream between Pookela Street and Kupohu Street**  
**Kaneohe, Island of Oahu, Hawaii**  
**Government Project/Job No. HW-O-04-98**  
**TMKs: (1) 4-5-024:002 to 005, and (1) 4-5-108:068 to 074**  
**File No. WQC 0000768/DA File No. POH-2009-00185**

The Department of Health (DOH), Clean Water Branch (CWB), acknowledges receipt on May 20, 2010, of your revised Application (signed and dated May 19, 2010) for a Section 401 WQC for the subject project notified by an e-mail and uploaded on the CWB's FTP site by Mr. Russell Arakaki of ParEn, Inc., your duly authorized representative, on May 20, 2010.

The proposed construction will be conducted in two (2) phases as summarized in Item No. 7.b of the Application, below:

**Phase 1**

1. Install, maintain, and monitor temporary water pollution, dust and erosion control measures and Best Management Practices (BMPs).

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2. Demolition and removal of 10 residential buildings and appurtenant structures and landscaping.
3. Removal of invasive plants within the stream corridor and stabilization of disturbed areas.
4. Installation of stream diversion measures to allow construction of southern stream bank gabion wall.
5. Excavation and dewatering for gabion wall.
6. Installation of gabion wall.
7. Removal of diversion measures.
8. Installation of erosion controls including hydromulch, temporary grassing, and erosion control matting.

## **Phase 2**

1. Install, maintain, and monitor temporary water pollution, dust and erosion control measures and BMPs.
2. Demolition and removal of existing concrete ditch.
3. Installation of a 60-inch diversion pipe and other diversion measures.
4. Construction of a temporary diversion wall.
5. Demolition and removal of CRM outlet structure.
6. Excavation and dewatering for the new reinforced concrete drop structure and gabion wall.
7. Drill and install micropile foundation.
8. Construct new concrete invert slab, gabion apron, and gabion wall.
9. Remove diversion structures, cofferdam and 60-inch bypass/diversion pipe.
10. Install erosion control measures.

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As stated in Mr. Arakaki's letter of May 20, 2010 that:

"It is the State Department of Transportation's goal to protect the existing in-stream uses and natural resources to the maximum extent practicable. Various studies have been conducted for the Castle Hills Access Road Drainage Improvements project, among which are an Archaeological Assessment in compliance with Section 106, and an Environmental Assessment (EA). A determination of a Finding of No Significant Impact (FONSI) was published for this EA and received no opposition during the 30-day public challenge period.

In addition, various Federal and State reviews and permits have been prepared to evaluate and mitigate any potential impacts of construction. Numerous government agencies, including the National Fish and Wildlife Service, United States Coast Guard, United States Department of Agriculture Natural Resources Conservation Service, Department of Land and Natural Resources Commission on Water Resource Management, State Historic Preservation Office, Division of Aquatic Resources, Department of Business Economic Development and Tourism Office of Planning, and Office of Hawaiian Affairs have been consulted through mail, email, conference and field investigation. Findings, comments and recommendations from these reviews have been taken into consideration and reflected in the revised design and site-specific BMP's developed for this project. The public, especially the communities adjacent to the proposed project, were also consulted during project development. Several community meetings were conducted to present project design approaches and to address any comments or concerns from the affected community. Project plans were revised to accommodate public comments on several occasions.

In accordance with HAR Section 11-54-09.1.04(b), we request a waiver from the public participation process as the proposed construction work for the Castle Hills Access Road Drainage Improvements Project is covered under a Nationwide Permit Authorization, the project will only result in minor discharge, and the project is noncontroversial."

The "*NOTICE OF PROVISIONAL NATIONWIDE PERMIT VERIFICATION*," dated October 29, 2009, Mr. George P. Young, Chief of the Regulatory Branch, Honolulu Engineer District (HED) of the U.S Army Corps of Engineers (COE) rendered his Department of the Army (DA) permitting jurisdictional determination which states:

"The proposed drainage improvements project consists of the reconstruction of a new stormwater culvert outlet and gabion apron in Kapunahala Stream. Appurtenant work above the Ordinary High Water Mark includes the installation of new gabion walls on the north and south banks of Kapunahala Stream and the reconstruction of a concrete ditch leading into the open culvert. Temporary in-stream discharges include placement of a sand bag berm to divert stream water away from the sheet pile cofferdam enclosing the work area. The project will be conducted in accordance with the drawings titled *Plans for Castle Hills Access Road Drainage Improvements, Vicinity of Pookela Street, Kupohu Street & Pilina Way, Project No. HWY-O-04-98*(attachment).

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The Corps has determined that the proposed work can be authorized under Nationwide Permit (NWP) #18 (Minor Discharges) 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 R18 (Minor Discharges)), Paragraph C (General Conditions), and the Honolulu Engineer District Regional General Conditions for Nationwide Permits (approved May 14, 2007). This NWP is issued provisionally under the authority of Section 404(e) of the Clean Water Act (33 U.S.C. 1344)."

Based on the DA NWP No. 18 (Minor Discharges) JD rendered by the COE-HED on October 29, 2009; information contained in the May 19, 2010 revised Section 401 WQC Application; in considering with Mr. Arakaki's waiver request; and in accordance with Hawaii Administrative Rules (HAR), Paragraph 11-54-9.1.04(b), the DOH waives the notification requirements for the processing of an Application for a Section 401 WQC for the subject project with the following conditions:

1. The determination of waiving the notification requirements for the processing of an application for a Section 401 WQC for the subject project:
  - a. Shall become effective the date of this letter and expire at midnight **March 18, 2012**, or until the applicable State Water Quality Standards (WQS) is revised or modified, or the applicable DA NWP No. 18 expires or is revised or modified, or the project construction is completed, whichever is earliest. If the applicable WQS is revised or modified, before **March 18, 2012**, and such that the activity complies with the revisions or modifications to the WQS, the determination of waiving the notification requirements shall continue to be valid until **March 18, 2012**.

The Director of Health (Director) may, upon the written request under 33 CFR 330.6(b) from the Department of Transportation (DOT) administratively extend the expiration date of this determination if the written request can demonstrate to the Director that the project is in fact under construction or under contract to begin construction after the NWP expires and there are no significant changes to the project scope and the changes will not, either individually or cumulatively, cause adverse impact to the receiving water quality. The request shall be accompanied with appropriate color photographs demonstrating that the project is in fact under physical construction and the purpose of extending the expiration date is to allow the contractor to complete the project construction.

- b. Shall become invalid if the project construction activity is found to be controversial after the effective date of this letter. The DOT shall cease all discharge activities as specified in Item No. 7.d for the purposes as specified in Item Nos. 7.b and 7.c of the May 19, 2010 revised Section 401 WQC Application. The DOT and the contractor(s) shall not hold the DOH responsible for any damages or costs incurred due to the cessation of the discharge activity.

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c. May be revoked when:

- (1) New State WQS are subsequently established before the activity is completed and/or the Director determines that the activity is violating new State WQS. The Director will notify the DOT of the violation. The DOT shall cease the violation within 180 calendar days of the date of the notice. If the DOT fails within 180 calendar days of the date of the notice to cease the violation, the Director may revoke this waiver determination; or
- (2) The Director determines that the discharge(s) from the activity is violating the existing State WQS or any condition specified in this letter. The Director will notify the DOT of the violation. The DOT shall cease the violation within seven (7) calendar days of the date of the notice. If the DOT fails within seven (7) calendar days of the date of the notice to cease the violation, the Director may revoke this waiver determination.

These actions shall not preclude the DOH from taking appropriate enforcement action authorized by law.

Written notification by the Director under this section is complete upon mailing or sending a facsimile transmission of the document or actual receipt of the document by the DOT.

2. The DOT shall:

- a. (1) Invite the DOH's representative(s) to attend the partnering, pre-construction or any other similar type of meeting that is established for the proposed construction project.

(2) Notify the CWB:

(A) At e-mail [cleanwaterbranch@doh.hawaii.gov](mailto:cleanwaterbranch@doh.hawaii.gov) or via fax No. (808) 586-4352 within seven (7) calendar days before any work is to begin. All communication, including but not be limited to the e-mail, with the CWB shall indicate **File No. WQC 000768.**

(B) Within 14 calendar days after the completion of the proposed construction activities (including the disturbed sites restoration activities).

- b. Submit to the CWB within seven (7) calendar days before each phase of the construction work is to begin, the:

- (1) General Contractor's Information as required in Item No. 2 of the Application;
- (2) Emergency Contact's information as required in Item No.3 of the Application;

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- (3) Project site Contact Person information as required in Item No.4 of the Application;  
and
  - (4) An updated construction schedule, as appropriate.
- c. Ensure that work shall be performed only during the period that the Kapunahala Stream has minimal or no flow,
- d. Comply, and shall also require the contractor(s) to comply, with applicable specifications, schedules, procedures, "***Applicable Water Quality Monitoring and Assessment Program for Castle Hills Access Road Drainage Improvements and Kapunahala Stream Bank Stabilization, Kāneʻohe, Oʻahu, Hawaiʻi*** (AECOS No. 1212B, dated November 20, 2009, and revised April 16, 2010), site-specific BMPs measures and any other project construction related requirements or information contained in your May 19, 2010 revised Section 401 WQC Application submitted with Mr. Arakaki's letter of May 20, 2010.

The DOT shall properly conduct or contract with a qualified laboratory/environmental consultant to conduct the "***Applicable Water Quality Monitoring and Assessment Program for Castle Hills Access Road Drainage Improvements and Kapunahala Stream Bank Stabilization, Kāneʻohe, Oʻahu, Hawaiʻi*** (AECOS No. 1212B, dated November 20, 2009, and revised April 16, 2010) submitted with Mr. Arakaki's e-mail of May 20, 2010.

Test methods promulgated in 40 CFR Part 136 effective on July 1, 2001, and when applicable, the chemical methodology for sea water analyses (see HAR, Section 11-54-10) shall be used. The detection limits of the test methods used shall be equal to or lower than the applicable WQS as specified in HAR, Chapter 11-54. For situations where the applicable WQS is below the detection limits of the available test methods, the test method which has the detection limit closest to the applicable WQS shall be used. If a test method has not been promulgated for a particular parameter, the applicant may submit an application through the Director for approval of an alternate test procedure by following 40 CFR §136.4.

The Director may, at the Director's own discretion or upon written request from the DOT and on a case-by-case basis, require the DOT to modify the monitoring frequency(ies) or change the sampling locations and/or parameter, as appropriate. If a written request is submitted for the reduction of monitoring frequency(ies), it shall be accompanied by an assessment of monitoring results which shall clearly demonstrate that the project construction activity related discharge has fully complied with the applicable WQS.

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For each phase of the proposed construction work, DOT shall take representative pre and post-construction site photographs. Pre-construction representative site photographs shall be submitted to the CWB prior to the initiation of the proposed in-stream works. Post-construction representative site photographs shall be submitted to the CWB within 14 calendar days after the completion of each phase of the proposed construction activities (including the disturbed sites restoration activities).

Field measurement results as well as the turbidity laboratory analytical results shall be submitted to the CWB, before the closing of the next business day the sample was taken, via e-mail in Excel and pdf formats to [cleanwaterbranch@doh.hawaii.gov](mailto:cleanwaterbranch@doh.hawaii.gov). All communication, including but not be limited to the e-mail, with the CWB shall include **File No. WQC 0000768** and the certification statement below.

e. Ensure that:

- (1) All "discharges" associated with the proposed construction activities are conducted in a manner that will not cause or contribute to a violation to the "Basic Water Quality Criteria Applicable to All Waters" as specified in HAR, Section 11-54-4.
- (2) All material(s) placed or to be placed in State waters are free of waste metal products, organic materials, debris, and any pollutants at toxic or potentially hazardous concentrations to aquatic life as identified in HAR, Subsection 11-54-4(b).

- f. Ensure that sheet piles, silt fence, sand bags, erosion control mats, and appropriate and effective silt containment or treatment device(s) and soil erosion control measures as well as the 60" stream flow diversion pipe will be properly deployed prior to the commencement of the construction work; be properly maintained throughout the entire period of the construction work; and not be removed until the construction work is completed and the condition in the affected area has returned to its preconstruction condition or better, as demonstrated by the monitoring results.
- g. Ensure that construction debris, including but not limited to those resulting from the excavation/dredging activity, is contained on land and prevented from entering or re-entering State waters.
- h. Ensure that all temporarily constructed structures (including the sheet piles, silt fence, sand bags, and 60" stream flow diversion pipe), silt containment device(s) and/or temporary soil erosion control structures, are properly removed immediately after the completion of the construction work and when the affected water body has returned to its preconstruction condition or better, as demonstrated by the monitoring results, including the color photographs.

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- i. Ensure that the permitted activity will not result in noncompliance or cause violations to the applicable State WQS. Although temporary increases in turbidity level is expected, any visible floating debris, oil, grease, scum, other floating materials, or objectionable color, or turbidity plume, detected outside the confined/isolated areas constitutes a violation to HAR, Subsection 11-54-4(a) requirements.

The DOT shall immediately cease the portion of the construction work which is causing or may cause noncompliance with HAR, Subsection 11-54-4(a), Subsection 11-54-4(b), or the portion of the construction is damaging or will cause damage to the aquatic environment as is indicated through applicable monitoring and assessment plan results or during the daily inspection or observations. The construction activity shall not resume until adequate mitigative measures are implemented and appropriate corrective actions are taken and approved by the Director.

The DOT, Contractor and/or subcontractor(s) shall not hold the DOH responsible for any damages or costs incurred due to the temporary cessation of the construction operation.

This action shall not preclude the DOH from taking appropriate enforcement action authorized by law.

- j. Immediately report any spill(s) or other contamination(s) that occurs at the project to the CWB via telephone number (808) 586-4309 or through e-mail to:  
[cleanwaterbranch@doh.hawaii.gov](mailto:cleanwaterbranch@doh.hawaii.gov).
  - k. Ensure that:
    - (1) Erosion and Sediment Control Measures are in place and functional before earth moving operations begin;
    - (2) Temporary soil stabilization shall be applied on areas that will remain unfinished for more than 30 calendar days; and
    - (3) Permanent soil stabilization shall be applied as soon as practicable after final grading.
- The DOT shall ensure that the Contractor and/or subcontractor(s) will maintain, at the construction site or in the nearby field office, a record that these requirements have been fully complied with.
- l. Not discharge construction site dewatering effluent, concrete truck wash water, and any other types of effluent without first obtaining the required National Pollutant Discharge Elimination System permit from the DOH.



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- m. Maintain, or require the contractor to maintain, a copy of the May 19, 2010 revised Section 401 WQC Application package which includes the **"Applicable Water Quality Monitoring and Assessment Program for Castle Hills Access Road Drainage Improvements and Kapunahala Stream Bank Stabilization, Kāne'ohe, O'ahu, Hawai'i"** (AECOS No. 1212B, dated November 20, 2009, and revised April 16, 2010), and site-specific BMPs measures, the construction daily log and this letter at the construction site or in the nearby field office.
3. Work shall be discontinued during storm events that exceed 5-year, 1-hour intensity or during flood condition.
4. Clearing and grubbing shall be held to the minimum, if any.
5. The DOT shall review and update the effectiveness and adequacy of the **"Applicable Water Quality Monitoring and Assessment Program for Castle Hills Access Road Drainage Improvements and Kapunahala Stream Bank Stabilization, Kāne'ohe, O'ahu, Hawai'i"** (AECOS No. 1212B, dated November 20, 2009, and revised April 16, 2010), implemented site-specific BMPs and other environmental protection measures as often as needed. The DOT shall modify the **"Applicable Water Quality Monitoring and Assessment Program for Castle Hills Access Road Drainage Improvements and Kapunahala Stream Bank Stabilization, Kāne'ohe, O'ahu, Hawai'i"** (AECOS No. 1212B, dated November 20, 2009, and revised April 16, 2010), site-specific BMPs measures and/or environmental protection measures upon request or when instructed by the Director.

Any change(s) to the implemented site-specific BMPs measures, **"Applicable Water Quality Monitoring and Assessment Program for Castle Hills Access Road Drainage Improvements and Kapunahala Stream Bank Stabilization, Kāne'ohe, O'ahu, Hawai'i"** (AECOS No. 1212B, dated November 20, 2009, and revised April 16, 2010), and/or correction(s) or modification(s) to information already on file with the DOH shall be submitted to the CWB for review and comment, as such change(s), correction(s) or modification(s) arises. The DOT shall properly address all comment(s) and/or concern(s) to the Director's satisfaction before such change(s), correction(s) or modification(s) become effective.

6. By applying for and accepting this Section 401 WQC determination, the DOT agrees that the DOH may conduct routine inspection of the construction site in accordance with Hawaii Revised Statutes, Section 342D-8.
7. Construction debris, vegetation and/or dredged material removed from the construction site shall be disposed of at the upland State or County approved sites. A Solid Waste Disclosure Form for Construction Sites shall be completed and returned to the DOH, Solid and Hazardous Waste Branch, Solid Waste Section. The form may be downloaded at: <http://hawaii.gov/health/environmentallwater/cleanwater/forms/pdf/oswm5-94.pdf>.

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No construction material or construction activity-related materials shall be stockpiled, stored or placed in State waters (including Kapunahala Stream) or in ways that will disturb or adversely impact the aquatic environment.

8. Runoff, return flow or airborne particulate pollutants, if any, from the excavated/dredged material dewatering process or from the stockpiling site shall be contained on land and not be allowed to enter State waters.
9. The DOT shall comply with all new State WQS adopted by the DOH after the effective date of this letter.
10. The DOH reserves the right of taking appropriate enforcement action authorized by law against any non-compliance of conditions contained in this letter.
11. Effective the date of this letter, Mr. Russell Arakaki is no longer recognized as the duly authorized representative. Mr. Pratt Kinimaka, District Engineer of DOT-HWYS, Oahu Office, is recognized as the duly authorized representative to comply with and be responsible for all conditions specified in this Section 401 WQC. All future information must be submitted by you or Mr. Pratt Kinimaka.

Please include File No. WQC 0000768 and the following certification statement in all future correspondence with the DOH for the subject project:

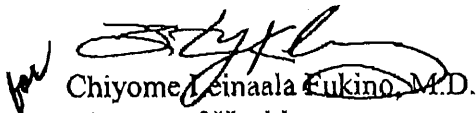
**"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."**

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If you have any questions, please contact Mr. Edward Chen of the Engineering Section, CWB, at 586-4309.

Sincerely,

  
Chiyome Leinaala Fukino, M.D.  
Director of Health

- c: Regulatory Branch, HED, COE [via fax 438-4060 only]  
CZM Program, Office of Planning, DBEDT [via fax 587-2899 only]  
CWRM, DLNR (w/o encl.) [via e-mail [Robert.K.Chong@hawaii.gov](mailto:Robert.K.Chong@hawaii.gov) only]  
Mr. Pratt Kinimaka, Oahu Office, DOT-HWYS (w/o encl.) [via fax 831-6726 only]  
Mr. Edwin Sniffen, DOT-HWYS [via fax (808) 692-7555 only]  
Mr. Russell Arakaki of ParEn, Inc., [via fax 593-1607 only]  
Mr. Robert Shin, DOT-HWYS (w/o encl.) [via e-mail [Robert.Shin@hawaii.gov](mailto:Robert.Shin@hawaii.gov) only]  
Ms. Larissa Sato, Parson Brickerhoff (w/o encl.) [via e-mail [sato@pbworld.com](mailto:sato@pbworld.com) only]