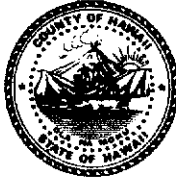


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DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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April 29, 2020

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(Via E-mail: shareem.jelani@epa.gov)

Ms. Kate Rao
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**SUBJECT: Request for Change to Compliance Milestones for the Nā'ālehu
Wastewater Treatment Plant and Collection System
Federal Administrative Order on Consent
EPA Docket No. SDWA-UIC-AOC-2017-0002
Nā'ālehu Large Capacity Cesspools (LCC)**

Dear Mr. Shareem and Ms. Rao:

The County of Hawai'i ("County") finds it necessary to request changes to the compliance dates to complete the subject project(s).

Ongoing COVID-19 Pandemic:

At the present time there is a world-wide pandemic associated with the novel corona virus (COVID-19). The County of Hawai'i mayor declared a state of emergency on February 28, 2020, and the governor of the State of Hawai'i issued an emergency proclamation on March 4, 2020. The following limitations in the state directly affect the County's ability to meet established deadlines in the subject Administrative Order on Consent (AOC):

- A statewide "stay-at-home" order is in effect. Gatherings in excess of 10 persons are prohibited, with social distancing requirements in effect. Public libraries are closed at

least until June 1, 2020. Non-essential state employees are working from their homes, including State Historic Preservation Division staff.

- Interisland travel is restricted to personnel in support of essential activities, and a mandatory 14-day quarantine at the interisland destination is in effect for any non-essential travelers.

The governor of Hawai'i's emergency proclamations can be accessed at: <https://governor.hawaii.gov/emergency-proclamations/>. Although the current emergency proclamations are in effect through May 31, 2020, it is possible they will be extended as the state and county governments decide how to best address the public health crisis. It not possible to predict when the applicable limitations will ultimately be lifted, nor the future impacts on backlog for both public agencies and private companies. However, for scheduling purposes, we have assumed that the restrictions are lifted on June 1, 2020, as currently scheduled.

The Environmental Assessment (EA) Process:

The USEPA has previously authorized an extension of the AOC deadline to complete the EA process. However, the COVID-19 pandemic directly affects the County's ability to complete this process by the existing deadline. In particular:

1. **Archeology.** The archeological consultant for the project has completed work on a formal Literature Review report for the project in support of the EA. The literature review supports the preparation of the draft EA. A field study is also required as a first step in a multi-step process to secure State Historic Preservation Division ("SHPD") clearances for the project, including the Section 106 consultation process. Our archeology consultants have qualified staff located on-island, so the inter-island travel restrictions do not impact the field work. However, we do not know how the COVID-19 pandemic is affecting SHPD document review times. We anticipate SHPD review periods could be longer than earlier estimates, but there is no indication yet how much longer the document reviews will take.
2. **Biology.** Flora and fauna field studies must be prepared. Our wildlife consultant is located on-island, so the interisland travel restrictions have no impact. Unfortunately, the botany consultant is based in Honolulu and cannot reasonably travel to Hawai'i Island until the inter-island travel restrictions are lifted. The flora and fauna studies are required for the EA and Section 7 consultation process.
3. **Public Participation.** The EA process is intended to include public participation. Although not required, the County has always intended to conduct a public meeting during the 30-day draft EA comment period. A public meeting is essential given the project's tumultuous history. Furthermore, the Pāhala EA effort highlighted the need

to provide the affected communities with multiple hard copies of the EA documents in the area's public libraries, due to residents' lack of access to the Internet.

Section 106 Consultation Processes:

The Section 106 consultation process must be completed before the final EA can be published. Currently, the multi-step process includes:

- Submittal of the draft Field Study and Literature Review report for approval by SHPD.
- Determination by SHPD whether an archeological inventory survey ("AIS") is required. We anticipate that SHPD will require an AIS for the project.
- Development of an AIS plan for the project and submittal to SHPD for approval.
- Approval of the AIS plan by SHPD.
- Execution of the AIS and submittal to SHPD for approval.
- Approval of the AIS by SHPD.
- Submittal of a concurrence request letter by the State Department of Health ("DOH") to SHPD.
- Concurrence by SHPD.

Although SHPD is required to respond to submittals within 90 days, review times are much longer due to personnel shortages at the agency. The draft AIS for the Pāhala project was under review by SHPD for approximately 11.5 months before a formal response was provided. Based on feedback from our consultants with respect to correspondence with SHPD at this time, we anticipate the SHPD review periods will be longer due to the COVID-19 pandemic. It should be noted that our consultants are trying to anticipate SHPD needs and requests in order to minimize the total duration of the SHPD review process.

Final Environmental Assessment Impact:

EPA extended the AOC compliance date to complete the final EA on September 26, 2019. The revised compliance date is four months after completion of SHPD's consultation process, with a backstop date of no later than July 23, 2021. The County's extension request dated September 13, 2019, assumed SHPD's review and approval of the AIS would occur within six months. The recent Pāhala experience showed that a 12-month review period is realistic but could be longer due to the COVID-19 pandemic.

The County intends to use State Revolving Fund ("SRF") loans to fund most or all of the project. It should be noted that the DOH has indicated annual SRF funding limitations that could impact the project financing, and the County recognizes that other funding sources may need to be identified. It is not clear how the COVID-19 pandemic response will affect the County's capital improvements program. The State of Hawai'i and County of Hawai'i both anticipate a significant budget shortfall due to the economic slowdown resulting from the pandemic, which

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may further impact the ability of the County to fund the project. The SRF loan funding requires completion of federal cross-cutter requirements, including Section 106. The Section 106 consultation process must be completed before a final EA determination can be published. Therefore, the extended SHPD review time will delay completion of the environmental review process. The time required to arrive at the final EA for the project has significant consequences on the ability of the County to comply with other compliance dates, as discussed below.

Property Procurement Impacts:

The County cannot subdivide and procure the wastewater treatment plant (“WWTP”) property until after the final EA is published.

Special Permit Impacts:

Most of the proposed WWTP location is on a parcel that is designated Agriculture by the State of Hawai‘i Land Use Commission (“LUC”). WWTPs are not an allowed use on lands that are designated Agriculture by the LUC unless a special permit is approved. The County of Hawai‘i Planning Commission is the approving authority for the special permit if the proposed WWTP parcel is less than 15 acres. The LUC must approve the special permit if the site is greater than 15 acres. An issue to be resolved during development of the draft EA is whether a required drainage improvement adjacent to the WWTP can be excluded from the determination of the WWTP parcel size for special permit purposes. If not, the LUC approval process is expected to add approximately one year to the time required to secure the special permit.

The County of Hawai‘i must acquire the WWTP site before the special permit process can be initiated, which means a final Chapter 343 EA and possibly the accepted AIS and SHPD determination letter is required. Therefore, the time required to produce the final EA directly impacts the County’s ability to secure the required land use entitlement for the WWTP.

Fieldwork Limitations:

The Nā‘ālehu project may largely be funded using the SRF loan program. DOH, who administers the SRF program, has told County staff that it may not fund the project if field investigations are undertaken without SHPD approval prior to completion of the Section 106 consultation process. We anticipate that upon review of the AIS, SHPD will require submittal and approval of an archeological monitoring plan (“AMP”) prior to conducting fieldwork. We further anticipate the time required for consultation with and approval by SHPD for the AMP to be six months from receipt. The fieldwork limitations directly affect the County’s ability to conduct a geotechnical study for design purposes, including percolation testing of the proposed effluent disposal system to assess the site’s adequacy and an associated geophysical survey to detect the presence of lava tubes (voids) which will influence both the collection system and WWTP design. Topographic survey tasks may also be impacted.

Design Impacts:

Survey and geotechnical investigations within the transmission system alignment and WWTP parcel are pending due to fieldwork limitations. The fieldwork limitations are in effect until the AMP is approved by SHPD. The geotechnical investigations and survey are crucial elements of the project for the following reasons:

- The Nā'ālehu area is known to contain lava tubes, some of which may have been used for past burial purposes. Lava tube entrances located in the vicinity of the proposed WWTP site will be identified and investigated during the archeological field investigation.
- Lava tube identification is critical for design of the collection system. It is desirable to minimize the number of residential lots that will need to rely on grinder pumps to lift sewage to the sewer system. Grinder pumps require periodic maintenance and repairs that homeowners and residents are generally not qualified to complete themselves. Therefore, pumped lots represent locations that are at higher risk of sewage spills and corresponding public health risk due to mechanical and/or electrical system malfunctions. Minimization of pumped lots will require installing the sewers deeper in certain locations. Identification of lava tubes is needed to confirm the feasibility and to design the sewer profiles to minimize the number of pumped lots.
- Similarly, the WWTP will include 20-foot deep lagoons for the treatment process. The presence or absence of lava tubes must be confirmed during the early stage of the design process. If the geotechnical investigation reveals the presence of significant lava tubes in conflict with the treatment infrastructure, then the WWTP site layout will need to be adjusted or the wastewater treatment process modified, each requiring a significant redesign effort. In addition, modification of the EA may be required.
- Geotechnical recommendations are required for structural design of the WWTP and transmission pump station structures. Specifically, soil-bearing pressure and lateral earth pressure recommendations are required to design structure foundations and walls, respectively. In addition, the geotechnical engineer provides key seismic design parameters (e.g., site-specific dynamic earth pressures) for the structural engineer to ensure the structures can withstand earthquakes.
- The geotechnical investigations include percolation testing of the WWTP site soils to provide confirmation that the intended land application effluent disposal system will have sufficient capacity to meet the community's needs. Design of the effluent disposal system will require the completed geotechnical study.
- The geotechnical study will take approximately eight months to complete after approval to conduct fieldwork is obtained.
- Completing the WWTP design is expected to take fifteen months after the geotechnical study is complete.

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- Completing the two-phase collection system design is also expected to take fifteen months after the geotechnical study is complete. Further discussion of the two-phase collection system approach is provided below.

Construction Impacts:

The schedule impacts presented above will significantly impact the schedule to bid and construct the project. Therefore, closure of the LCCs will be significantly delayed.

In order to facilitate closure of the LCCs as soon as possible, the County intends to complete the project in two phases. Phase 1 will include constructing the new WWTP and a new sewer pump station, connecting the existing collection system to the new WWTP, and closing the LCCs. Phase 2 will consist of constructing a new collection system that meets County standards, connecting the new system to the WWTP, connecting existing properties to the new collection system, and abandoning the old collection system. Designs for each phase will need to be complete before construction can begin. Furthermore, the Phase 1 project will need to be substantially complete before the Phase 2 project construction can begin, to avoid potential conflicts of having two contractors making modifications to the system at the same time.

The County cannot execute a construction contract until the Final EA is published, and the designs are completed.

Connection of Newly Accessible Properties:

After both Phase 1 and 2 of the projects are complete, the County will issue letters to the applicable property owners about becoming accessible and requiring connection to the new collection system within 180 days per County Code. The costs to connect will be the responsibility of the property owners.

Request:

In view of these constraints upon the County's ability to complete the subject project(s), the County of Hawai'i Department of Environmental Management formally requests changes to the compliance milestones set forth in the subject AOC. The table below provides the proposed extensions. Column "C" provides the preceding event that limits completion of the AOC milestone (Column "A"). Column "D" provides a final compliance date. The earlier of Column "C" and Column "D" dates will be the compliance milestone.

AOC Milestone	Current Due Date	New Proposed Milestone Due Date	
A	B	C	D
Phase 1 Environmental Site Assessment & Preliminary Engineering Report	Completed October 20, 2017	Not applicable	Not applicable
Initial Public Meeting	Completed April 9, 2018	Not applicable	Not applicable
Complete Preliminary Engineering Report	Completed October 25, 2018	Not applicable	Not applicable
Complete Phase 1 ESA	Completed November 27, 2018	Not applicable	Not applicable
Complete EA for Nā'ālehu WWTP	Within 4 months of completion of SHPD's consultation process, and no later than July 23, 2021 ¹	Within 4 months of completion of SHPD's consultation process	To be completed no later than August 27, 2023
Acquire Land for Nā'ālehu WWTP	June 1, 2020 ²	Within 18 months of publication of Final EA	To be completed no later than January 27, 2026
Design of WWTP	June 28, 2020	Within 18 months of completion of SHPD consultation process ³	To be completed no later than October 20, 2025
Design of New Collection System (Phases 1 and 2)	July 21, 2020	Phases 1 and 2 within 18 months of completion of SHPD consultation process ³	Phases 1 and 2 to be completed no later than October 20, 2025
Complete Construction of WWTP	February 28, 2022	Within 20 months of WWTP design completion	To be completed no later than June 20, 2027

¹ Extended from original AOC compliance date by letter dated September 26, 2019.

² Extended from original AOC compliance date by letter dated June 22, 2018.

³ Defined as approval of the archeological inventory survey and archeological monitoring plan by SHPD.

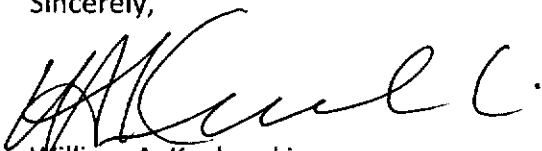
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Connect existing collection system and close LCCs (Phase 1)	April 17, 2022	Within 22 months of WWTP and Phase 1 collection system design completion (both designs are required to complete this AOC compliance milestone)	To be completed no later than August 9, 2027
Replace collection system serving LCCs and connect new collection system to WWTP (Phase 2)	September 30, 2022	Replace collection system, connect new system to WWTP, and connect existing properties within 22 months of connecting existing collection system and closing LCCs	To be completed no later than May 17, 2029

The County recognizes that the COVID-19 situation is dynamic at the present time, and a future request for additional AOC extensions may be submitted at a later date if COVID-19 related restrictions ultimately affect the County's ability to meet the proposed deadlines presented above.

Please contact Dora Beck at dora.beck@hawaiicounty.gov or me at william.kucharski@hawaiicounty.gov should you have any questions.

Sincerely,



William A. Kucharski
Director

cc: Dora Beck, P.E., DEM-Wastewater Division Chief, (Dora.Beck@hawaiicounty.gov)
Craig Lekven, P.E., Brown and Caldwell (CLekven@brwnald.com)