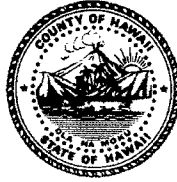


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May 15, 2019

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Ms. Kate Rao
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**SUBJECT: Request for Changes to Compliance Milestones
Federal Administrative Order of Consent
EPA Docket No. SDWA-UIC-AOC-2017-0002
Pāhala and Nā'ālehu Large Capacity Cesspools (LCCs)**

Dear Mr. Shareem and Ms. Rao:

As described in our letter dated April 5, 2019 which included the letter from our consultant, Brown and Caldwell, the State Historic Preservation Division (SHPD) review time for the project's archeological inventory survey (AIS) is currently anticipated to be one year, due to staff shortages and backlog at the agency. The current AOC milestone was based on a 90-day SHPD review and acceptance of the AIS, as set forth in Hawai'i Administrative Rules Section 13-275-3(a). SHPD acceptance of the AIS is required before the EPA can issue a Section 106 request for concurrence of effect determination letter to SHPD. SHPD will then have a 30-day period to respond to the EPA concurrence letter, after which time the Section 106 consultation process will be complete for NEPA purposes, and the environmental assessment (EA) finalized.

Furthermore, the State of Hawai'i Department of Health (DOH) has recently informed the County of Hawai'i that it will not fund fieldwork using the State Revolving Fund (SRF), other

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than archeological and flora and fauna investigations, prior to completion of the Section 106 process. This limitation affects the County's ability to:

1. Conduct geotechnical investigations,
2. Inspect existing dry laterals located on private property, and
3. Perform a topographic survey of the collection system service area.

All three of these fieldwork tasks will occur within the area of potential effect (APE) of the project. These required fieldwork tasks cannot be initiated prior to Section 106 process completion if they are to be funded with the SRF.

Even if the Pāhala project utilized no SRF funds, the collection system design cannot be completed without geotechnical investigations, inspection of the existing sewer laterals, and a topographic survey. These activities cannot be started without completing the Section 106 consultation process. In addition, the SHPD delay will impact the County's ability to apply for the required special permit and procure the Pāhala wastewater treatment plant (WWTP) parcel. The collection system design cannot be completed until the WWTP location is assured.

The geotechnical investigations are required to complete the collection system, WWTP, and LCC closure designs. An extensive network of lava tubes below the ground surface is known to exist in Pāhala. This ancient cave system is culturally significant to the Native Hawaiian community and presents design challenges. The geotechnical investigation will identify the presence, size, and location of lava tubes that could place constraints upon the design of the collection system and WWTP. In addition, the geotechnical investigations are necessary to develop site-specific seismic and soil bearing design criteria that are required for structural design of the large capacity cesspool closures and WWTP structures.

The County has determined it is necessary to inspect the existing private laterals that were installed by the former collection system owner, due to anecdotal statements by the community referencing substandard construction and impacts caused by the length of time that has passed since installation. The lateral inspection procedure includes excavating the ends of the laterals to allow the use of a closed-circuit television camera to view the inside of the buried pipes.

The topographic survey of the collection system service area is required to prepare the collection system design documents.

It is important to note that the delay in receiving the approvals required by SHPD will not result in a day for day schedule change. The current engineering design crews, for example, will be reassigned to other active contracts, and their intact return to the Pāhala and

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Nā'ālehu projects is unlikely. This will require additional time to recruit, retrain, and bring a new crew to work with the understanding of the current design personnel. Similarly, the sub-consultants will also reassign their crews and equipment to other projects. There is no assurance that these crews can be easily reconstituted. The longer the delay in receiving final SHPD reviews, the longer the overall delay in closing the specific LCCs.

The County will notify the EPA when the probable review time information from SHPD is received. In addition, our consultants are investigating whether SHPD and DOH approval to conduct fieldwork can be obtained in advance of completing the Section 106 process by providing archeological monitoring during fieldwork execution. We will provide an update to EPA if a viable approach is confirmed.

Request:

In view of these constraints upon the County's ability to complete the design and construction of the AOC elements in both Pāhala and Nā'ālehu, the County of Hawai'i Department of Environmental Management formally requests a change to the compliance milestones set forth in the subject Administrative Order of Consent (AOC). It is requested that the AOC compliance schedule, being dependent upon the State of Hawai'i SHPD Section 106 concurrence and AIS acceptance, reflect that the AOC schedule will commence upon the acceptance of the Section 106 AIS review and acceptance. Once this date is accepted and final, the County shall comply with the revised schedule durations and tasks as defined by this new start date.

The proposed AOC compliance milestone change for the Pāhala collection system design from May 24, 2019, to a "to be determined" date is necessary due to factors beyond the County's control. As such, we believe the delay qualifies as "*force majeure*" as defined in paragraph 50 of the AOC. The remaining schedule milestones for both Pāhala and Nā'ālehu are being examined, and the County requests 30 calendar days to evaluate and finalize an appropriate alternative schedule for these projects.

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