



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

JUL 02 2015

Michelle Lynch
Regulatory Branch Chief
Honolulu District
US Army Corps of Engineers
CEPOH, Building 230
Fort Shafter, HI 96858-5440

Subject: Public Notice POH-2012-00081, Kapalama redevelopment at Piers 40-45 in Honolulu Harbor

Dear Ms. Lynch: *Shelley*

Thank you for the opportunity to comment on the subject PN dated May 28, 2015 and for an extension to the comment period. The following comments were prepared under the authority of, and in accordance with, the Federal Guidelines (Guidelines) promulgated under Section 404(b)(1) of the Clean Water Act (CWA) at 40 CFR Part 230. Under separate cover, EPA will provide our formal determinations regarding dredged material suitability and ocean disposal, along with required special conditions for such disposal pursuant to our authorities under the Marine Protection, Research, and Sanctuaries Act (MPRSA) and the Ocean Dumping Regulations at 40 CFR Parts 220-227.

In summary, the Hawaii Department of Transportation, Harbors Division (Applicant) proposes to construct a new bulkhead wharf to provide sufficient berths for two Panamax container vessels and berths for interisland barges within Honolulu Harbor at Kapalama. Based on the available information, EPA objects to the issuance of the permit for this project without a more accurate and complete assessment of impacts, and a robust compensatory mitigation proposal accounting for direct, indirect and temporal losses of marine resources including corals..

According to the PN, the proposed work involves dredging a total of 5.64 ac and filling 2.49 ac for a total affected marine area of 8.13 acres. However, this may be a minimum impact area because the PN provides no accounting of indirect impacts from construction activities and sedimentation, and appears to omit 0.6 acres of fill material from upland sources at the Snug Harbor dike and west end of Pier 43. Correcting this exclusion increases the fill area to 3.09 acres, which still may not capture all fill since the permit application form describes a 138,900 sq. ft. fill area (3.19 acres). The Corps should verify the size of the impact areas before making a permit decision.

Independent of actual direct fill area, however, EPA strongly disagrees with the Applicant's conclusion that compensatory mitigation is unnecessary for this proposed work. This is a significant project with direct and permanent impacts from construction dredging and fill to at least 8.13 acres of marine habitat containing special aquatic sites, and is the largest area of fill in waters of the U.S. and largest impact to corals in recent Honolulu District permitting history. The basis of the Applicant's claim of 0.29 acres of net increase of waters of the U.S. is unclear given the acreage inconsistencies described above, and the lack of proposed compensatory mitigation suggests a false functional equivalence between the created waters and the losses from direct and indirect impacts to marine resources.

According to the 2014 Marine Baseline Assessment by AECOS, the area of impact includes 205,526 coral colonies and other marine life. Although the Applicant proposes to relocate corals larger than 20 cm as an impact avoidance and minimization measure, this equates to <1% of the impacted colonies (only approximately 1,900 of 205,526 corals are larger than 20 cm). Moreover, proposed transplantation to other areas of Honolulu Harbor and to aquaculture facilities at the 'Anuenue Fisheries Research center, will result in some mortality of transplanted

corals. Recent experience at the Maui Ocean Center, where a predatory nudibranch proliferation occurred in their holding tanks, demonstrates that some mortality is expected in such holding operations. Those corals that are transplanted within Honolulu Harbor will be further stressed by spills and other discrete lethal pollution events, and extensive plans for the Harbor's future dredging and reconstruction. EPA supports' transplantation of coral colonies away from the project's footprint as an impact avoidance measure, but alternative transplantation sites should be carefully selected. In addition, care must be taken to avoid spreading non-native species that occur with corals in Honolulu Harbor.

The Guidelines prohibit discharge of dredged or fill material that will cause or contribute to significant degradation of the aquatic ecosystem (40 CFR 230.10(c)). Compensatory mitigation can reduce impacts below this threshold, including the creation of new marine habitat. However, the acres of direct fill in this case represent a permanent loss of long-established marine habitat and its aquatic resources, which new open water habitat does not fully or immediately replace. Construction dredging permanently alters water depth, light availability, water circulation, and the character of the seafloor. An unknown additional area (at minimum including the dredged areas within the silt curtains) will be degraded as an indirect consequence of the project's dredge and fill activities. Even if the 0.29 acre net gain of jurisdictional waters is accurate, the proposed work impacts aquatic functions that must be mitigated to avoid significant degradation and comply with the Guidelines.

EPA recommends the applicant develop a compensatory mitigation plan that is consistent with the 2008 Final Compensatory Mitigation Rule and accounts for the lost aquatic resource functions of 205,526 coral colonies through direct and indirect impacts. Compensation activities and ratios must also account for the temporal loss of these functions (which for large coral colonies can take decades to reestablish). We recommend restoration of a degraded marine site outside of the Harbor as the most likely approach to satisfy mitigation requirements. To assist the applicant in designing acceptable mitigation, we enclose a table of potential mitigation options from the Draft "Handbook on Coral Reef Impacts: Avoidance, Minimization, Compensatory Mitigation, and Restoration," under development by the US Coral Reef Task Force.

Finally, we note that we are in the process of reviewing the final sediment testing report dated June 2015, upon which we will base final EPA determinations of sediment suitability for placement at the EPA-designated South Oahu Ocean Dredged Material Disposal Site (ODMDS). If EPA concurs in ocean disposal, our preliminary analysis indicates that both standard ocean disposal conditions and special project-specific ocean disposal conditions will be necessary. As you know, the ocean disposal permit for the project cannot be issued without inclusion of EPA's required conditions, which we anticipate transmitting not later than July 15, 2015.

Thank you for your continued partnership in implementing the programs of the CWA and the MPRSA. As additional information becomes available on the mitigation plan, please contact Dr. Wendy Wiltse of my staff at 808-358-6206 or wiltse.wendy@epa.gov. For questions regarding ocean disposal, please contact Brian Ross at 415-972-3475 or ross.brian@epa.gov.

Sincerely,



Jason Brush
Supervisor
Wetlands Section

Enclosure

Cc: Joy Anamizu, Honolulu District
Dan Polhemus, US Fish and Wildlife Service
Gerry Davis, National Marine Fisheries Service