



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

REPLY TO
ATTENTION OF:

09 AUG 2012

Regulatory Branch

File Nos. **POH-2010-00079**
POH-2011-00026

A&B Properties, Inc.
Attn: Mr. Jason Koga
11 South Puunene Avenue
Kahului, Hawaii 96732

Dear Mr. Koga:

In accordance with the U.S. Army Corps of Engineers (Corps), Pacific Ocean Division Administrative Appeal Decision dated March 27, 2012, the Honolulu District reevaluated approved Jurisdictional Determination (JD) POH-2010-00079, which was issued on October 5, 2011. Based on the reevaluation, we have determined that our original JD was in error.

The Maui Industrial Park offsite drainage system is not a navigable water of the U.S. within the jurisdictional limits of the Corps' authority under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 401). However, the three adjacent culverts that provide an outlet to the Pacific Ocean (the "outlet culverts") are seaward of the line on the shore reached by the plane of the mean high water in its unobstructed, natural state and are therefore within the Corps' Section 10 jurisdiction. In addition, the drainage system is a water of the U.S. within the jurisdictional limits of the Corps' authority under Section 404 of the Clean Water Act (33 U.S.C. § 1344). These determinations are discussed in greater detail below and are documented in the revised approved JD POH-2010-00079, which is enclosed with this letter. (Enclosure 1)

In our original JD, we characterized the entire Maui Industrial Park offsite drainage system as a "drainage channel". The reevaluation revealed that, in fact, the drainage system consists of a drainage ditch that extends from the Hana Highway *makai* (seaward) to a set of culverts that empty into a small, open, gunite-lined retention pond. At the *makai* (seaward) end of the retention pond, the three outlet culverts open to the Pacific Ocean at Kahului Harbor.

We previously asserted Section 10 jurisdiction over the entire drainage system based on our determination that the standing waters contained within it were subject to tidal influence and therefore constituted an extension of the Pacific Ocean. Based on the information you provided and other resources, we reevaluated the determination and concluded that only a portion of the drainage system is subject to Section 10 jurisdiction. A review of the design drawings revealed that an elevation discontinuity exists at the seaward opening of the outlet culverts. Consequently, tidal influence does not exist within the outlet culverts themselves and the drainage system is not a navigable water of the U.S. However, in coastal areas, Section 10 jurisdiction extends to all places covered by the ebb and flow of the tide, shoreward to the line on the shore reached by the plane of the mean high water in its unobstructed, natural state. At the outlet culverts, we have estimated the line reached by the mean high water by reference to the "apparent shoreline", which is established by the shoreline vegetation (33 CFR 329.12(a)(2)).

Because the shoreline vegetation is upland of the outlet culverts, the outlet culverts are in navigable waters of the U.S. within Section 10 jurisdiction.

Our assertion of Section 404 jurisdiction over the drainage system is based on our determination that the drainage system is a non-relatively permanent water (non-RPW) with a significant nexus to downstream navigable waters. The significant nexus determination is based on the fact that the drainage system carries flood water and pollutants from the existing adjacent commercial and light industrial activities to the Pacific Ocean. The U.S. Environmental Protection Agency Region IX concurred with our significant nexus determination on June 19, 2012.

Based on the revised approved JD establishing a more limited extent of Corps jurisdiction, we reevaluated the permitting requirements for the work authorized by POH-2011-00026 (replacement of damaged culverts where the drainage ditch empties into the retention pond) and for the work authorized by POH-2010-00079 (routine maintenance clearing of accreted beach sand at the seaward outlet of the outlet culverts).

In accordance with Regulatory Guidance Letter (RGL) 07-02, we have determined that under Section 404(f) of the Clean Water Act, the culvert replacement work authorized by POH-2011-00026 constitutes maintenance of a drainage ditch and is exempt from Department of the Army permitting requirements. The portion of the Maui Industrial Park offsite drainage system that meets the definition of a drainage ditch for purposes of applying a Section 404(f) exemption extends from the Hana Highway *makai* (seaward) to the culverts that empty into the retention pond. Future work proposed in this reach of the drainage system, including the culverts but not including the retention pond or outlet culverts, will be evaluated in accordance with RGL 07-02 to determine whether the work is exempt from Department of the Army permitting requirements under Section 404(f) and related regulations.

As work in or affecting navigable waters of the U.S., a Department of the Army permit is required for the routine maintenance clearing of accreted beach sand in the vicinity of the outlet culverts. General Permit (GP) 2011-001 for Maintenance Clearing of Rivers, Streams, Storm Drains, and Beach Areas in the State of Hawaii (expires April 13, 2017) authorizes routine maintenance clearing of rivers, streams, storm drains, and beach areas under certain conditions. You may conduct your routine maintenance clearing work under GP-2011-001 as long as your work meets the terms and conditions of GP-2011-001, including providing the Corps with a pre-construction notification prior to beginning the work. A copy of GP-2011-001 is enclosed for your review and consideration. (Enclosure 2)

We appreciate your patience as we worked through the Corps' Regulatory Appeal process. You can provide comments on your experience with the Honolulu District Regulatory Branch by accessing our web-based customer survey form at <http://per2.nwp.usace.army.mil/survey.html>.

File No. **POH-2010-00079** is assigned to the proposed maintenance clearing project. File No. **POH-2011-00026** is assigned to the culvert replacement project. Please refer to the individual file numbers in all future communications with the office regarding these or other

future projects proposed at these locations. Should you have any questions, please contact Ms. Joy Anamizu of this office at the above address, by telephone at 808-835-4308 (Fax: 808-438-4060), or by email at Joy.N.Anamizu@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "George P. Young".

for

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

Enclosures

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 7 August 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CEPOH-EC-R; POH-2010-00079; A&B Properties, Inc. Unauthorized Canal Dredging

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Hawaii County/parish/borough: Maui City: Kahului
Center coordinates of site (lat/long in degree decimal format): Lat. 20.89439° **N**, Long. 156.4603° **W**.
Universal Transverse Mercator: Zone 4

Name of nearest waterbody: Pacific Ocean

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Pacific Ocean

Name of watershed or Hydrologic Unit Code (HUC): Iao Stream / 20020000201

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 3 August 2012

Field Determination. Date(s): 17-18 March 2008; 28 February 2012

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: The Maui Industrial Park offsite drainage system extends from the Hana Highway makai (seaward) to a set of culverts that empty into a small, open, gunite-lined retention pond. At the makai (seaward) end of the pond, three adjacent culverts serve as an outlet to the Pacific Ocean at Kahului Harbor. In coastal areas, Section 10 jurisdiction extends to all places covered by the ebb and flow of the tide, shoreward to the line on the shore reached by the plane of the mean high water (MHW) in its unobstructed, natural state. At Kahului Harbor, NOAA tidal data establish the MHW elevation at 4.31 feet above 0.0 NOAA station datum (Station ID 1615680). However, in accordance with 33 CFR § 329.12(a)(2), where precise determination of the actual location of the line on the shore reached by the plane of the MHW is not necessary, the line reached by the MHW may be estimated by observation of the "apparent shoreline". At the location where the culverts provide an outlet to the Pacific Ocean, the apparent shoreline is established by the shoreline vegetation. Because the shoreline vegetation is upland of the outlet culverts, the culverts at the terminal end of the drainage system are in navigable waters of the U.S. within RHA jurisdiction.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: approximately 2,700 linear feet: average 40 width (ft) and/or acres.

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Wetlands: 0.0 acres.

c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM.**

Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: .

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: **Pacific Ocean**.

Summarize rationale supporting determination: _____.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: _____.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. **Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.**

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 11.9 **square miles**

Drainage area: **Pick List**

Average annual rainfall: 16.2 inches

Average annual snowfall: 0 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **1 (or less)** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: _____.

Identify flow route to TNW⁵: _____.

Tributary stream order, if known: _____.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain: The artificial reach of the tributary is partially concrete-lined drainage ditch that extends from Hana Highway to the first set of culverts above the gunite-lined retention pond.
 Manipulated (man-altered). Explain: The natural pond below the first set of culverts has been lined with gunite and is used as a retention pond. At the makai (seaward) end of the pond, three adjacent culverts have been installed to provide an outlet to the Pacific Ocean at Kahului Harbor.

Tributary properties with respect to top of bank (estimate):

Average width: 30 feet
Average depth: 5 feet
Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The [inland] culverts are in need of replacement; however, the condition of the lined areas of the drainage channel leading to/from the [inland] culverts are stable. At the terminal end of the tributary, sand naturally accretes and forms blockages in front of the outlet culverts.

Presence of run/riffle/pool complexes. Explain: None.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): less than 0.67 %

(c) Flow:

Tributary provides for: **Ephemeral flow**

Estimate average number of flow events in review area/year: **2-5**

Describe flow regime: .

Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

(iii) **Chemical Characteristics:**

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Water condition observed at the outlet end of the [inland] culverts (at the pond) appeared somewhat discolored (dark, not clear) and contained debris and trash.
Identify specific pollutants, if known: Unknown.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: Fish (+50 individuals) were observed at the outlet end of

the [inland] culverts.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is: **Pick List**

Characteristics:

Subsurface flow: **Pick List**. Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain: reservoir is artificial wetland.

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed: water and sediment retention.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Findings for: A&B Properties Inc., Drainage Channel ([inland] culvert replacement) The tributary (drainage ditch) where the [inland] culverts are to be replaced is surrounded by commercial and light industrial land areas which carries pollutants/debris/trash that drains into the channel through both overland flow and existing storm drain outlets. During heavy rain/storm events, pollutants, debris, and trash that collect within the channel is washed out into Kahului Harbor (Pacific Ocean). The tributary also provides habitat for non-native fish (and other invertebrates) and is in close proximity (350 ft) to the nearby Kanaha Pond State Wildlife Sanctuary, which provides habitat for listed threatened and endangered waterbirds.
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

TNWs: The Pacific Ocean, all places covered by the ebb and flow of the tides, to the line on the shore reached by the plane of the mean high water (MHW). At Kahului Harbor, NOAA tidal data establish MHW elevation at 4.31 feet above 0.0 NOAA station datum (Station ID 1615680). In accordance with 33 CFR § 329.12(a)(2), the shoreward limit of the MHW elevation is estimated by observation of the apparent shoreline, which is characterized by the shoreline vegetation on the beach.

Wetlands adjacent to TNWs: linear feet width (ft), Or, acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: artificial impoundment has potential to release excess waters to RPW tributaries.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: **approximately 2,700** linear feet width (ft).
- Other non-wetland waters: acres.

Identify type(s) of waters: **Maui Industrial Park offsite drainage channel [system] from makai (seaward) of Hana Highway to the Pacific Ocean.**

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
 - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.⁹**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
Identify type(s) of waters: .
- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Engineering plans provided by A&B Properties, Inc.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
 - Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: USGS 12 digit HUC map overlay in Google Earth, 2012.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: USGS quad topo map overlay (Kahakuloa) in Google Earth, 2012 .
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: USFWS NWI map overlay in Google Earth, 2012.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): aerial imagery in Google Earth, 2012.
or Other (Name & Date): Site photos of drainage ditch, inland culverts, and outlet culverts from A&B Properties, Inc (various years).
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: The JD describes two (2) types of waters, a non-RPW tributary, the Maui Industrial Park offsite drainage channel (a.k.a. A&B Properties, Inc drainage ditch system), that drains into a TNW, the Pacific Ocean.

The U.S. Environmental Protection Agency Region IX concurred with the significant nexus determination on 19 June 2012.

Section 404 jurisdiction applies to the drainage channel system from the Hana Highway makai (seaward) to Pacific Ocean.

Section 10 jurisdiction extends from the Pacific Ocean to all places covered by the ebb and flow of the tides, shoreward to the line on shore reached by the plane of the MHW.

Elevations for Kahului Harbor Station ID: 1615680 with station datum at zero: 1) Mean High Water (MHW) = 4.31 feet, 2) Mean Sea Level (MSL) = 3.53 feet, 3) Mean High Water (MHW) = 4.31 feet, and the Mean Higher-High Water (MHHW) = 4.67 feet. (Source: NOAA tides and currents website 1983-2001 epoch for Station 1615680).

The Corps' regulatory jurisdictional boundary in tidal waters for Section 404 activities (discharges of dredged or fill material in water of the U.S.) is the "High Tide Line" (HTL). In Hawaii, the HTL can be estimated by reference to the MHHW line.



US Army Corps
of Engineers
Honolulu District

DEPARTMENT OF THE ARMY
GENERAL PERMIT GP 2011-001

MAINTENANCE CLEARING OF RIVERS, STREAMS, STORM
DRAINS, AND BEACH AREAS IN THE STATE OF HAWAII
(modification)

Effective Date: April 13, 2012

Expiration Date: April 13, 2017

1. INTRODUCTION:

In accordance with Parts 320, 322, 325, 326 and 329 of Title 33, Code of Federal Regulations, the District Engineer of the U.S. Army Corps of Engineers, Honolulu District (Corps) has determined that general permit GP 2011-001 should be issued to authorize maintenance clearing of rivers, streams, and storm drains, and beach areas in waters of the United States, including navigable waters in the State of Hawaii, subject to the specifications and limitations specified below. This authorization is made pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403). This general permit does not authorize any filling activities or maintenance clearing projects when the Corps determines that the public interest requires regulation through an individual permit, nor may this general permit be used to authorize excavation or dredging for the sole purpose of restoring navigation depth for vessels. This general permit replaces GP 96-001.

2. APPLICABLE AREAS:

This general permit applies to waters of the United States, including navigable waters of the United States in main Hawaiian Islands in the State of Hawaii, **except** for the following areas or locations:

- a. Areas of recognized biological importance. These include, but are not limited to, coral reefs, endangered species habitat, areas of harvested or concentrated shellfish production, fish spawning grounds, migratory waterfowl breeding areas, coastal wetlands, mudflats, vegetated shallows, and riffle and pool complexes;
- b. Within close proximity to a public water supply intake, or prime groundwater recharge area;
- c. Within or adjacent to any stream or waterbody included, or proposed for future inclusion, in a Federal or State Wild and Scenic River system or designated, or proposed to be designated, as an American Heritage River;
- d. In any area upstream or within the boundaries of a wildlife refuge, sanctuary, game management area, or similar facility without written approval by the manager of the facility.

e. Within the Area of Potential Effect of any historic property listed, or eligible for listing, in the National Register of Historic Places, unless the State Historic Preservation Officer, Office of Hawaiian Affairs, and Hui Malama I Na Kupuna `O Hawai`i Nei has been afforded an opportunity to comment on the impacts of the proposed activity and determined that there will be no effect on the known or designated historic and/or traditional or cultural property.

3. SPECIFICATIONS AND LIMITATIONS OF AUTHORIZED WORK:

a. This general permit authorizes the maintenance clearing of river and stream mouths and channels, storm drains and similar structures, and beach areas, including, but not limited to, the following activities:

(1) Removal, including mechanized removal, of siltation shoals, sand plugs, and excessive vegetation and debris from river and stream mouths and channels, storm drains, and similar structures; and

(2) Removal, including mechanized removal, of seaweed, rubble, and other debris from beach areas.

b. Work performed under this general permit is subject to the following limitations:

(1) Maintenance clearing activities may not extend more than 50 feet seaward of the Mean High Water (MHW) line;

(2) Except in emergency situations where there is imminent threat to life and/or property, maintenance clearing activities may be conducted only during periods of low flow and little or no rainfall.

c. This general permit does not authorize blasting, new dredging, or dredging that changes the character, scope, or elevation of the original contour or the previously-authorized maintenance dredging baseline. If information on the original contour is not available, the prospective permittee must indicate the extent or depth of the proposed work in the preconstruction notification required as a condition of this general permit. (See Section 4 for Conditions of the Regional General Permit.)

d. This general permit does not authorize maintenance clearing activities that would have more than a minimal adverse effect on any species listed or proposed for listing as either threatened or endangered under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (ESA) or that would result in the destruction or adverse modification of an area designated, or proposed for designation, as critical habitat for species listed as threatened or endangered under the ESA or for species recognized by the State of Hawaii Department of Land and Natural Resources as threatened or endangered. (See below for Endangered Species Act Special Conditions.)

4. CONDITIONS OF THE REGIONAL GENERAL PERMIT:

Activities authorized by this general permit are subject to the following conditions:

a. Procedures for Work Authorization:

(1) Any prospective permittee seeking to perform work under this general permit must notify the Corps of their intent to complete work under authority of this permit by submitting a pre-construction notification (PCN) as early as possible;

(2) If the proposed activity complies with the terms and conditions of this general permit, the Corps will provide written notification to the prospective permittee that the work may proceed under this general permit. **No work may commence prior to receiving this notification.**

b. The PCN that must be submitted to the Corps for verification under this general permit must contain the following information and documents:

(1) Prospective permittee's name, mailing address, telephone numbers, and email address;

(2) If applicable, authorized agent's name, title, company, mailing address, telephone numbers, and email address (not applicable if an agent is not required);

(3) Location of the proposed project

(a) On 8.5-inch x 11-inch paper, with notations legible for reproduction, plans that include exact location, latitude and longitude, vicinity and plan maps, and profile and cross-sectional views including existing conditions, pre-sedimentation and/or anticipated post-construction conditions;

(b) If maintenance clearing is proposed in a waterway- designated as impaired under the current List of Impaired Waters in Hawaii prepared under Clean Water Act Section 303(d) or in any area where contamination is known or suspected, the designation "303(d) Impaired Waters" or "known or suspected contamination" must be indicated prominently in the upper right-hand corner of the PCN. The 303(d) List of Impaired Waters can be found at the following URL: http://hawaii.gov/health/environmental/envplanning/wqm/2006_Integrated_Report/2006_Integrated_Report.pdf;

(4) Any available historical data regarding original depths and extents of areas to be cleared;

(5) Description of the source, type, composition, and quantity of material to be cleared, the method and equipment to be used in the clearing operation, the site plans for disposal of excess excavated material, and de-watering plans;

(6) Date activity is expected to commence, expected duration of the proposed work, and date activity is expected to be completed;

(7) Site-specific Best Management Practices Plan and appropriate monitoring plan to demonstrate that the proposed activity will be conducted in a manner that complies with all terms and conditions of this general permit;

(8) Name of contractor/company or person(s) doing the work, if known;

(9) A statement that the prospective permittee, at least 20 days prior to the commencement of the proposed work, contacted the State Historic Preservation Officer, the Office of Hawaiian Affairs, and Hui Malama I Na Kupuna `O Hawai`i Nei regarding the presence, absence, or likelihood that designated/potential historic properties and/or traditional or cultural properties are in the permit area which may be affected by the proposed project. The statement should include the available information, response and comments, provided by that agency or organization, or an affirmation that the agency or organization did not respond or comment on the proposed work.

(10) A dated copy of notification to the State of Hawaii, Department of Business, Economic Development & Tourism (DBEDT) of the prospective permittee's intent to seek verification from the Corps that the proposed activities are authorized by this general permit (GP 2011-001). The notification should clearly indicate that the DBEDT has had a minimum of 20 days to review the proposed work to ensure compliance with the Coastal Zone Management Act (CZMA). Provide a copy of any DBEDT response and comments to the notification.

c. General Conditions:

The following general conditions apply to all activities authorized under this general permit:

(1) The permittee shall make every reasonable effort to execute the work authorized by this general permit in a manner so as to minimize any adverse impact of the work on fish, wildlife and natural environmental values;

(2) The permittee must allow representative(s) from the Corps to make periodic inspection at any time deemed necessary to ensure that the activity being performed under authority of this permit is in compliance with the terms and conditions of this permit;

(3) If the property associated with an authorized project is sold or transferred to a third party, the original permittee shall obtain the transferee's written agreement to comply with all terms and conditions of this permit. A copy must be forwarded to the Corps to validate the transfer of authorization;

(4) This permit does not grant any property rights or any exclusive privileges nor does it authorize any injury to property or rights of others.

(5) This permit does not obviate the need to obtain other Federal, State, or local approvals required by law;

(6) Discharges associated with activities authorized under this permit may also be regulated under National Pollutant Discharge Elimination System (NPDES) permitting requirements authorized under Section 402 of the Clean Water Act and managed by the State of Hawaii, Department of Health, Clean Water Branch (DOH-CWB). It shall be the permittee's responsibility to consult with the DOH-CWB at (808) 586-4309 on potential NPDES permitting requirements and to obtain the applicable NPDES permit(s) prior to initiating the activity;

(7) Permitted maintenance clearing activities must not preclude the use of public rights-of-way including, but not limited to, continuous lateral access along the shoreline. Temporary provisions, e.g. detours, shall be made to maintain public access during clearing operations;

(8) This permit does not authorize interference with any existing or proposed Federal project;

(9) In issuing authorization under this permit, the Federal Government assumes no liability for the following:

(a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;

(b) Damages to the permitted project or uses thereof as a result of current or future operations undertaken by, or on behalf of, the United States in the public interest;

(c) Damages to persons, property, or to other permitted or unpermitted activities authorized by this permit;

(d) Damage claims associated with any future modification, suspension, or revocation of this permit or any individual authorization issued by the Corps;

(10) In determining whether an individual project can be authorized by this general permit, the Corps will rely on information and data provided by the prospective permittee in connection with the request for work authorization. If such information or data prove to be false, incomplete or inaccurate, the authorization may be modified, suspended or revoked, in whole or in part;

(11) This general permit may be modified suspended, or revoked in whole or in part, if it is determined that the individual or cumulative impacts of the authorized work are

contrary to the public interest. The authorization for an individual project may also be summarily modified, suspended, or revoked, in whole or in part, upon a finding by the Corps that the project is contrary to the public interest. Any modification, suspension or revocation of the permit shall follow procedures identified in 33 CFR 325.7;

(12) The permittee shall notify the District Engineer of the permittee's intent to proceed with the authorized activity at least 72 hours prior to the date that the authorized activity will commence and of the completion of the authorized activity no later than fourteen (14) calendar days from the date of its completion;

(13) If an individual activity authorized by this general permit is not completed within two years of authorization (the Notice of Authorization will specify expiration date), the authorization, if not previously modified, revoked, or specifically extended, will automatically expire. The permittee may request, in writing, an extension not to exceed an additional two years from the expiration date specified in the original Notice of Authorization. Such a request must be submitted to the Corps within two months of the original expiration date and contain specific reason(s) for the additional time requirement. Failure to submit such an extension request within that time will result in the requirement to submit a new request for verification under this general permit;

(14) The permitted activity shall not interfere with the public's right to free navigation on all navigable waters of the United States;

(15) If during construction or operation of the authorized activity, the permittee discovers a previously unknown historic property, all work shall immediately cease and the Corps shall immediately be notified. The Corps will initiate the Federal and State coordination to determine the appropriate notification and consultation requirements and to identify appropriate remedial/ /preservation actions. Based on the circumstances of the public interest, which may include the opinion of the State Historic Preservation Officer, the Office of Hawaiian Affairs, Hui Malama I Na Kupuna `O Hawai`i Nei, and any Native Hawaiian group or individual, the Corps may re-evaluate the individual authorization under this general permit. Further work may not proceed until written notification is received from the Corps.

d. Special Conditions:

The following special conditions apply to all activities authorized under this general permit:

(1) The permittee should make every effort to develop and implement a plan spanning the length of this general permit which schedules conducting anticipated work at streams and storm-drains during the dry season, and anticipated work at beach areas during non-swell season. Work should be ceased and re-scheduled in the event of an out-of-season heavy rainfall or swell;

(2) Use of bulldozers to remove sediments may be allowed when the permittee provides documentation that the sediment is unvegetated, or otherwise void of vegetal root systems and that equipment-specific best management practices (BMPs) shall be in place to avoid more than *de minimis* discharges to waters of the United States;

(3) Avoid conducting maintenance activities that will lead to mid- and long-term destabilization and exposure of bare sediment/sand along stream banks, stream bed and beaches;

(4) Prior to starting any authorized activity, determine via surveys or available literature whether coral reef and/or seagrass beds are present near, or downstream of, areas where the activities will be conducted. Where coral reef or seagrass could be indirectly impacted by the authorized work, the permittee must minimize any potential impacts by limiting the extent of in-water work by conducting the work from land, limiting the footprint of the work/dredge area, and implementing appropriate BMPs;

(5) No debris, petroleum products, or deleterious materials or wastes shall be allowed to fall, flow, leach, or otherwise enter any waters of the United States;

(6) All authorized activities shall be done in a manner so as to confine and isolate the construction activity and to control and minimize turbidity. Silt curtains or other appropriate and effective silt containment devices approved by the Corps shall be used to minimize turbidity and shall be properly maintained throughout the entire period of in-water work to prevent the discharge of any material to the downstream aquatic habitat. All sediment control devices installed as BMPs (i.e., fabric sandbags, silt curtains/screens, etc.) downstream or makai of the authorized work shall remain in place until the in-water work is completed and will be removed in their entirety and disposed of at an appropriate upland location once the water quality of the affected area has returned to its pre-construction condition;

(7) Return flow or runoff from upland dewatering site(s)/disposal site(s) shall be contained on land and shall not be allowed to discharge and/or re-enter any waters of the United States;

(8) No sidecasting or stockpiling of excavated materials in the aquatic environment is authorized. All excavated materials shall be placed above the high tide line (in coastal areas), above the ordinary high water mark at all other waters of the United States, or disposed of in an upland location. The permittee shall demonstrate that there is no reasonable expectation that disposal locations adjacent to high tide lines on the ocean, or in floodplains adjacent to other rivers or streams, would result in the material being eroded into the nearby waterbody by high tides and/or flood events;

(9) Warning signs shall be properly deployed and maintained until the portion of the in-water work is completed and the affected area water quality has returned to its pre-construction condition and turbidity control devices have been removed from the waterway;

(10) Fueling, repair, and other activities with any potential to release pollutants will occur in a location where there is no potential for spills to have an effect on waters of the United States;

(11) If a visible plume and/or floating petroleum products are observed outside of the containment area, the following measures shall be taken:

- (a) All in-water work shall stop;
- (b) The permittee or contractor shall inform the Corps immediately and the Corps will consult with appropriate agencies;
- (c) The site shall be inspected by the permittee to ascertain the source of the plume;
- (d) Control measures shall be refurbished, modified, and/or improved, e.g., additional silt containment devices will be installed, as necessary to ensure the integrity of the containment area;
- (e) Work shall not continue until after the plume or oil sheen is no longer visible.

(12) An individual, designated responsible for environmental monitoring, will be on-site during clearing operations. This individual will conduct visual inspections, perform water quality sampling and other environmental monitoring, as appropriate, and report all results to the Corps on a regular basis during clearing operations;

(13) When the Corps is notified that an authorized activity is detrimental to fish and wildlife resources, the Corps will issue a suspension order until all pertinent issues have been satisfactorily resolved. The permittee shall comply with any Corps-directed remedial measures deemed necessary to mitigate or eliminate the adverse effect;

(14) Unless terminated earlier, the expiration date of this general permit will be five years from the date of issuance. At that time, there will be a re-evaluation and review of the environmental effects of the activities authorized under the general permit. The re-evaluation will incorporate the views of federal, state, and local agencies and the public following issuance of a new public notice. This general permit may be reissued, revised, or revoked, as appropriate. Individual projects authorized under this permit, but not completed prior to the expiration date of the general permit, may proceed in accordance with the terms and conditions of this permit, regardless of the outcome of the re-evaluation and review.

Endangered Species Act Special Conditions

(1) For non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the

designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act.

(2) The permittee shall inform the Corps and NOAA National Marine Fisheries Service, Pacific Islands Regional Office, Protected Resource Division (NMFS PRD) of each interaction with a species listed under the Endangered Species Act (ESA) (ESA-listed species) and shall include information on the disposition of any ESA-listed species that is injured or killed.

(3) In the event that work authorized under this GP results in a “take” of an ESA-listed species, as defined by the Endangered Species Act, that “take” must be reported to the Corps, and all work shall stop until the Corps, after consultation with NMFS PRD, notifies the permittee that the authorized work may resume. (The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct).

(4) Constant vigilance shall be kept for the presence of ESA-listed species during all phases of the authorized work.

(a) A responsible party, i.e., permittee/site manager/project supervisor, shall designate a competent observer to survey work sites and the areas adjacent to the authorized work area for ESA-listed species;

(b) Surveys shall be made prior to the start of work each day, including prior to resumption of work following any break of more than one half hour. Periodic additional surveys throughout the work day are strongly recommended;

(c) All in-water work will be postponed or halted when ESA-listed species are within 50 yards of the authorized work and will only begin/resume after the animals have voluntarily departed the area, with the following exception: if ESA-listed species are noticed within 50 yards of the authorized work after work has already begun, that work may continue only if, in the best judgment of the responsible party, the activity is unlikely disturb or harm the animal(s), for example, divers performing surveys or underwater work (excluding the use of toxic chemicals) is likely safe, the use of heavy machinery is not; and

(d) No one shall attempt to feed, touch, ride, or otherwise intentionally interact with any ESA-listed species.

(5) Project footprints shall be limited to the minimum area necessary to complete the authorized work.

(6) The project area shall be flagged to identify sensitive resource areas, such as seagrass beds, ESA-listed terrestrial plants, and turtle nests.

(7) The authorized work shall be timed to minimize effects on ESA-listed species and their habitats.

(8) The authorized work shall cease under unusual conditions, such as large tidal events and high surf conditions, except for efforts to avoid or minimize damage to aquatic resources.

(9) A pollution and erosion control plan for the authorized work site and adjacent areas shall be prepared and carried out. At a minimum, this plan shall include and require:

(a) Proper installation and maintenance of silt fences, saucages, equipment diapers, and/or drippans;

(b) A contingency plan to control and clean spilled petroleum products and other toxic materials;

(c) Appropriate materials to contain and clean potential spills will be stored at the work site, and be readily available;

(d) All project-related materials and equipment placed in the water will be free of pollutants;

(e) Daily pre-work inspections of heavy equipment for cleanliness and leaks, with all heavy equipment operations postponed or halted until leaks are repaired and equipment is cleaned;

(f) Fueling of project-related vehicles and equipment will take place at least 50 feet away from the water, preferably over an impervious surface;

(g) A plan to prevent trash and debris from entering the marine environment during the project; and

(h) All construction discharge water (e.g., concrete washout, pumping for work area isolation, vehicle wash water, drilling fluids) must be treated before discharge.

(10) Any necessary and appropriate erosion controls shall be properly installed before undertaking the authorized work.

(11) All disturbed areas must be immediately stabilized following cessation of activities for any break in work longer than 4 days.

(12) For any equipment used in undertaking the authorized work, the 160 dB and 120dB isopleths shall not exceed the 50 yard shut-down range for impulsive and continuous sound sources, respectively.

(13) Maintenance dredging and in-water excavation shall not be undertaken if any ESA-listed species is within 50 yards of the authorized work, and those operations shall immediately shut-down if an ESA-listed species enters within 50 yards of the authorized work.

This general permit, as modified, will become effective on the date of the District Engineer's signature.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

A handwritten signature in black ink, appearing to read 'D. Guttormsen', with a long horizontal flourish extending to the right.

Douglas B. Guttormsen, P.E.
Lieutenant Colonel, U.S. Army
District Engineer