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

In reply, please refer to:
File:

09040PCTM.21

September 28, 2021

Mr. Aaron Setogawa
Planner
Office of Planning and Sustainable Development
P.O. Box 2359
Honolulu, Hawaii 96804



Dear Mr. Setogawa:

**SUBJECT: Comments on the A21-810 State Land Use DBA,
Approximately 56 Acres at Lanai City Project
Island of Lanai, County of Maui, Hawaii
TMKs: (2) 4-9-002:061 (por.), (2) 4-9-014:001 (por.), and
(2) 4-9-014:009 (por.)**

The Department of Health (DOH), Clean Water Branch (CWB), acknowledges receipt of your letter, dated September 20, 2021, requesting comments on your project. The DOH-CWB has reviewed the subject document and offers these comments. Please note that our review is based solely on the information provided in the subject document and its compliance with the Hawaii Administrative Rules (HAR), Chapters 11-54 and 11-55. You may be responsible for fulfilling additional requirements related to our program. We recommend that you also read our standard comments on our website at: <https://health.hawaii.gov/cwb/files/2018/05/Memo-CWB-Standard-Comments.pdf>.

1. Any project and its potential impacts to State waters must meet the following criteria:
 - a. Antidegradation policy (HAR, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.
 - b. Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.
 - c. Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).
2. You may be required to obtain National Pollutant Discharge Elimination System (NPDES) permit coverage for discharges of wastewater, including storm water runoff, into State surface waters (HAR, Chapter 11-55).

For NPDES general permit coverage, a Notice of Intent (NOI) form must be submitted at least 30 calendar days before the commencement of the discharge. An application for a NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge. To request NPDES permit coverage, you must submit the applicable form ("CWB Individual NPDES Form" or "CWB NOI Form") through the e-Permitting Portal and the hard copy certification statement with the respective filing fee (\$1,000 for an individual NPDES permit or \$500 for a Notice of General Permit Coverage). Please open the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>. You will be asked to do a one-time registration to obtain your login and password. After you register, click on the Application Finder tool and locate the appropriate form. Follow the instructions to complete and submit the form.

3. If your project involves work in, over, or under waters of the United States, it is highly recommended that you contact the Army Corp of Engineers, Regulatory Branch (Tel: 835-4303) regarding their permitting requirements.

Pursuant to Federal Water Pollution Control Act [commonly known as the "Clean Water Act" (CWA)], Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may **result** in any discharge into the navigable waters..." (emphasis added). The term "discharge" is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40 of the Code of Federal Regulations, Section 122.2; and Hawaii Administrative Rules (HAR), Chapter 11-54.


4. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.
5. It is the State's position that all projects must reduce, reuse, and recycle to protect, restore, and sustain water quality and beneficial uses of State waters. Project planning should:
 - a. Treat storm water as a resource to be protected by integrating it into project planning and permitting. Storm water has long been recognized as a source of irrigation that will not deplete potable water resources. What is often overlooked is that storm water recharges ground water supplies and feeds streams and estuaries; to ensure that these water cycles are not disrupted, storm water cannot be relegated as a waste product of impervious surfaces. Any project planning must recognize storm water as an asset that sustains and protects natural ecosystems and traditional beneficial uses of State waters, like

community beautification, beach going, swimming, and fishing. The approaches necessary to do so, including low impact development methods or ecological bio-engineering of drainage ways must be identified in the planning stages to allow designers opportunity to include those approaches up front, prior to seeking zoning, construction, or building permits.

- b. Clearly articulate the State's position on water quality and the beneficial uses of State waters. The plan should include statements regarding the implementation of methods to conserve natural resources (e.g. minimizing potable water for irrigation, gray water re-use options, energy conservation through smart design) and improve water quality.
- c. Consider storm water Best Management Practice (BMP) approaches that minimize the use of potable water for irrigation through storm water storage and reuse, percolate storm water to recharge groundwater to revitalize natural hydrology, and treat storm water which is to be discharged.
- d. Consider the use of green building practices, such as pervious pavement and landscaping with native vegetation, to improve water quality by reducing excessive runoff and the need for excessive fertilization, respectively.
- e. Identify opportunities for retrofitting or bio-engineering existing storm water infrastructure to restore ecological function while maintaining, or even enhancing, hydraulic capacity. Particular consideration should be given to areas prone to flooding, or where the infrastructure is aged and will need to be rehabilitated.

If you have any questions, please visit our website at: <http://health.hawaii.gov/cwb/>, or contact the Engineering Section, CWB, at (808) 586-4309.

Sincerely,


ALEC WONG, P.E., CHIEF
Clean Water Branch

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