



DEPARTMENT OF THE ARMY  
PACIFIC OCEAN DIVISION, U.S. ARMY CORPS OF ENGINEERS  
FORT SHAFTER, HAWAII 96858-5440

REPLY TO  
ATTENTION OF

Programs Directorate

12 OCT 2011

Hideo Kawahara  
A&B Properties, Inc.  
11 Puunene Avenue  
Kahului, Hawaii 96732-1608

Dear Mr. Kawahara:

Pacific Ocean Division received your September 27, 2011, Request for Appeal (RFA) of a Letter of Permission issued by the U. S. Army Corps of Engineers, Honolulu District, dated August 1, 2011 for proposed work on the Maui Industrial Park Offsite Drainage System. At this time we cannot accept your RFA.

In your request for appeal you explain that the jurisdictional determination (JD) upon which the permit is based is incorrect. Coordination by the Regulatory Appeals Review Officer (RO) with the Honolulu District indicates this JD was issued in association with a Nationwide Permit (NWP) to support slip lining under a separate permit application, POH-2011-00026, issued on February 23, 2011. In accordance with Title 33 of the Code of Federal Regulation Section 331.5(a)(1), a RFA for an appealable action must be received within 60 days of the date of the Notification of Administrative Appeals Options and Process/Request for Appeal form (NAP). Since the JD was issued more than 60 days from the date of receipt of your RFA, we cannot accept this reason for appeal.

The RO, in reviewing the remainder of your RFA and speaking with Honolulu District, identified that the Honolulu District was in error when it checked the box for Proffered Permit when issuing the NAP for the Letter of Permission (LOP), POH 2010-00079. The Initial Proffered Permit box should have been checked and the process outlined in that section has to be followed before a RFA can be filed with this office. The process for an Initial Proffered Permit as stated in the NAP is as follows:

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

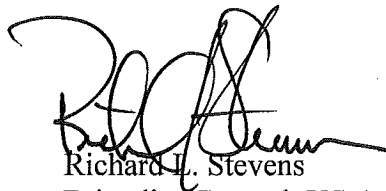
• OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below [Proffered Permit].

Since you have objected to the Initial Proffered Permit, I will forward a copy of your objections to the Honolulu District to reconsider its decision based on the concerns you raised in your RFA. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration. If at that time you would still like to submit a RFA, you may do so within 60 days of its issuance.

Because Pacific Ocean Division does not have a RO on staff, I have delegated Mr. Michael Vissichelli, the RO for the North Atlantic Division, to be the Pacific Ocean Division RO on this action. Mr. Vissichelli has extensive experience in the Regulatory Program and is available to answer any questions you might have on policies and procedures associated with the appeals program.

Mr. Vissichelli can be reached via telephone at 347-370-4663, e-mail [Michael.g.vissichelli@usace.army.mil](mailto:Michael.g.vissichelli@usace.army.mil), or in writing at Fort Hamilton Military Community, 301 General Lee Avenue, Brooklyn, NY, 11252-6700. You may also contact my Regulatory Program Manager, Mr. Thom Lichte, with any questions you might have at 808-438-0397 or 808-222-8461, e-mail [Thom.E.Lichte@usace.army.mil](mailto:Thom.E.Lichte@usace.army.mil).

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard L. Stevens', written over a horizontal line.

Richard L. Stevens  
Brigadier General, US Army  
Commanding