



State of Hawaii
Department of Health
Clean Water Branch

**Do NOT submit
this document.**

HAR Sections 11-54-09.1 to 11-54-09.1.09

**Guidelines for the Section 401 Water Quality Certification (WQC)
Application**

See Note 18.I. for the list of abbreviations which are used throughout these guidelines.

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1. Owner Information

The owner is the organization or person which/who is developing the project, not necessarily the owner of the land.

2. General Contractor Information

This is the organization which is in charge of constructing the project. This information may be provided to the CWB within 30 days after award of the construction contract.

3. Emergency Contact Information

Provide the name and two (2) phone numbers of at least two persons who may be contacted in case of emergency regarding “discharges” into the navigable waters.

4. Project Site Information

Also provide the project’s Federal, State, City, or County project/job number(s), as applicable.

5. Associated Permits or Licenses

- a. Provide the Department of the Army (DA) permit or license file number, type of the DA permit (i.e., NWP, GP, IP, LOP, etc.), and permit authorization (i.e., CWA, RHA, MPRSA, etc.).
- b. Provide the Section 402 NPDES Permit number and/or NGPC file number which is associated with this project activity, as applicable.
- c. Provide the RCRA Permit number for any hazardous wastes stored or used at the project, as applicable.
- d. For SARA, indicate the chemicals and their quantities at the project site, as applicable.
- e. Others (i.e., Underground Injection Control file number, Stream Channel Alteration Permit file number, CZM approval or file number, etc.), as applicable.

6. Receiving State Water Information

State water classification is available on the Water Quality Standards Map dated October 1987 from the CWB or in HAR Chapter 11-54 which may be downloaded from www.state.hi.us/doh/rules/emd/cwrule.html in pdf format. Provide associated existing uses including the recreational uses of the affected water body.

7. Project Description

See Guidelines for CWB-WQC Application - Note 18.k. for definitions of “discharge,” “pollutant,” “discharge of a pollutant,” “discharge of pollutants,” “navigable waters,” and “waters of the United States.”

- a. Provide the boundary coordinates of the project requiring the federal permit or license. Indicate the beginning and ending coordinates where the “discharge(s)” may enter the stream or shoreline projects. Indicate the center point coordinate where the

“discharge(s)” may enter other types of projects (i.e., wetlands, etc.). The coordinates shall be indicated to the nearest one (1) second of latitude and longitude.

- b. The overall project description should include: the project activities both in and out of the navigable waters, the construction or operation of facilities which may result in any direct and/or indirect “discharges” into State waters.
 - c. Provide a description of the “discharge” (i.e., storm water runoff, dredged spoil dewatering return flow and runoff, placement of backfill, pouring or placement of concrete, sand placement for beach nourishment, equipment in the water, etc.).
 - d. List all “discharge” activities that the owner is seeking coverage for under this WQC application (i.e., sand replenishment, backfills, etc.).
 - e. The biological, chemical, thermal, and any other pertinent characteristic of the “discharge” activity. These may include: nutrients from dredging, pre-drilling, or pile-driving activities; turbidity from leaks during tremie concrete placement; etc.
8. Description of the Existing Environment and Potential Environmental Effects from the Construction Activities
- a. Provide a survey report, if available, and photographs of existing physical environment. Provide a discussion on the environmental effects on water, land, sediment, soil, air, etc.
 - b. Provide monitoring data for existing chemical environment. Provide a discussion on the environmental effects on the water column, sediments, air, etc.
 - c. List all species, specifically native species, and habitats for existing biological environment. Provide a discussion on the environmental effects on plants, animals, and habitats.
 - d. Provide the existing use and effects on existing human activities such as recreational activities, propagation of fish, shellfish, or other aquatic animals, plants, etc. Provide a Mitigation/Compensation Plan in Item 12 if the project construction will result in adverse environmental effects or will interfere with or become injurious to any assigned uses made of or presently in State waters.
9. Project Schedule
- a. If the project construction schedule is not established, provide a best estimate of the project begin and end dates. An updated project construction schedule shall be submitted to the DOH 30 calendar days before the start of construction activities.
 - b. If the project discharge schedule is not established, provide a best estimate of the date or dates that the discharge will begin and end. Provide an exact discharge date at least three (3) working days prior to the commencement of the discharge.
10. Site-Specific Best Management Practices (BMPs) Plan
- A site-specific BMPs Plan shall be designed, implemented, operated, and maintained by the owner and/or its duly authorized representative in a manner to properly isolate and confine the discharge activity(ies) and to contain and prevent any potential pollutant(s) discharges from adversely impacting the State waters. The BMPs Plan shall include the following:

- a. Map(s) showing the location of the construction site (i.e., ocean, perennial stream, intermittent stream, wetlands, estuary, reservoir, etc.) and structural control measure(s) including typical sections, stockpiling site(s), treatment facility(ies), return flow discharge site(s), etc.:
 - i. Provide the location map on 8-1/2 by 11 inches sized paper or folded to 8-1/2 by 11 inches. Show at least one mile beyond the property boundaries of the project site on the map.
 - ii. Show the project site on a plat map or other appropriate map, including all of the required information.
 - iii. Also, if the project site(s) is located in a special aquatic site or in the immediate vicinity of a special aquatic site, include a delineation of the special aquatic site (including wetlands). Provide a Mitigation/Compensation Plan in Item 12 if fills or dredged/excavated material are to be placed in the special aquatic site, and/or if there will be any losses to the special aquatic site, in either function or acreage or both.
- b. The Site Characterization which identifies the ambient conditions at the project site and a description of any specific measures needed to protect the ecosystem at the project site.
- c. The construction sequence constitutes an important portion of the water pollution control plan. The construction sequence shall be arranged to minimize the potential adverse impact(s) resulting from the proposed construction activities. The construction schedule shall be clearly described, particularly, the schedule for any in-stream and/or in-water work. Selection of the dry-season, low-flow, or no-flow period to conduct the in-stream construction activities is preferred. A contingency plan is required to ensure that, even under the worst case scenario, the construction activity will have minimal adverse impact(s) on the State waters.
- d. Identification of the specific construction method(s) to be applied with respect to each type of construction activity proposed including a description of the type of equipment involved and how and where this type of equipment would be employed.
- e. The potential discharge shall be described. At a minimum, this description shall specify the source(s), quantity (in cubic yards, gallons per day, etc.), and duration (in hours, days, weeks, etc.) of the proposed "discharges":
 - i. Materials placed or to be placed, both temporarily or permanently, into State waters:
 - ii. Materials that may enter State waters due to the proposed construction activities such as soil erosion, discharges from the trenching activity, bedding materials, construction debris, removed vegetation and soil attached to the roots, construction dewatering effluent discharges, hydrotesting effluent discharges, storm water discharges associated with the construction activities, runoff from excessive construction site dust control process, runoff from stockpiling site, concrete truck washdowns, etc.;
 - iii. Materials that may re-enter State waters such as runoff or return flow from the dredged/excavated material dewatering site or runoff from the dredged/excavated material stockpiling site(s);
 - iv. Discharges associated with the operation and maintenance of the equipment involved, such as oil leak(s) from the equipment, spills from the equipment fueling operation, spills from the fuel storage facility, etc.; and

- v. Temporary structure(s) construction, removal and restoration related discharges such as from the construction and removal of berm(s), dike(s), cofferdam(s), sheet piling(s), sandbag(s), silt curtain(s) etc.
- f. Description of the dredged/excavated material (wet or dry). If dewatering of the dredged/excavated material is needed and discharge of dewatering effluent is anticipated:
 - i. Description of type, composition, and quantity of the material to be excavated/dredged;
 - ii. An acceptable dewatering treatment and discharging plan shall be prepared and submitted; and
 - iii. Location(s) for dredged/excavated material stockpile site, dewatering treatment site, dredged/excavated material disposal site(s), and dewatering discharge point shall be identified on an 8-1/2 by 11 inches sized map.
- g. The selection of the most appropriate and effective control measure(s) shall be based on the information obtained in Items 10.a., 10.b., 10.c., 10.d., 10.e., and 10.f. In some cases, treatment is required before the discharges can be permitted to enter or re-enter the State waters.

11. Applicable Monitoring and Assessment Plan

The Applicable Monitoring and Assessment Plan shall be prepared. At a minimum, it shall include the following:

- a. Description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge:
 - i. Monitoring parameters (see General Monitoring Guideline for Section 401 Water Quality Certification Projects on page 18),
 - ii. Type of sample (i.e. grab sample, composite sample, etc.),
 - iii. Sampling devices,
 - iv. Units of measure,
 - v. Sampling frequency (see General Monitoring Guideline for Section 401 Water Quality Certification Projects on page 18)
 - vi. Sampling method,
 - vii. Sampling location(s) of the monitoring point(s) on a map, and
 - viii. Quality Assurance/Quality Control Methods.

Description of the methods and means being used to monitor/maintain all pollutant control measures.

Reporting requirements shall include time and frequency of the reports (i.e., every month, etc.), method of the report (i.e., faxed, mailed or delivered); and content of the report. Send the report to the DOH at an address indicated in Note 18.c.

A narrative of how the monitoring results will be used to demonstrate whether or not the project construction activity was in compliance with the applicable State water quality standards. The assessment shall also include a discussion on whether there is a net loss of special aquatic sites after the implementation of mitigation/compensation measures, if applicable.

12. Mitigation/Compensation Plan

Include the Data Quality Objectives (DQO) and Quality Assurance (QA) and Quality Control (QC) methods for review and comment. The purpose and goal of the DQO process can be found on the EPA website at: <http://www.epa.gov/QUALITY/qs-docs/g4-final.pdf>.

This item is applicable to all discharges that affect special aquatic sites as specified in 40 CFR Sections 230.40 - 230.45. A "special aquatic site" may be any one of the following: sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs, and riffle and pool complexes.

If the placement of fills or dredged/excavated material into any special aquatic site is involved, the owner or its duly authorized representative shall also submit to the DOH for review and comment a Mitigation/Compensation Plan that is approved by the COE, Honolulu Engineer District in accordance with "MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF THE INTERIOR AND THE DEPARTMENT OF THE ARMY (effective as of December 21, 1992)" or any applicable amendment thereafter.

13. Supporting Documents

If reference is made to supporting documents, the reference document must be identified by title, date, page number, and paragraph. In addition, a copy of each supporting document, including a copy of the related Federal Permit or License determination, shall be submitted with the Section 401 WQC Application.

14. Additional Information

a. Indicate the mailing addresses of the owner, general contractor, or project in this section, as applicable. Explain any irregularities or unique features of the project. Provide any additional site-specific information required specifically to justify the project's qualification under the conditional blanket certification or under certain DA NWP, GP, or PGP authorizations. Additional sheets may be attached with reference to Item 14.

b. ~~Provide, in this section, the requirements from Item No. 13.b.(5) to 13.b.(8) of the Friday, December 13, 1996 Federal Register, Volume 61, No. 241, Pages 65920-65921.~~

i. ~~NATIONWIDE PERMIT NO. 21 - SURFACE COAL MINING ACTIVITIES~~

~~The PCN must include a U.S. Department of the Interior, Office of Surface Mining (OSM) or State approved mitigation plan.~~

ii. ~~NATIONWIDE PERMIT NO. 29 - SINGLE-FAMILY HOUSING~~

~~The PCN must also include:~~

- ~~(1) Any past use of this NWP by the individual permittee and/or the permittee's spouse;~~
- ~~(2) A statement that the single-family housing activity is for a personal residence of the permittee;~~
- ~~(3) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 0.5 acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 0.5 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the COE (see paragraph 13(f) of the Friday, December 13, 1996 Federal Register, Volume 61, Number 241, page 65922); and~~
- ~~(4) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership~~

this is no longer applicable

~~(including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant by the entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed.~~

iii. ~~NATIONWIDE PERMIT NO. 31 MAINTENANCE OF EXISTING FLOOD CONTROL PROJECTS~~

~~The prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five (5) year (or less) maintenance plan. In addition, the PCN must include all of the following:~~

- ~~(1) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided that the approved flood control protection or drainage is not increased;~~
- ~~(2) A delineation of any affected special aquatic sites, including wetlands; and~~
- ~~(3) Location of the dredged material disposal site.~~

iv. ~~NATIONWIDE PERMIT NO. 33 TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING~~

~~The PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.~~

- e. ~~Provide, in this section, the additional requirements indicated in Item 5.b. of the April 15, 1998 Section 401 Water Quality Certification (File No. WQC 0000335) for the PCNs for the following Nationwide Permits:~~

i. ~~NATIONWIDE PERMIT NO. 3 MAINTENANCE~~

~~The owner or its duly authorized representative shall submit evidence that the structure(s) or fill(s) to be repaired or rehabilitated was previously authorized by the Honolulu Engineer District or the DOH or both and the structure(s) or fill(s) is currently serviceable.~~

ii. ~~NATIONWIDE PERMIT NO. 16 RETURN WATER FROM UPLAND CONTAINED DISPOSAL AREA~~

~~The owner or its duly authorized representative shall submit the following information:~~

- ~~(1) A Detailed Dewatering Plan. The Plan, at a minimum, shall include the sediment quality data, treatment design, design concerns, calculations used in the treatment design, and proposed mitigative measures.~~
- ~~(2) An applicable dewatering return flow (effluent) water chemistry monitoring plan.~~

iii. ~~NATIONWIDE PERMIT No. 31 MAINTENANCE OF EXISTING FLOOD CONTROL FACILITIES~~

~~The owner or its duly authorized representative shall submit the following information:~~

this is no longer applicable

- (1) ~~The proof that debris basins, retention and/or detention basins, or channels to be maintained was either (i) previously authorized by the Honolulu Engineer District by individual permit, general permit, or by 33 CFR 330.3 and constructed or (ii) constructed by the Corps and transferred to a local sponsor for operation and maintenance;~~
- (2) ~~Previously approved project scope and design and the Honolulu Engineer District approved maintenance baseline; and~~
- (3) ~~An approved Mitigation Plan.~~

iv. ~~NATIONWIDE PERMIT No. 33 - TEMPORARY CONSTRUCTION, ACCESS AND DEWATERING~~

~~The owner or its duly authorized representative shall submit the following information:~~

- (1) ~~A Detailed Dewatering Plan. The Plan, at a minimum, shall include the sediment quality data, treatment design, design concerns, calculations used in the treatment design, and proposed mitigative measures.~~
- (2) ~~An applicable dewatering effluent discharge monitoring plan.~~

15. Statement of Choice of Publication

- a. The owner shall choose to publish a Public Notice of Proposed Action or a Public Notice of Public Hearing.
- b. The DOH suggests that if the owner or its duly authorized representative feels that the proposed "discharge" activity is highly controversial, the owner or its duly authorized representative should request to bypass the Public Notice of Proposed Action and elect to arrange for a public hearing via the Public Notice of Public Hearing.

c. ~~This item is not applicable for submittals of PCNs which qualified under a conditionally certified WQC such as:~~

- i. ~~April 15, 1998 issued Section 401 WQC (File No. WQC 0000335) for DA NWP Nos. 3, 4, 5, 6, 13, 14, 16, 18, 19, 22, 25, 31, 33, 36, and 38 Promulgated on December 13, 1996, Federal Register, Volume 61, No. 241, in the State of Hawaii~~
- ii. ~~December 10, 1996 issued Section 401 WQC (File No. WQC 0000305) for DA GP 96-001 for Maintenance Clearing of Rivers, Streams, Storm Drains, and Beach Areas in Waters of the United States, including Navigable Waters of the United States, in the State of Hawaii~~
- iii. ~~September 9, 1996 issued Section 401 WQC (File No. WQC 0000298) for DA GP 94-001 for 19 Listed Molokai Fishponds Restoration, Repair, Maintenance or Reconstruction in the Waters of the United States, including Navigable Waters, in the State of Hawaii~~
- iv. ~~April 3, 1996 issued Section 401 WQC (File No. WQC 0000174) for DA GP 95-002 for Utility Lines In, Under or Above Waters of the United States, including Navigable Waters, in the State of Hawaii~~

this is no longer applicable

16. Authorization of Representative

- a. Alteration of this item will result in the invalidation of the authorization statement(s).

- b. Authorization statements are provided for the owner to complete as required. Options include statement a, b, c, a and c, or d.
 - i. Option "a": This authorization begins with Section 401 WQC Application processing and ends upon the owner's receipt of the Section 401 WQC.
 - ii. Option "b": This authorization begins with Section 401 WQC Application processing and ends upon termination of the discharge to State waters.
 - iii. Option "c": This authorization begins upon the owner's receipt of the Section 401 WQC and ends upon termination of the discharge to State waters.
 - iv. Option "d": If authorization statements a, b, and/or c do not meet the intent of the authorization, the owner or its duly authorized representative may attach a separate authorization statement specifying the limited authorization of the representative.
- c. Additional information will be requested from the authorized representative (with a copy to the owner) at the street or mailing address or phone or fax number provided for this item, as applicable.
- d. Provide the duly authorized representative's information in the applicable item(s). There shall be only one duly authorized representative at any time. The designated duly authorized representative may be changed by the owner at any time during the processing of the CWB-WQC Form or the term of the Section 401 WQC. The duly authorized representative will no longer be authorized effective on the date of receipt of any new authorization statement from the owner.
- e. HAR Section 11-55-07(b) states:

"A person is a duly authorized representative only if:

 - (1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.);
 - (2) The authorization is made in writing by a person designated under subsection (a); and
 - (3) The written authorization is submitted to the director."

HAR Chapter 11-55 may be downloaded from "www.state.hi.us/doh/rules/emd/cwrule.html" in pdf format.

17. Certification

- a. Do not alter the statements in or format of this item. Alteration of this item will result in the invalidation of this submittal.
- b. The person certifying this Section 401 WQC Application must meet one of the descriptions as indicated in the form and be employed by the owner listed in Item 1.

- c. Statement of Assurance - The owner shall ensure that the State Water Quality Standards shall not be violated.
- d. Original signature is needed.

18. General Information

a. Section 401 Water Quality Certification (WQC)

- i. The State of Hawaii, DOH is authorized under Section 401 of the Federal Clean Water Act and Section 342D-53 of the Hawaii Revised Statutes to administer the Section 401 WQC program in Hawaii. The Section 401 WQC program is described in Sections 11-54-09.1 to 11-54-09.1.09 of the HAR Chapter 11-54 entitled "Water Quality Standards."
- ii. A WQC issued by the DOH pursuant to Section 401 of the CWA is required by any owner or its duly authorized representative applying for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any "discharge" into navigable waters.
- iii. The DOH suggests that the owner or its duly authorized representative check with the issuing and permitting Federal agency to determine whether or not a Federal license or permit is required before submitting a Section 401 WQC Application. The following more common Federal permits may require a Section 401 WQC prior to issuance:
 - (1) Section 404 Permit of the Clean Water Act of 1977. Issuing authority is the U.S. Army COE.
 - (2) Section 402 Permit of the Clean Water Act of 1977. If the issuing authority is the EPA.
 - (3) Section 9 Permit of the Rivers and Harbors Act of 1899. Issuing authority is the U.S. Coast Guard.
 - (4) Section 10 of the Rivers and Harbors Act of 1899. Issuing authority is the U.S. Army COE.
 - (5) Section 102 Permit of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. Issuing authority is the U.S. EPA.
 - (6) Section 103 Permit of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. Issuing authority is the U.S. Army COE.
 - (7) Section 23(b) of the Federal Power Act. Issuing authority is the Federal Energy Regulatory Commission.

b. Availability of Section 401 WQC Applications

The CWB-WQC Application is a WordPerfect 6.1 document. Hard copies and electronic files are available. The CWB-WQC Application and Guideline may be downloaded from "www.state.hi.us/doh/eh/cwb/forms" in pdf or WordPerfect 6.1 format. See Note 21.c.i. for the addresses.

c. Inquiries and Submittals

- i. Section 401 WQC inquiries and submittals shall be directed to the street ~~or mailing~~ address listed below:

(1) *Street Address*

State of Hawaii
Department of Health
Environmental Management Division
Clean Water Branch
919 Ala Moana Boulevard, Room 301
Honolulu, Hawaii 96814-4920

Also mail or deliver CD/
DVD with all supporting
information in pdf
format.

(2) ~~*Mailing Address*~~

~~State of Hawaii
Department of Health
Environmental Management Division
Clean Water Branch
P.O. Box 3378
Honolulu, Hawaii 96801-3378~~

- ii. Questions should be directed to the Clean Water Branch Engineering Section at (808) 586-4309 or fax number (808) 586-4352.
- iii. For projects on Oahu, submit the original Section 401 WQC Application with the owner's original signature and supporting documents.
- iv. For projects located on islands other than Oahu, submit two (2) copies of the Section 401 WQC Application and supporting documents. One copy of the Section 401 WQC Application shall include the owner's original signature.
- v. The owner or its duly authorized representative is encouraged to apply for certification at least one hundred eighty (180) days prior to the start of "discharge" activities.
- vi. Retain a copy of the Section 401 WQC Application and supporting documents for the owner's or duly authorized representative's records.

d. Filing Fee

- i. Every owner, including federal, state, and county government agencies, who submits a Section 401 WQC Application for a Section 401 WQC shall pay a filing fee of \$1000.00 except for an activity which meets the DOH conditional blanket certification criteria issued to the U.S. Army COE, Honolulu Engineer District for the required regional or nationwide general permits.
- ii. The filing fee shall be submitted with the Section 401 WQC Application and shall be made payable to the "State of Hawaii" in the form of a cashier's check or money order.
- iii. The filing fee shall not be refunded nor applied to any subsequent Section 401 WQC Application following final action of a denial or termination of the submittal.
- iv. A Section 401 WQC Application submitted by the U.S. Army COE, Honolulu Engineer District, for the purpose of adopting regional or nationwide general permits, in accordance with 33 CFR Parts 325 and 330, respectively, shall be exempt from the payment of filing fees.

e. Completeness of the Section 401 WQC Application

- i. The submittal will not be considered complete unless every item on the Section 401 WQC Application is appropriately addressed.
 - ii. A response must be provided for each item. If an item is not relevant to the proposed activity, indicate with "Not Applicable" or "N/A," to show that the item was considered.
 - iii. An incomplete Section 401 WQC Application will delay the determination of the Section 401 WQC. An incomplete Section 401 WQC Application may be returned to the owner or its duly authorized representative for more information. This could delay the processing of the certification application.
- f. Notification
 - i. Acknowledgment of Section 401 WQC Application: The Director will notify the owner or operator or its duly authorized representative of receipt of the Section 401 WQC Application.
 - ii. The Director shall notify the owner or its duly authorized representative, in writing, if the Section 401 WQC Application is incomplete or otherwise deficient. A description of the type of additional information necessary to complete the Section 401 WQC Application or correct the deficiency will be included with the written notice.
 - iii. Processing of the Section 401 WQC Application shall not be completed until such time as the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of the Section 401 WQC.
 - iv. The owner or its duly authorized representative will be informed, in writing, by the Director when a Section 401 WQC Application is considered to be complete.
 - v. The owner or its duly authorized representative is required to notify the Director, in writing, of any changes which may affect the certification process.
 - vi. See the "Section 401 Water Quality Certification Processing Flowchart" dated July 15, 1997 on page 19 and the "Section 401 Water Quality Certification (WQC) Blanket Coverage Processing Flowchart" dated April 12, 1999 on page 20 of these Guidelines.
 - vii. For projects which qualify for coverage under the DOH's conditional blanket certifications, the DOH shall have 30 days to review and provide comment after receiving the required information. The owner or its duly authorized representative shall properly address the DOH's concern(s) and comment(s) within 30 days of the DOH's notification. Failure to properly address the DOH's concern(s) or comment(s) or correct a deficiency shall be sufficient grounds for denial of a Section 401 WQC without prejudice. The owner or its duly authorized representative may resubmit a complete Notification for a Section 401 WQC.
- g. Public Notices
 - i. The DOH shall prepare all public notices for publication by the owner or its duly authorized representative. The owner or its duly authorized representative shall pay for the publication of the Public Notice of Proposed Action or Public Notice of Public Hearing, whichever is applicable. The owner or its duly authorized representative should review the public notice for accuracy to avoid delays and/or republication costs. The owner or its duly authorized representative shall submit

an affidavit certifying publication of the public notice within two (2) weeks of the publication date.

- ii. A Public Notice shall be published for solicitation of public participation once in a daily newspaper of general circulation and/or if applicable, in a daily newspaper of general circulation for the neighbor island counties. The public notice shall be published on a date specified by the Director.
- iii. On a case-by-case basis, public hearings may be arranged (date, time, place) by the CWB and the hearing will be conducted by the hearing officer designated by the Director. In addition to the hearing officer, a CWB staff member will be present to serve as a resource person and the owner or its duly authorized representative will be requested to send a representative to attend the scheduled hearing to present testimony supporting the Section 401 WQC request.

h. Section 401 Water Quality Certification Issuance

- i. If after publication of the Public Notice of Proposed Action, there are no significant adverse comments or justifiable request(s) for a public hearing during the thirty (30) day public participation comment period, the Director will make a final determination for issuance or denial of a Section 401 WQC.
- ii. After a public hearing, if applicable, the Director shall consider all evidence and testimonies presented and make a final determination for the issuance or denial of a Section 401 WQC.
- iii. The Director may issue a Section 401 WQC for a term not to exceed two (2) years.

i. Section 401 Water Quality Certification Waiver

- i. The Director shall act on a request for certification within a period which shall not exceed one (1) year after receipt of a complete Section 401 WQC Application.
- ii. If the Director fails or refuses to act on a request for certification within a reasonable period of time (which shall not exceed one year), after receipt of a complete application package, the certification requirements may be waived with respect to Federal applications by the COE.
- iii. If the discharge in question fulfills a specific condition of the Federal permit pursuant to 33 CFR §§330.5 and 330.6, the Director will determine, on a case-by-case basis, if the project is considered to be minor and non-controversial. Public participation requirements may be waived for minor and noncontroversial activities within one year of the receipt of a completed Section 401 WQC Application.

j. Section 401 Water Quality Certification Conditions

The owner or its duly authorized representative is required to comply with all conditions noted within the certification or waiver.

k. Definitions

For the purpose of the Section 401 WQC Application, "discharge" includes any material, solid or liquid or otherwise, which is placed into navigable waters.

- i. "Discharge" when used without qualification includes a discharge of a pollutant and a discharge of pollutants. (Section 502(16) of the CWA)

- ii. “Pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This also includes materials and/or equipment used for construction within navigable waters (i.e., concrete, silt containment devices, construction equipment, etc.). This term does not mean:
 - (1) “Sewage from vessels” within the meaning of Section 312 of the CWA; or
 - (2) Water, gas or other material which is injected into a well to facilitate production of oil or gas or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that such injection or disposal will not result in the degradation of ground or surface water resources. (Section 502(6) of the CWA)
- iii. “Discharge of a pollutant” and “discharge of pollutants” each means:
 - (1) Any addition of any pollutant to navigable waters from any point source; and
 - (2) Any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft. (Section 502(12) of the CWA)
- iv. “Navigable waters” means the waters of the United States, including the territorial seas. (Section 502(7) of the CWA)
- v. “Waters of the United States” or “waters of the U.S.” means:
 - (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
 - (2) All interstate waters, including interstate “wetlands;”
 - (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (a) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (c) Which are used or could be used for industrial purposes by industries in interstate commerce;
 - (4) All impoundments of waters otherwise defined as waters of the United States under this definition;
 - (5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;

- (6) The territorial sea; and
- (7) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

NOTE: At 45 FR 48620, July 21, 1980, the Environmental Protection Agency suspended until further notice in §122.2, the last sentence, beginning "This exclusion applies. . ." in the definition of "Waters of the United States." This revision continues that suspension.¹ (40 CFR §122.2)

I. Abbreviations

BMPs	-	Best Management Practices
CFR	-	Code of Federal Regulations
COE	-	U.S. Army Corps of Engineers
CWA	-	Clean Water Act
CWB	-	Clean Water Branch of the State of Hawaii Department of Health Environmental Management Division
CWRM	-	Commission of Water Resources Management of the State of Hawaii Department of Land and Natural Resources
CZM	-	Coastal Zone Management Certification (administered by State DBEDT/ Office of Planning)
DA	-	Department of Army Permit (issued by U.S. Army Corps of Engineers under various Federal authorizations)
DBEDT	-	State of Hawaii Department of Business, Economic Development and Tourism
DLNR	-	State of Hawaii Department of Land and Natural Resources
DOH	-	State of Hawaii Department of Health
EPA	-	Environmental Protection Agency
GP	-	DA Regional General Permit
HAR	-	Hawaii Administrative Rules
HRS	-	Hawaii Revised Statutes
IP	-	DA Individual Permit
LOP	-	DA Letter of Permission
MPRSA	-	Marine Protection, Research and Sanctuaries Act of 1972
NPDES	-	National Pollutant Discharge Elimination System
NWP	-	DA Nationwide Permits
PCNs	-	Pre-Construction Notifications
PDNs	-	Pre-Discharge Notifications
PGP	-	DA State Programmatic General Permit
RCRA	-	Resource Conservation and Recovery Act
RHA	-	Rivers and Harbor Act of 1899
SARA	-	Superfund Amendment and Reauthorization Act
SCAP	-	Stream Channel Alteration Permit (administered by State DLNR/CWRM)
WQC	-	Water Quality Certification (issued by the Clean Water Branch - Section 401 of the CWA)

General Monitoring Guideline for Section 401 Water Quality Certification Projects

Period of Construction Project	<1 to 4 Months					\$5 Months to #4 Year					Construction Project Monitoring Frequency*		
Parameter to Monitor for "X" Months of "In-Water" Work	#1	>1	2	3	4	\$5	1	2	3	#4	Pre-	During	Post
Photo Documentation	U										U	U	U
pH	T	U	U	U	U	U	U	U	U	U	U	U	°
Turbidity	T	U	U	U	U	U	U	U	U	U	U	U	°
Total Suspended Solids (TSS)	T	U	U	U	U	U	U	U	U	U	U	U	°
Dissolved Oxygen (DO)	T	T	T	T	T	T	T	T	T	T	U	U	°
Salinity	T	T	T	T	T	T	T	T	T	T	U	U	°
Temperature	T	T	T	T	T	T	T	T	T	T	U	U	°
Secchi Disc or Light Extinction	-	-	-	-	-	-	-	-	-	-	-	-	-
Biological Monitoring	X	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Nitrate + Nitrite Nitrogen (NO ₃ NO ₂)	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Total Kjeldahl Nitrogen (TKN)	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Ammonia Nitrogen (NH ₄)	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Total Nitrogen (TN)	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Ortho-Phosphate (PO ₄)	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Total Phosphorus (TP)	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Chlorophyll %	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Silicate	•	•	•	•	•	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Pesticides, PAHs, metals, etc.	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž	Ž
Other													
Monitoring Frequency	D	D	D	3W	3W	3W	2M	M	Q	Q	*	**	***

Symbol Legend	
U	Basic water quality monitoring parameters
T	Included with dredging projects, if no habitat loss or modification
°	Optional per data evaluation suggesting no significant impact
-	Optional per dredging projects
X	Photo documentation on dredging project with some habitat loss or modification
Y	Bio-monitoring on dredging projects with habitat loss or modification
Ž	To be determined on individual case
•	Optional per individual cases for dredging projects

* Pre-construction sampling for TSS and Turbidity of TEN samples over TWO weeks for projects that impact bottom sediment.

** During construction monitoring is limited to length of "in-water" work period.

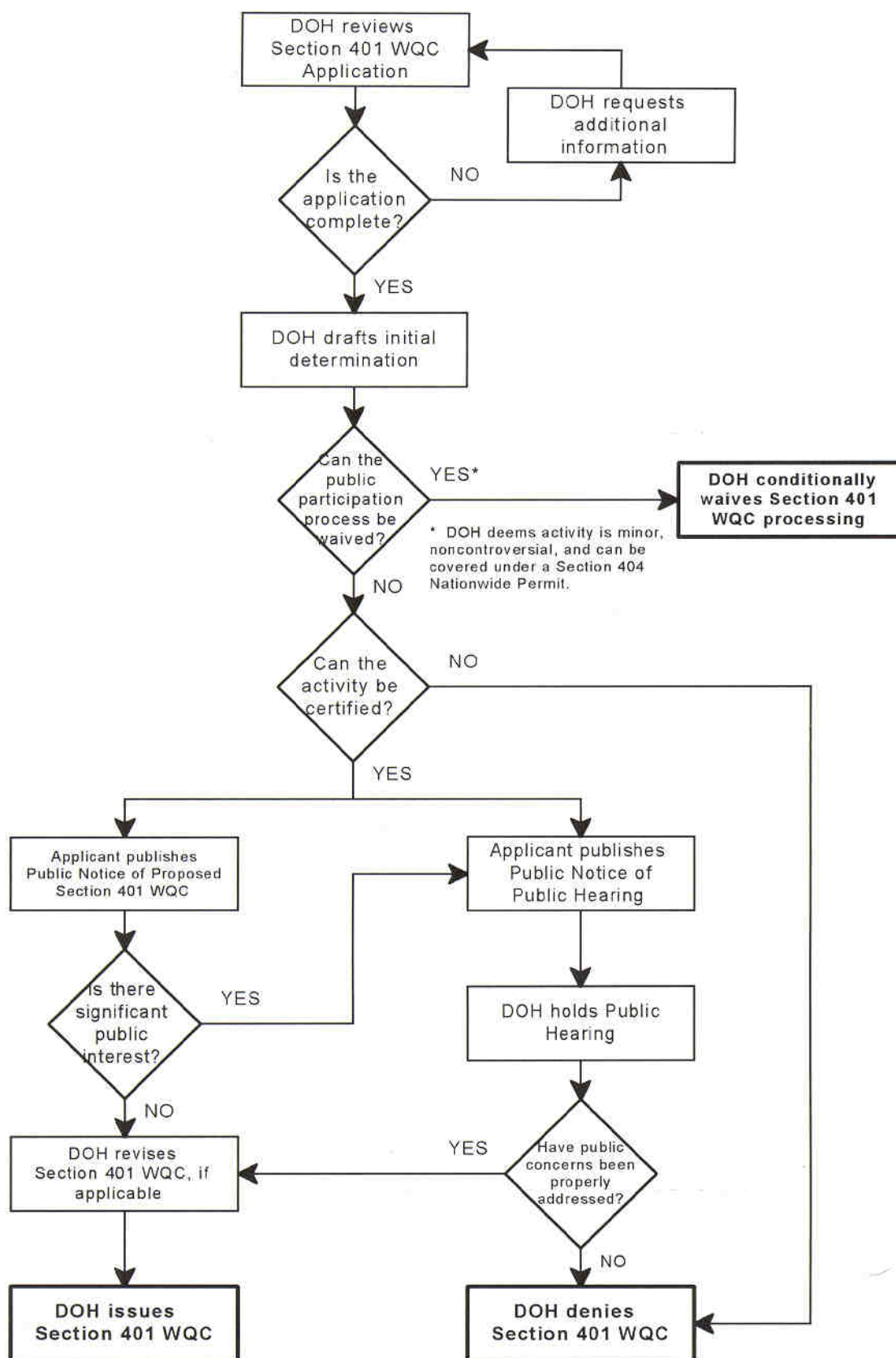
*** Post-construction monitoring is limited to once per construction period.

Shaded blocks represent basic or minimum requirement for most projects.

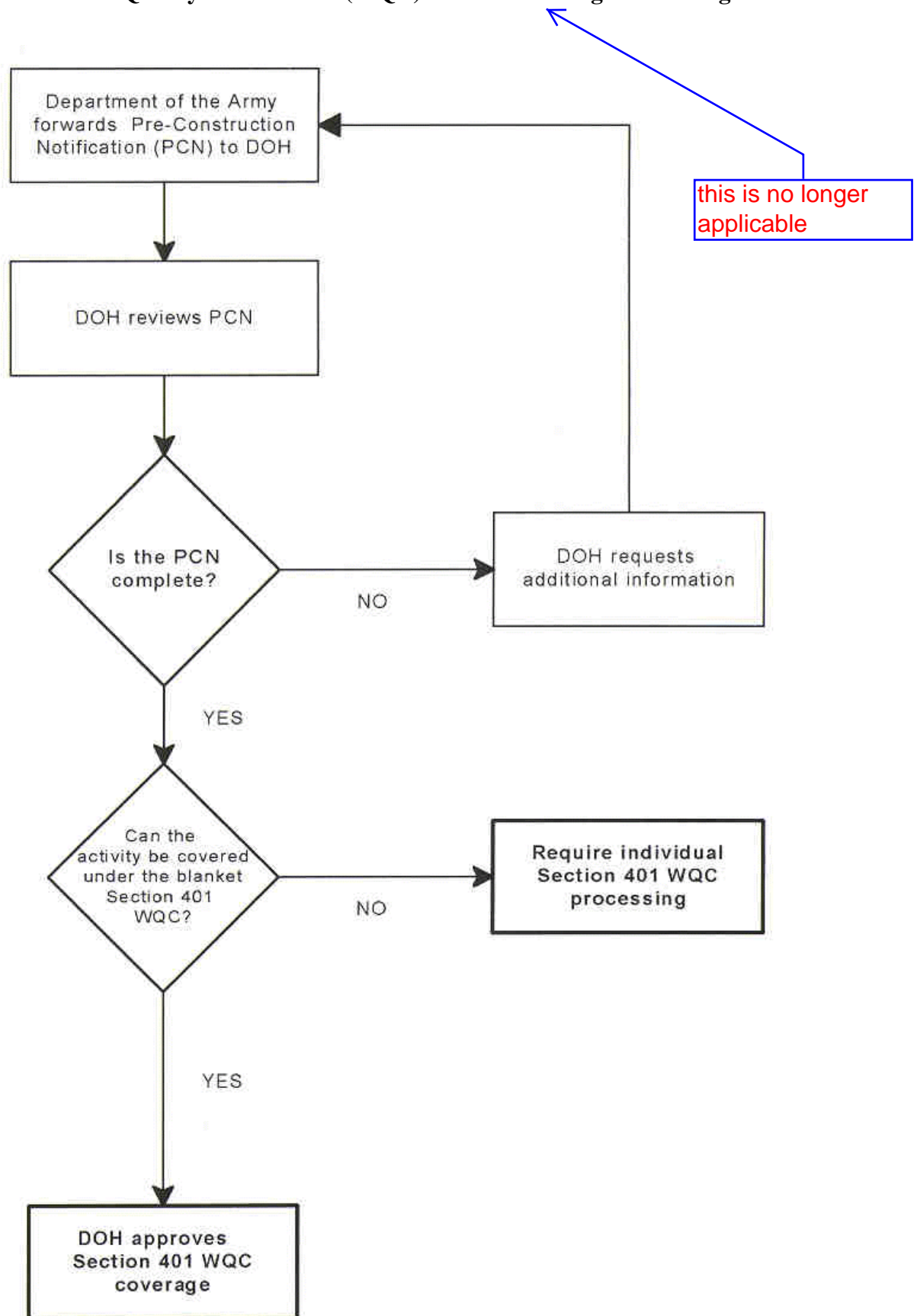
D = Daily
W = Weekly
M = Monthly
Q = Quarterly
(i.e., 3W = three times per week)

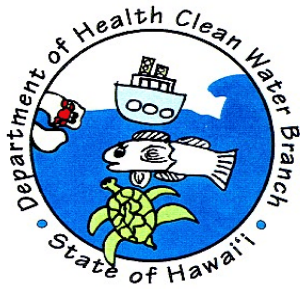
Notes:

Section 401 Water Quality Certification Processing Flowchart



~~Section 401 Water Quality Certification (WQC) Blanket Coverage Processing Flowchart~~





State of Hawaii
Department of Health
Clean Water Branch

CWB USE ONLY

WQC No.: _____ Engineer: _____

Date Received: _____

CWB-WQC Application

Information Required for the Section 401 Water Quality Certification (WQC)

Before completing this form, read the Guidelines for CWB-WQC Application.

- ✿ If mail is not received at the street address, provide the mailing address(es) in Item 14, Additional Information.

1. Owner Information (see Guidelines for CWB-WQC Application - Note 1)

Legal Name: _____

Street Address ✿: _____

City, State and Zip+4 Code: _____

Contact Person & Title: _____

Phone No.: (____) _____ Fax No.: (____) _____

2. General Contractor Information (see Guidelines for CWB-WQC Application - Note 2)

Name: _____

Street Address ✿: _____

City, State and Zip+4 Code: _____

Contact Person & Position Title: _____

Phone No.: (____) _____ Fax No.: (____) _____

3. Emergency Contact Information (see Guidelines for CWB-WQC Application - Note 3)

a. Company/Organization Name: _____

Contact Person & Title: _____

Phone No.: (____) _____ Phone No.: (____) _____

b. Company/Organization Name: _____

Contact Person & Title: _____

Phone No.: (____) _____ Phone No.: (____) _____

4. Project Site Information (see Guidelines for CWB-WQC Application - Note 4)

Project Name: _____

Government Project/Job No. (as applicable): _____

Street Address ☎: _____

City, State and Zip+4 Code: _____

Contact Person & Title: _____

Phone No.: (____) _____ Fax No.: (____) _____

Island: _____

Tax Map Key Number(s)			
Zone	Section	Plat	Parcel(s)

5. Associated Permits or Licenses (see Guidelines for CWB-WQC Application - Note 5)

Provide the type(s), status, corresponding file number(s), and legal authorization(s) of any existing or pending permits or licenses:

a. Department of the Army (DA) Permit or License: _____

b. Section 402 NPDES Permit: _____

c. RCRA Permit (Hazardous Wastes): _____

d. Facility on SARA 313 List (identify SARA 313 chemicals on site):

e. Other (Specify): _____

6. Receiving State Water Information (see Guidelines for CWB-WQC Application - Note 6)

a. Name: _____

Classification: (check the appropriate space(s))

Inland: Class 1 _____ Class 2 _____ Estuary _____
Marine: Class AA _____ Class A _____ Embayment _____

Describe the associated existing uses at the "discharge" location(s):

b. Name: _____

Classification: (check the appropriate space(s))

Inland: Class 1 _____ Class 2 _____ Estuary _____
Marine: Class AA _____ Class A _____ Embayment _____

Describe the associated existing uses at the "discharge" location(s):

7. Project Description (see Guidelines for CWB-WQC Application - Note 7)

a. Project Site Coordinates

Latitude: _____° _____' _____" N

Longitude: _____° _____' _____" W

Latitude: _____° _____' _____" N

Longitude: _____° _____' _____" W

b. Describe the overall project scope and activities

c. Describe the "discharge" activity and the purpose of the proposed discharge activity

d. List all "discharge" activities that the owner is seeking coverage for under this WQC application

- e. Specify physical, chemical, biological, thermal, and any other pertinent characteristic of the "discharge" activity

8. Description of the Existing Environment and Potential Environmental Effects from the Construction Activities (see Guidelines for CWB-WQC Application - Note 8)

- a. Describe the Existing Physical Environment and Potential Physical Environmental Effects

- b. Describe the Existing Chemical Environment and Potential Chemical Environmental Effects

- c. Describe the Existing Biological Environment and Potential Biological Environmental Effects

- d. Describe the Existing Uses and Its Potential Effects

9. Project Schedule (see Guidelines for CWB-WQC Application - Note 9)

- a. Provide the estimated date or dates on which the activity will begin and end:

- b. Provide the date or dates that the discharge(s) will take place:

10. Site-Specific Best Management Practices (BMP) Plan (see Guidelines for CWB-WQC Application - Note 10)

The BMPs Plan shall, at a minimum, include the following:

- a. Maps are attached ☐ Yes ☐ No

- b. Site Characterization

c. Construction Sequence and Duration

d. Construction Method

e. Characteristics of the discharge and potential pollutants associated with the proposed construction activity

Source	Composition	Quantity	Duration

f. Characteristics of the dredged/excavated material

Source	Composition	Quantity	Duration

g. Proposed control measures and/or treatment

11. Applicable Monitoring and Assessment Plan (see Guidelines for CWB-WQC Application - Note 11)

The Applicable Monitoring and Assessment Plan shall, at a minimum, include the following:

a. Description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge

- b. Description of the methods and means being used to monitor/maintain all pollutant control measures

- c. Reporting requirements

- d. A narrative of how the monitoring results will be used to demonstrate whether or not the project construction activity was in compliance with the applicable State water quality standards

12. Mitigation/Compensation Plan (see Guidelines for CWB-WQC Application - Note 12)

15. Statement of Choice of Publication (see Guidelines for CWB-WQC Application - Note 15)

Check One:

___ Public Notice of Proposed Action

___ Public Notice of Public Hearing

___ Not Applicable. The applicant is seeking WQC coverage under authorization of WQC File No. _____ for a DA permit authorization under the following (provide applicable information):

DA NWP No. _____

DA GP No. _____

DA PGP No. _____

16. Authorization of Representative (see Guidelines for CWB-WQC Application - Note 16)

Check one and complete the appropriate space(s). Alteration of this item will result in the invalidation of the authorization statement(s).

- a. This statement authorizes the named individual or any individual occupying the named position of the company/organization listed below to act as our representative to process the required Section 401 WQC Application to discharge to navigable waters from the subject project. The Owner hereby agrees to comply with and be responsible for all Section 401 WQC conditions.

Company/Organization Name: _____

Street Address ☎: _____

City, State and Zip Code+4: _____

Authorized Person & Title: _____

Phone No.: () _____

Fax No.: () _____

- b. This statement authorizes the named individual or any individual occupying the named position of the company/organization listed below to act as our representative to process the required Section 401 WQC Application to discharge to navigable waters from the subject project. Our representative is further authorized to fulfill all conditions of the Section 401 WQC. The Owner hereby agrees to comply with and be responsible for all Section 401 WQC conditions.

Company/Organization Name: _____

Street Address ☎: _____

City, State and Zip Code+4: _____

Authorized Person & Title: _____

Phone No.: () _____ Fax No.: () _____

- c. This statement authorizes the named individual or any individual occupying the named position of the company/organization listed below to act as our representative to fulfill all conditions of the Section 401 WQC for the subject project. The Owner hereby agrees to comply with and be responsible for all Section 401 WQC Conditions.

Company/Organization Name: _____

Street Address ☎: _____

City, State and Zip Code+4: _____

Authorized Person & Title: _____

Phone No.: () _____ Fax No.: () _____

- d. A separate statement is attached. Yes _____ No _____

17. Certification (see Guidelines for CWB-WQC Application - Note 17)

Alteration of this item will result in the invalidation of this application. **The person certifying this CWB-WQC Application must meet one of the following descriptions and be employed by the owner listed in Item 1.**

- ___ I certify that for a municipal agency, I am a principal executive officer or ranking elected official.
- ___ I certify that for a state agency, I am a principal executive officer or ranking elected official.
- ___ I certify that for a federal or other non-federal public agency, I am a principal executive officer or ranking elected official.
- ___ I certify that for a federal agency, I am the chief executive officer of the agency, or I am the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
- ___ I certify that I am a general partner for a partnership.
- ___ I certify that I am the proprietor for a sole proprietorship.
- ___ I certify that for a corporation or association, I am the President, Vice President, Secretary, or Treasurer of the corporation or association and in charge of a principal business function, or I perform similar policy or decision making functions for the corporation or association:
- ___ I certify that for a corporation, I am the Manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), and authority to sign documents has been assigned or delegated to me in accordance with corporate procedures.
- ___ I certify that for a trust, I am a trustee.

In accordance with the State of Hawaii, Department of Health, Water Quality Standards, there is reasonable assurance that the proposed activity will be conducted in such a manner which will not violate the basic water quality criteria applicable to all waters and the specific water quality criteria applicable to the class of navigable waters where the proposed "discharge" would take place.

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.

Signature: _____ Date: _____

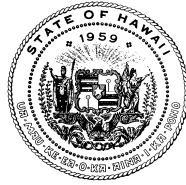
Printed Name & Title: _____

Company/Organization Name: _____

Phone No.: () _____ Fax No.: () _____

CWB-WQC Application Checklist		
If any item is listed as "no," attach a sheet with the reason for its exclusion from the Section 401 WQC Application submittal.		
Item Number	Description	Is item addressed? (yes/no)
1.	Owner Information	_____
2.	General Contractor Information	_____
3.	Emergency Contact Information	_____
4.	Project Site Information	_____
5.	Associated Permits or Licenses	_____
6.	Receiving State Water Information	_____
7.	Project Description	_____
8.	Description of the Existing Environment and Potential Environmental Effects from the Construction Activities	_____
9.	Project Schedule	_____
10.	Site-Specific BMPs Plan	_____
11.	Applicable Monitoring and Assessment Plan	_____
12.	Mitigation/Compensation Plan	_____
13.	Supporting Documents	_____
14.	Additional Information	_____
15.	Statement of Choice of Publication	_____
16.	Authorization of Representative	_____
17.	Certification	_____
18.	Filing Fee (\$1000.00) is attached	_____
19.	Number of copies with supporting documents submitted	
	a. One (1) copy for projects on Oahu with owner's original signature	_____
	b. Two (2) copies for projects on islands other than Oahu (one with owner's original signature)	_____

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

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

In reply, please refer to:
DOH/CWB

WQC751.FNL.10

March 10, 2010

Mr. Jeffrey A. Lundahl
President
Stable Road Beach Restoration Foundation, Inc.
590A Stable Road
Paia, Hawaii 96779-9755

Sample WQC -
Note conditions

Dear Mr. Lundahl:

**Subject: Section 401 Water Quality Certification (WQC) Application
Stable Road Beach Nourishment Evaluation Project
Paia, Island of Maui, Hawaii
File No. WQC 0000751/DA File No. POH-2008-00064**

In accordance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*; the "CWA"); Hawaii Revised Statutes (HRS), Chapters 91, 92, and 342D; Part 121 of Title 40, Code of Federal Regulations (CFR); and Hawaii Administrative Rules (HAR), Chapter 11-54; the Department of Health (DOH), has reviewed your Section 401 WQC Application and appurtenant data relevant to water quality considerations for the subject proposed construction activities. The discharge activities associated with the construction of the subject project will be authorized under the U.S. Department of the Army (DA), Honolulu Engineer District (HED), State Programmatic General Permit (SPGP) No. SPGP 2001-01 under DA File No. POH-2008-064 to be issued under the authorization of Rivers and Harbors Act of 1899 (RHA, 33 U.S.C. 403), Section 10 and CWA, Section 404. The processing of this Section 401 WQC Application is based on the requirements contained in CWA, Section 401; HRS, Chapters 91, 92, and 342D; 40 CFR Part 121; and HAR, Chapter 11-54.

The following is the information of the owner:

Owner:

Stable Road Beach Restoration Foundation, Inc. (SRBRFI)
590A Stable Road
Paia, Hawaii 96779-9755

Contact: Mr. Jeffrey A. Lundahl, President
Phone: (808) 871-4110
Fax No.: (808) 871-4110
E-mail: jeffreyalundahl@msn.com

The Director of Health (Director) attests to the following statements based on the information contained in the September 1, 2008 Section 401 WQC Application and December 4, 2009 revised Section 401 Application (Application) including the "Attachment" Sections A1 through G2, received on December 8, 2009, as listed in the Enclosure.

1. The Director has either:
 - a. Examined the application submitted by the SRBRFI and bases its certification upon an evaluation of the information contained in such Application which is relevant to water quality considerations; or
 - b. Examined other information furnished by the SRBRFI sufficient to permit the statement described in Item No. 2. below.
2. When all requirements and conditions contained in this Section 401 WQC are fully complied with, there is reasonable assurance that the discharges resulting from the proposed construction and the maintenance/modification operations activities will be conducted in a manner which will not violate the applicable water quality standards and will comply with the applicable provisions of CWA, Sections 301, 302, 303, 306, and 307.
3. The following conditions are deemed necessary and shall be imposed with respect to the project construction and maintenance related discharge activities to be authorized under DA SPGP No. SPGP 2001-01 issued on April 25, 2005 provisions of CWA, Section 404 and RHA, Section 10 under File No. POH-2008-00064 and the State of Hawaii, Department of Land and Natural Resources (DLNR), Category II Small-Scale Beach Nourishment (SSBN) Application MA-08-01 provisional approval issued by the Office of Conservation and Coastal Lands on May 8, 2009, under File No. SSBN MA 08-01:
 - a. The "discharge" activity and the purpose of the proposed discharge activity as described in Item Nos. 7.c and 7.d of the Application consists of:
 - (1) There is discharge of the sand/water slurry pumping of existing beach sand to fill the temporary geotubes. The slurry discharge will come out the ends of the geotubes until they are full and sealed. This slurry discharge and work area will be contained by the perimeter sediment barrier. The geotubes are proposed to help retain the natural and nourished sand.
 - (2) There is discharge of the pumped offshore sand/water slurry to the beach until the 10,000 cubic yards (CY) is pumped. This discharge will be contained by the nearshore stilling basin and outer sediment barrier work enclosure. The discharge is proposed to nourish the beach.

(3) There is possible equipment operation and maintenance fuel and lubricant pollutant discharge, which will be contained and treated immediately by appropriate pollution control devices (*See Application Attachment Section E2, Site-Specific BMPs for additional information).

(4) Temporary construction related sand/water slurry discharges and possible pollutant discharge as described above, although the pollutant discharge is not anticipated. No long term operational or consequential discharges are anticipated.

*See Application Attachment Section E2 for more information.

- b. Materials to be temporarily or permanently placed into Pacific Ocean at Paia, Island of Maui identified under Item No. 10.e of the Application include the following:

Source	Composition	Quantity	Duration
Groins' beach sand fill	Beach sand/ water slurry	800 CY	5 days
Offshore sand pumping	Sand/ water slurry	10,000 CY	10 days
Possible pollutants	Oils, grease, fuel	Minimal	Minimal

*See Application Attachment Section E1, Construction Work Plan, describes the oil, grease and fuel compositions.

- c. This Section 401 WQC:

(1) Shall be issued and become effective on the date of this letter.

(2) For offshore sediment (beach quality sand) dredging and the placement of 10,000 CY beach quality sand on the beach and the construction of four (4) temporary geotube groins fronting Tax Map Key (TMK) Nos. (2) 3-8-002:065, 094, 071, 077, 074, and 078 (seaward) shall expire two (2) years from the issuance date of the Section 401 WQC, or until the applicable water quality standards (WQS) are revised or modified, or when the DA SPGP 2001-01 work authorization verification is modified, revoked, suspended, or expired, or when the dredging and placement of 10,000 CY beach quality sand on the beach and the four (4) temporary geotube groins construction is completed, whichever is earliest. If the applicable State WQS is revised or modified before the two-year period and the discharge activity complies with the revisions or modifications, this Section 401 WQC shall continue to be valid for the remainder of the two-year period.

- (3) For temporarily constructed four (4) geotube groins modification and maintenance shall expire four (4) years from the construction completion date of the four (4) temporary geotube groins. The Owner shall report the completion date to the CWB through e-mail cleanwaterbranch@doh.hawaii.gov within 14 calendar days of the completion date. All four (4) temporarily constructed geotube groins (geotubes only) shall be completely removed at the end of the four-year period at SRBRFI cost.

The Director, upon the written request from the SRBRFI, may consider administratively extending the expiration date of this Section 401 WQC for Item No. 3.c(3) only when the written request is accompanied with copy of the appropriate permit application(s) to demonstrate that SRBRFI is seeking applicable Federal, State and County permits for the construction of other types of engineered permanent shore protection structure(s) or permanent groins constructed with natural marine bottom materials that are compatible with the existing marine bottom material and meets applicable HAR, §11-54-7 requirements (not materials filled in the geotubes).

- (4) May be revoked when any of the following is identified:

- (a) The SRBRFI shall comply with all applicable new WQS as adopted by the DOH. In any case where:
- (i) WQS applicable to the waters into which the activity may discharge are subsequently established before the activity is completed; or
 - (ii) The Director determines that the activity is violating new WQS.

The CWB will notify the SRBRFI of the violation. The SRBRFI shall cease the violation within 180 calendar days of the date of the notice. If the SRBRFI fails within 180 calendar days of the date of the notice to cease the violation, the Director may revoke this certification; and

- (b) The Director determines that the discharge(s) from the activity is violating any existing WQS or condition of this Section 401 WQC, the CWB shall notify the SRBRFI of the violation. The SRBRFI shall cease the violation within seven (7) calendar days of the date of the notice. If the SRBRFI fails within seven (7) calendar days of the date of the notice to cease the violation, the Director may revoke this certification.

These actions shall not preclude the Director from taking other enforcement action authorized by law.

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

d. The SRBRFI shall:

- (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, if any.
- (2) Comply with following sections of the "**Construction Plans and BMPs**" as specified in the Application Attachment:

Construction Plans and BMPs	Date
E1 Construction Work Plan	10/9/2009
E2 Site Specific BMPs Plan	10/9/2009
E3 Temporary Stilling Basin Design	10/9/2009
E4 Onshore Dewatering Plan	10/9/2009
E5 Silt Removal Plan (contingency)	11/5/2008
E6 Geotube Removal Plan (contingency)	8/3/2009
E7 Inland Work Plan	11/5/2008
E8 NPDES Permit Evaluation	9/27/2008

All questions/concerns that the DOH may have regarding modification/addition to BMPs measures accepted by DOH shall be answered to the satisfaction of the CWB prior to the installation of modified/additional BMPs measures.

- (3) Conduct or contract with a qualified laboratory to conduct the "**Environmental Monitoring Plans**" as specified in the Application Attachment:

Environmental Monitoring Plans

F1 Water Quality Cert. Performance Monitoring/Metric	8/3/2009
F2 Benthic Habitat Performance Monitoring/Metric	8/3/2009
F3 Beach Erosion Performance Monitoring/Metric	10/25/2009

Test methods promulgated in 40 CFR, Part 136, effective on July 1, 2006, 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 you and on a case-by-case basis, require you to modify the monitoring frequency(ies), parameter to be monitored, or change the sampling locations, 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.

Unless otherwise requested by the Director, water quality analytical results and relevant QA/QC results shall be submitted to the CWB in accordance with Environmental Monitoring Plans (sections F1 through F3) listed above. Only results from representative samples shall be acceptable. Representative sampling data shall be submitted to the CWB by e-mail at cleanwaterbranch@doh.hawaii.gov. All reports shall include **File No. WQC 0000751** and the certification statement below.

Color photographs shall be taken before and after the completion of the proposed construction activities. The photographs should show what the beach looked like before, during, and after the sand pumping. Copies of the color photographs taken should note the date and time the photos were taken. Photographs taken before the project construction shall be submitted to the CWB prior to the commencement of the project construction. Photographs taken after the construction shall be submitted to the CWB within two (2) weeks after the completion of the construction project.

- (4) Ensure that all "discharges" associated with the proposed construction and operations related activities are conducted in a manner that will comply with "Basic Water Quality Criteria Applicable to All Waters" as specified in HAR, Section 11-54-4.
- (5) Ensure that 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 specified in HAR, Section 11-54-4(b).

- (6) Ensure that the permitted activity will not result in noncompliance or violations to the following discharge limitations:

Discharge Limitations

- (a) All waters shall be free of substances attributable to the sand placement-related activities authorized under this WQC and DA, SPGP 2001-01, including:
- (i) Materials that will settle to form objectionable sludge or bottom deposits.
 - (ii) Floating debris, oil, grease, scum, or other floating materials.
 - (iii) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters.
 - (iv) High or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water.
 - (v) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life.
 - (vi) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.
- (b) State waters, including sand beaches, affected by the sand placement-related activities is subject to monitoring and to the standards for acute and chronic toxicity and the protection of human health as specified in HAR, Subsection 11-54-4(b).
- (c) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of 10 millimeters (0.40 inch) 24 hours after a heavy rainstorm.
- (d) Oxidation - reduction potential (EH) in the uppermost 10 centimeters (four (4) inches) of sediment shall not be less than +100 millivolts.
- (e) No more than 50% of the grain size distribution of sediment shall be smaller than 0.125 millimeters in diameter.

- (f) The discharge resulting from the sand placement-related activity(ies) permitted under the authorization of DA, SPGP 2001-01, shall not interfere with or become injurious to any assigned uses made of (designated uses, as defined in HAR, Section 11-54-1, and specified in HAR, Section 11-54-3), or presently in (existing uses, as defined in HAR, Section 11-54-1, and specified in HAR, Subsection 11-54-1.1), those waters.

SRBRFI shall immediately cease the portion of the construction work if water quality monitoring or daily inspection or observation result(s) indicates that noncompliance to Item No. 3.d(6), above, will occur or is occurring. The construction and operations related activities shall not resume until adequate mitigative measures are implemented and appropriate corrective actions are taken and concurred with by the DOH.

SRBRFI shall not hold the DOH responsible for any damages or costs incurred due to the temporary cessation of the construction operations.

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

- (7) Ensure that construction debris is contained and prevented from entering or reentering State waters, including the Pacific Ocean. All construction debris will be properly removed from the aquatic environment and be disposed of at an upland Federal, State, or County-approved sites. A Solid Waste Disclosure Form for Construction Sites shall be completed and returned to the DOH's Solid and Hazardous Waste Branch, Office of Solid Waste Management. No construction material or construction-related materials shall be stockpiled, stored, or placed in the aquatic environment or stored or placed in ways that will disturb the aquatic environment. The Solid Waste Disclosure Form for Construction Sites is available online at:
<http://www.hawaii.gov/health/environmental/waste/sw/pdf/swdiscformnov2008.pdf>.
- (8) Immediately report to the CWB by e-mail at cleanwaterbranch@doh.hawaii.gov and DOH's Maui District Health Office (DHO) via fax (808) 984-8237 of any spill(s) or other contamination(s) that occurs at the project site.

(9) Ensure that all temporarily constructed structures, including the silt containment device(s), deployed or other similar structures constructed, are removed following the completion of the project construction and upon the verification that the affected marine bottoms and water column have been returned/restored to its pre-construction condition. Floating boom and/or full depth silt curtain must be in place and functional before the removal (demolition) of the four (4) temporary geotube groins. The floating boom and full depth silt curtain shall be properly installed, maintained, and operated until the pollutant producing activities are completed and the disturbed area water quality has returned to its pre-construction condition or better.

(10) Provide project status notifications. The SRBRFI shall:

- (a) Notify the CWB and provide updated construction schedule by e-mail at cleanwaterbranch@doh.hawaii.gov and to the Maui DHO via fax (808) 984-8237 within seven (7) calendar days before the start of construction activities.
- (b) Notify the CWB and Maui DHO in writing within 14 calendar days after the completion of the proposed sand placement and four (4) temporary geotube groins construction activities (including the restoration of the disturbed site).

All communication, including but not limited to the e-mail and fax, with the CWB shall include **File No. WQC 0000751** and the certification statement below.

(11) Ensure that:

- (a) Erosion and Sediment Control Measures are in place and functional before earth moving operations begin.
- (b) Temporary soil stabilization will be applied on areas that will remain unfinished for more than 30 calendar days.
- (c) Permanent soil stabilization will be applied as soon as practicable after final grading.

SRBRFI shall maintain and shall also ensure that the contractor(s) will maintain, at the construction site or in the nearby field office, a record to demonstrate that Item No. 3.d(11) of the Section 401 WQC requirements have been fully complied with.

- (12) Ensure that all areas impacted, either directly or indirectly, by the project construction activities are fully restored.
 - (13) Discontinue the work during flood conditions.
 - (14) Hold clearing and grubbing work to a minimum.
 - (15) Comply with all new State WQS or applicable requirements adopted by the DOH after the effective date of this WQC and/or after received the WQC coverage issued by the Director.
- e. SRBRFI shall review and update the effectiveness and adequacy of the "**Construction Plans and BMPs.**" The SRBRFI shall modify the "**Environmental Monitoring Plans**" and/or environmental protection measures upon request or when instructed by the Director.
- Any change(s) or modification to "**Construction Plans and BMPs**" or the "**Environmental Monitoring Plans,**" or correction(s)/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) arise. The SRBRFI shall properly address all comment(s) and/or concern(s) to the CWB's satisfaction by writing before such change(s), correction(s) or modification(s) become effective.
- f. By applying for and accepting this Section 401 WQC, the SRBRFI agrees that the DOH may conduct routine inspection of the construction site, taking color photographs, and to sample any discharges or effluent in accordance with HRS, Section 342D-8.
- g. There shall be no discharge of any type of washing waters (including concrete truck or rock washing water) or treated construction activity related effluent into State waters without first obtaining from the DOH a National Pollutant Discharge Elimination System permit authorizing such type of discharge to State Waters.

SRBRFI has published a Notice of Proposed Section 401 WQC in *The Maui News* on January 28, 2010.

After consideration of the expressed views of all interested persons and agencies and pertinent State statutes and rules, the DOH hereby issues this Section 401 WQC to SRBRFI for the subject project.

Mr. Jeffrey A. Lundahl
March 10, 2010
Page 11

WQC751.FNL.10

Please include **WQC File No. WQC 0000751** and the following certification statement in all future correspondence hard copy, fax, and e-mail 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."

Should you have any questions, please contact Mr. Edward Chen of the Engineering Section, CWB, at (808) 586-4309.

Sincerely,

WILFRED K. NAGAMINE, P.E., ACTING CHIEF
ENVIRONMENTAL MANAGEMENT DIVISION

EC:np

Enclosure: List of Applications and Supporting Documents

- c: Dr. Wendy Wiltse, PICO, EPA, Region 9 (w/encl.) [via fax 541-2712 only]
- Regulatory Branch, HED, COE (w/encl.) [via fax 438-4060 only]
- CZM Program, Office of Planning, DBEDT (w/encl.) [via fax 587-2899 only]
- Solid and Hazardous Waste Branch, DOH (w/encl.)
- Chief, District Environmental Health Program, Maui (w/encl.) [via fax (808) 984-8237 only]
- Mr. Roland Asakura, CWB, Maui District Health Office (w/encl.) [via e-mail only]



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

REPLY TO
ATTENTION OF:

October 29, 2009

Regulatory Branch

Mr. Brennon T. Morioka, Director
Department of Transportation
State of Hawaii
869 Punchbowl Street
Honolulu, HI 96813

Sample Department of the Army,
Corps of Engineers, Honolulu
District, Provisional Nationwide
Permit Verification

NOTICE OF PROVISIONAL NATIONWIDE PERMIT VERIFICATION

Proposed Drainage Improvements Project

File No. POH-2009-00185

TMKs 145108068, 145108069

Kapunahala Stream, Oahu

Dear Mr. Morioka:

This office has completed evaluation of your Department of the Army (DA) permit application and deemed it complete for the proposed placement of less than 25 cubic yards of permanent fill material in Kapunahala Stream, TMKs 145108068, 145108069, Kaneohe, Oahu.

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 sheetpile 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).

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 B.18 (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).

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 (WQC0000768) or waiver for your proposed drainage improvement project. Therefore, your application is a **Provisional NWP 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, instream work can commence and the NWP will expire 2 years from the date of that WQC letter.** All nationwide permits expire on March 18, 2012. 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.

DO NOT begin the work until receipt of the WQC is received by this office. You are cautioned that commencement of the proposed work prior to DA NWP 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.

The following determinations have been made in order to issue this notice of provisional NWP verification:

CZM Consistency: The Office of Coastal Zone Management issued their conditional CZM concurrence of consistency for activities under NWP 18 on May 11, 2007. The CZM issued their consistency determination to the Department of Transportation for this project on August 16, 2009. A copy of this provisional NWP verification will be provided to their office and may be subject to subsequent comment.

Section 401 Water Quality Certification (WQC0000768): The Clean Water Branch, DoH has not completed its evaluation and a WQC has not been issued.

Endangered Species: The Corps has determined that the proposed project's Area of Potential Effect (APE) at the Kapunahala Stream location will have no effect on species listed as endangered or threatened, or their designated critical habitat, pursuant to Section 7 of the Endangered Species Act. This determination is consistent with the U.S. Fish and Wildlife Service's (USFWS) current record that the APE contains no federally listed, endangered, threatened or proposed threatened or proposed endangered species and is not part of a proposed or designated critical habitat.

Essential Fish Habitat (EFH): In accordance with the Essential Fish Habitat (EFH) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSFMA), the Corps has determined that the proposed project will have no effect on designated EFH within the Kaneohe watershed and nearshore waters

Compliance with Section 106, National Historic Preservation Act, Historic/Cultural Resources: The Corps has determined that no cultural or historic resources are located within

the APE for the culvert work. The APE consists of an approximate 400-square-foot area of drainage channel and embankment where the replacement culvert and gabion apron would be placed. The National and State Register of Historic Places for the Island of Oahu were consulted and no historic property is likely to be within, or immediately adjacent to the APE. The proposed location of the culvert spillway would not result in any disturbance to known agricultural lo'i. Accordingly, The Corps has determined that issuance of a NWP for the proposed drainage improvements project is a federal undertaking that will have "No Effect" on any eligible or listed historic and traditional cultural properties on the State and National Registers of Historic Places.

You must comply with all applicable conditions of the NWP General Conditions and the Corps Honolulu District NWP Regional Conditions. Copies of the conditions are provided for your compliance in Enclosures 1 and 2, respectively. In accordance with NWP General Condition #26, the Permittee shall sign, date and return the enclosed Compliance Certification upon completion of the maintenance and repairs (Enclosure 3).

The following special conditions listed below shall apply to the proposed drainage improvements project at Kapunahala Stream:

SPECIAL CONDITIONS

1. Upon receipt of WQC0000768 issued by the Clean Water Branch, DOH, the proposed work will be considered verified and will expire 2 years from the date of that WQC letter. Instream work may commence from that date.

2. THE PERMITTEE's designated Construction Contractor shall submit a Best Management Practices Plan (BMPP) to the Regulatory Branch POC prior to conducting instream activities. Relevant measures recommended by the USFWS shall also be incorporated in the BMPP (Enclosure 4).

3. THE PERMITTEE and/or their designated Contractor shall ensure daily visual inspection of the construction site and its environs by the designated individual, or his representative, 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. The Regulatory Branch POC shall be notified prior to conducting instream work. Visual inspections will be documented with photographs and written descriptions, if necessary. A post-construction report consisting of before-and-after construction photographs shall be submitted to the Honolulu District Regulatory Branch with the Compliance Certification form.

4. No mechanized equipment may be stockpiled in the aquatic environment.

Please be 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 the Permittee of any need to obtain other Federal, State, or local authorizations required by law.

File No. **POH-2009-00185** 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,

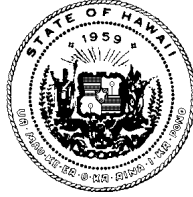


George P. Young, P.E.
Chief, Regulatory Branch

Enclosures

Copy Furnished (w/o encls):

Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 50088, Honolulu, HI 96850
Dr. Wendy Wiltse, U.S.E.P.A., Region IX, Honolulu Branch, P.O. Box 50003, Honolulu, HI 96850
John Nakagawa, Office of Planning, CZM Program, P.O. Box 2359, Honolulu, HI 96804
Alec Wong, Chief Clean Water Branch, State DOH, P. O. Box 3378, Honolulu, HI 96801
Laura H. Thielen, Chairman & State Historic Preservation Officer, DLNR, P.O. Box 621, Honolulu, HI 96809
Dr. Pua Aiu, Administrator, State Historic Preservation Office, 601 Kamokila Blvd., #555, Kapolei, HI 96707
Clyde W. Namu'o, Office of Hawaiian Affairs, 711 Kapiolani Blvd., Suite 500, Honolulu, HI 96813
David K. Tanoue, Director, Dept. of Planning and Permitting, C&C Honolulu, 650 So. King St, Honolulu, HI 96813



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
EMD / CWB

WQC768.FNL.10

May 21, 2010

Sample WQC Waiver
(of Public Notice
Process) - note
conditions

The Honorable Brennon T. Morioka, Ph.D., P.E.
Director
Department of Transportation
AliiAIMoku Building, Room 509
869 Punchbowl Street
Honolulu, Hawai'i 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).
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.

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).

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.

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 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;

- (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.

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. 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.

- 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.

- 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.

- 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, Kāneʻohe, Oʻahu, Hawaiʻi***" (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, Kāneʻohe, Oʻahu, Hawaiʻi***" (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, Kāneʻohe, Oʻahu, Hawaiʻi***" (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, Kāneʻohe, Oʻahu, Hawaiʻi***" (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>.

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.”

The Honorable Brennon T. Morioka, Ph.D., P.E.
May 21, 2010
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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

EC:np

- 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 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 only]
- Ms. Larissa Sato, Parson Brickerhoff (w/o encl.) [via e-mail sato@pbworld.com only]