



DEPARTMENT OF THE ARMY
HONOLULU DISTRICT, U.S. ARMY CORPS OF ENGINEERS
FORT SHAFTER, HAWAII 96858-5440

December 23, 2016

SUBJECT: Nationwide Permit Verification for Mala Boat Ramp Maintenance Dredging, Lahaina, Island of Maui, Hawaii, DA File No. POH-2016-00220

Mr. Carty Chang
DLNR Engineering Division
1151 Punchbowl Street #221
Honolulu, Hawaii 96813

Dear Mr. Chang:

The Honolulu District, U.S. Army Corps of Engineers (Corps) has completed review of your request for Department of Army (DA) authorization, dated September 21, 2016, and deemed it complete for the maintenance dredging of a 24,600 square foot area in and around the Mala Boat Ramp located at the Mala Boat Ramp Basin, Lahaina, Island of Maui, Hawaii. TMK (2) 4-5-005. DA file number POH-2016-00220 is assigned this project. Please reference this number in any future correspondence with this office relating to this permit.

This office has verified that your proposed activity complies with the terms and conditions of Nationwide Permit (NWP) 35, *Maintenance Dredging*, and the overall NWP program issued on March 17, 2012. This NWP verification is being issued pursuant to Section 10 of the Rivers and Harbors Act of 1899 (Section 10) and authorizes the following work as described below and as depicted on the enclosed drawings (Enclosure 1):

a. Project Description: Maintenance dredge a 25,600 square foot area in and around the Mala Boat Ramp using barge mounted equipment, such as an excavator or crane-operated clam shell bucket, to remove approximately 2,000 cubic yards of material to a depth of -7 feet Mean Lower Low Water (MLLW), and to place the dredged material in an upland location.

b. Implementation of the project's best management practices (BMPs), including installation of full-depth floating turbidity curtain around the project area during dredging.

For this NWP authorization to be valid, you must ensure that the work is performed in accordance with the project-specific Special Conditions (*Enclosure 2*), *Nationwide Permit General Conditions* and the *Honolulu District Regional Conditions* (*Enclosure 3*), and the *Pac-SLOPES Activity Specific Best Management Practices and General Conditions* (*Enclosure 4*).

This NWP verification is valid until **March 18, 2017** unless this NWP is modified, reissued, or revoked prior to that date. If the authorized work has not commenced or is not under contract by March 18, 2017, then please contact this office at least 60 days prior to expiration of the NWP to request a permit extension. It is incumbent upon you to remain informed of changes to the NWPs. If the Corps modifies, reissues, or revokes any NWP at an earlier date, we will issue a public notice announcing the changes. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 and subsequent enforcement action. This authorization does not relieve you of the responsibility to obtain any other Federal, State, and/or local authorizations required by law.

Finally, General Condition #30 requires a signed certification be submitted to this office upon completion of work. Therefore, please sign, date, and return the enclosed *Compliance Certification* form (Enclosure 5) within seven (7) days of completion of work to CEPOH-RO@usace.army.mil.

Thank you for your cooperation with the Honolulu District Regulatory Program. Should you have any questions related to this provisional permit, please contact Ms. Vera Koskelo of my staff at 808-835-4310 or via e-mail at Vera.B.Koskelo@usace.army.mil.

Sincerely,

ANAMIZU.JOY.N
For P.1258456366

Digitally signed by ANAMIZU.JOY.N
P.1258456366
DN: c=US, o=U.S. Government,
ou=DoD, ou=PKI, ou=USA,
cn=ANAMIZU.JOY.N P.1258456366
Date: 2016.12.23 11:56:41 -10'00'

Tunis W. McElwain
Chief, Regulatory Branch

Enclosures

cc: State of Hawaii DBEDT Office of Planning (John Nakagawa)
USCG (Kensley Raigeluw)
Ms. Elaine Tamaye, Agent (etamaye@eknahawaii.com)

MALA BOAT RAMP BASIN AND ENTRANCE CHANNEL - DREDGE LIMITS AND TEMPORARY STOCKPILE SITE



NOTES:
 (1) Dredge boat ramp basin and entrance channel to enable barge access for offloading dredged material. Estimated dredge quantity 1,000 - 2,000 cubic yards.
 (2) See Sheet C-3 for environmental controls at barge offloading and stockpile site.

DATE	SCALE	DATE	SCALE

DEPARTMENT OF STATE OF HAWAII
 DEPARTMENT OF NATURAL RESOURCES
 ENGINEERING DIVISION
 AT LAYLAHNA SMALL BOAT HARBOR
 LAYLAHNA, MAUI, HAWAII
 DREDGE MATERIAL OFFLOADING SITE
 AND TEMPORARY STOCKPILE AREA

DESIGNED BY: _____
 DRAWN BY: _____
 CHECKED BY: _____
 APPROVED: _____

SUBMITTED: _____
 TITLE: _____
 SCALE: _____
 DRAWING NO.: _____
 SHEET NO.: 3 OF 4

SHEET NO. 3 OF 4 SHEETS
 JOB NO. BAC03708
 Inquiry Date: 1/17/2013 20° 53' 03.67" N
 156° 53' 03.67" W

POH-2016-00220 (Mala Boat Ramp Maintenance Dredging, Lahaina, Island of Maui, Hawaii) Enclosure 2: Special Conditions

1. Incidents where any individuals of Green Sea Turtle (*Chelonia mydas*), Hawksbill Turtle (*Eretmochelys imbricata*), Loggerhead Sea Turtle (*Caretta caretta*), Hawaiian Monk Seal, (*Monachus schauinslandi*) listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of structures in navigable waters of the United States authorized by this NWP shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Honolulu District of the U.S. Army Corps of Engineers at (808) 835-4303. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measurements to ensure that evidence intrinsic to the specimen is preserved.
2. The Applicant and their contractor(s) must not conduct dredging during the week before and week after the full moon during calm sea conditions with incoming and slack tides from May 01 to September 30, inclusive of every year. If the applicant needs to dredge during these timeframes and conditions, they must provide a rationale in writing to the Corps and receive Corps authorization prior to commencing to dredge.
3. The Applicant and their contractor(s) must only conduct dredging activities in unconsolidated sediments and avoid hard substrates, including minimizing the movement of the dredging barge in the project area, anchoring the dredging barge and any associated vessels only in soft substrate devoid of corals, and installing barge lines and tethers in such a way that they do not come in contact with coral colonized bottom or hard substrate. If the applicant needs to conduct the authorized project work in a way that would directly and adversely affect hard substrate, they must provide a rationale in writing to the Corps and receive Corps authorization prior to commencing to dredge.
4. The applicant and their contractor(s) must comply with the project BMP plan, including the installation of full-length, anchored turbidity curtains during construction.
5. The applicant and their contractor(s) must prevent construction materials from dropping to the bottom during demolition and/or construction.
6. The applicant and their contractor(s) must not place construction related tools and equipment on any hard bottom substrate.
7. The applicant must ensure that their heavy equipment operators perform daily pre-work equipment inspections for cleanliness and leaks, other pollutants/contaminants, organic matter, and invasive species prior to use in the marine environment. All heavy equipment operations must be postponed or halted should a

leak be detected and/or pollutants, organic matter or invasive species found, and must not proceed until the leak is repaired and/or equipment cleaned.

8. The applicant and their contractor(s) must prevent litter/trash and sediment from erosion on land, specifically resulting from the project, from entering the water.

9. The applicant and their contractor(s) must conduct real-time turbidity monitoring a minimum of three times per day for every day during construction. At least one of the monitoring episodes must occur before dredging work has commenced for the day. The monitoring must be conducted outside the turbidity curtain at the tip of the revetment where coral colonies are located and within the turbidity-curtained project area. The turbidity measurements must be recorded and reports of the turbidity measurements must be provided to the Corps electronically at the end of every work week. If turbidity levels while work is ongoing exceed the baseline/pre-work levels, the applicant and their contractor(s) must provide an explanation for the exceedance in the weekly report. If no explanation is provided, the applicant and their contractor(s) must proceed as if a breach in the turbidity curtain has occurred (see Special Condition 10).

10. If a breach develops in the turbidity curtains or appears to have occurred due to an unexplained increase in turbidity levels outside the turbidity curtain, the applicant and their contractor(s) must stop work and contact the Corps immediately, referencing the project number POH-2016-00220. The applicant and their contractor(s) must provide a plan to resolve the breach and to address the adverse impacts of the excess sediment on the coral colonies located at the tip of the revetment in the boat basin, which may include but is not limited to fanning off settled sediments on the coral colonies, a post-incident quantitative resource survey to accurately evaluate the extent of unanticipated adverse effects to EFH resources, and plans to replace unanticipated loss. The applicant and their contractors must wait for Corps authorization to restart dredging following a breach or apparent breach of turbidity curtains.

11. The applicant and their contractor(s) must comply with the Pac-SLOPES Activity Specific Best Management Practices and General Conditions (Enclosure 5).

12. You must notify this office via email at Vera.B.Koskelo@usace.army.mil and CEPOH-RO@usace.army.mil of your intent to proceed with the authorized in-water work at least 72-hours in advance of commencement. In your email, reference the project number POH-2016-00220.

Nationwide Permit General Conditions – Activity Specific

Nationwide Permit 35: Maintenance Dredging of Existing Basins. Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is deposited at an area that has no waters of the United States site and proper siltation controls are used (Section 10).

Nationwide Permit General Conditions – Non-Activity Specific

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA- approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest

practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the

requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWP.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal

permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must

include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA- managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the

proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f)) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss

concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to an herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation

bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

- (c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

- (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's

compliance with the terms and conditions of the NWP's and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWP's, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

B. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit,

as provided for in NWP 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10- acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a)

that the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

C. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

D. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and

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e. Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of

an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of

waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource.

Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks.

The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP's, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

Pac-SLOPES Activity Specific BMPs

The following Best Management Practices (BMPs) apply to each action authorized under Pac-SLOPES.

5.1 Collision with vessels:

1. Vessel operators shall alter course to remain at least 100 yards from whales, and at least 50 yards from other marine mammals and sea turtles.
2. Vessel operators shall reduce vessel speed to 10 knots or less when piloting vessels in the proximity of marine mammals, and to 5 knots or less when piloting vessels in areas of known or suspected turtle activity.
3. If approached by a marine mammal or turtle, the vessel operator shall put the engine in neutral and allow the animal to pass.
4. Vessel operators shall not encircle or trap marine mammals or sea turtles between multiple vessels or between vessels and the shore.

5.2. Direct physical impact:

1. Before any equipment, anchor(s), or material enters the water, a responsible party, i.e., permittee/site manager/project supervisor, shall verify that no ESA-listed species are in the area where the equipment, anchor(s), or materials are expected to contact the substrate. If practicable, the use of divers to visually confirm that the area is clear is preferred.
2. Equipment operators shall employ "soft starts" when initiating work that directly impacts the bottom. Buckets and other equipment shall be sent to the bottom in a slow and controlled manner for the first several cycles before achieving full operational impact strength or tempo.
3. All objects lowered to the bottom shall be lowered in a controlled manner. This can be achieved by the use of buoyancy controls such as lift bags, or the use of cranes, winches, or other equipment that affect positive control over the rate of descent.
4. Equipment, anchor(s), or materials shall not be deployed in areas containing live corals, sea grass beds, or other significant resources.

5.3 Entanglement:

1. Mooring systems shall employ the minimum line length necessary to account for expected fluctuations in water depth due to tides and waves.
2. Mooring systems shall be designed to keep the line as tight as possible, with the intent to eliminate the potential for loops to form.
3. Mooring lines shall consist of a single line. No additional lines or material capable of entangling marine life may be attached to the mooring line or to any other part of the deployed system.

4. Mooring systems shall be designed to keep the gear off the bottom, by use of a mid-line float when appropriate, with the intent to eliminate scouring of corals or entanglement of the line on the substrate.
5. Any permanent or long-term deployments shall include an inspection and maintenance program to reduce the likelihood of failures that may result in loose mooring lines lying on the substrate or hanging below a drifting buoy.
6. Mooring systems, including those used for temporary markers, scientific sensor buoys, or vessel moorings, shall be completely removed from the marine environment immediately at the completion of the authorized work or the end of the mooring's service life. The only exceptions to this rule shall be mooring anchors such as eyebolts that are epoxied into the substrate and which pose little or no risk to marine life.

5.5 Exposure to elevated noise levels:

1. For any equipment used in undertaking the authorized work, the 160 dB and 120 dB isopleths shall not exceed the 50 yard shut-down range for impulsive and continuous sound sources, respectively.
2. Maintenance dredging, in-water excavation, movement of large armor stones, and benthic core sampling shall not be undertaken if any ESA-listed species is within 50 yards of the authorized work, and those operations shall immediately shut-down if an ESA-listed species enters within 50 yards of the authorized work.

Pac-SLOPES General Conditions

GENERAL CONDITIONS: The Corps will apply the following set of general conditions to each action authorized under Pac-SLOPES. Additionally, specific BMPs described in section 5 under the specific activity types will be required as applicable.

1. Each applicable condition, BMP, and conservation measure will be included as an enforceable part of the permit document.
2. The Corps will retain the right of reasonable access to projects authorized under Pac-SLOPES to monitor the compliance with and effectiveness of permit conditions.
3. Each permit will contain the requirement that the permittee document and report to the Corps and NMFS, all interactions with listed species, including the disposition of any listed species that are injured or killed. Should an ESA-listed species be adversely affected, all work must stop pending reinitiation of consultation between the Corps and NMFS PRD for that action.
4. Constant vigilance shall be kept for the presence of ESA-listed marine species during all aspects of a proposed action
 - a) A responsible party, i.e., permittee/site manager/project supervisor, shall designate a competent observer to survey work sites and the areas adjacent to the proposed action for ESA-listed marine species;
 - b) Surveys shall be made prior to the start of work each day, including prior to resumption of work following any break of more than one half hour. Periodic additional surveys throughout the work day are strongly recommended;
 - c) All in-water work will be postponed or halted when ESA-listed marine species are within 50 yards of the proposed work, and will only begin/resume after the animals have voluntarily departed the area, with the following exception: if ESA-listed marine species are noticed within 50 yards after work has already begun, that work may continue only if, in the best judgment of the responsible party, the activity is unlikely disturb or harm the animal(s), for example, divers performing surveys or underwater work (excluding the use of toxic chemicals) is likely safe, the use of heavy machinery is not; and
 - d) No one shall attempt to feed, touch, ride, or otherwise intentionally interact with any protected species.
5. Project footprints must be limited to the minimum area necessary to complete the project.
6. The project area must be flagged to identify sensitive resource areas, such as seagrass beds, listed terrestrial plants, and turtle nests.

7. Work located waterward of the Mean Higher High Tide Line of a navigable water or waterward of the upward limits of adjacent wetlands must be timed to minimize effects on ESA-listed species and their habitats.

8. Project operations must cease under unusual conditions, such as large tidal events and high surf conditions, except for efforts to avoid or minimize resource damage.

9. A stormwater management plan, commensurate to the size of the project, must be prepared and carried out for any project that will produce any new impervious surface or a land cover conversion that will slow the entry of water into the soil to ensure that effects to water quality and hydrology are minimized.

10. A pollution and erosion control plan for the project site and adjacent areas must be prepared and carried out. As a minimum, this plan shall include:

a.) Proper installation and maintenance of silt fences, saucages, equipment diapers, and/or drippans;

b.) A contingency plan to control and clean spilled petroleum products and other toxic materials.

c.) Appropriate materials to contain and clean potential spills will be stored at the work site, and be readily available;

d.) All project-related materials and equipment placed in the water will be free of pollutants;

e.) Daily pre-work inspections of heavy equipment for cleanliness and leaks, with all heavy equipment operations postponed or halted until leaks are repaired and equipment is cleaned;

f.) Fueling of project-related vehicles and equipment will take place at least 50 feet away from the water, preferably over an impervious surface;

g.) A plan will be developed to prevent trash and debris from entering the marine environment during the project; and

h.) All construction discharge water (e.g., concrete washout, pumping for work area isolation, vehicle wash water, drilling fluids) must be treated before discharge.

11. Erosion controls must be properly installed before any alteration of the area may take place.

12. Temporary access roads and drilling pads must avoid steep slopes, where grade, soil types, or other features suggest a likelihood of excessive erosion or failure; existing access routes must be utilized or improved whenever possible, in lieu of construction of new access routes.

13. All disturbed areas must be immediately stabilized following cessation of activities for any break in work longer than 4 days.

14. Drilling and sampling are restricted to uncontaminated areas, and any associated waste or spoils must be completely isolated and disposed of in an upland location.

15. Authorized work must comply with all applicable NWP General and Regional Conditions.

Pac-SLOPES SPECIAL CONDITIONS

In addition to the general conditions listed the following special conditions are required under Pac-SLOPES for each activity:

2.2.3 Marina or Harbor Repair & Improvement

- 1) Repair and replacement of over- and in-water structures (such as piers, docks, and launch ramps) under Pac-SLOPES is expressly limited to their existing footprints.
- 2) No piling installation or piling replacement will be authorized;
- 3) Repair and removal work will be accomplished in a manner that minimizes the potential spread of invasive species that may reside on the pilings; and
- 4) Removed materials must be disposed of at an approved upland disposal site.

2.2.4 Piling Repair & Removal

1. Repair and removal work will be accomplished in a manner that minimizes the potential spread of invasive species that may reside on the pilings;
2. Removed pilings must be disposed of at an approved upland disposal site; and
3. Installation of new or replacement pilings of any type is not authorized

2.2.5 Buoy Installation & Repair

1. Anchoring locations and moorings must be designed to avoid, to the greatest extent practicable, impacts to live corals and other benthic organisms.
2. The following buoy deployments are expressly excluded from coverage under Pac-SLOPES:
 - a.) Deployment of mooring buoys in or adjacent to seagrass beds;
 - b.) Any new deployments or installations within the Hawaiian Islands Humpback Whale National Marine Sanctuary; and
 - c.) With the exception of certain wave and current monitoring systems that operate in frequency bands well outside the hearing ranges of ESA-listed marine life, the deployment of moored active acoustic devices.

2.2.6 Maintenance Dredging

1. With the exception of the actual dredging apparatus (e.g. clamshell buckets, or the scoop and articulated arm of a backhoe, etc.), heavy equipment will be operated from above and out of the water;
2. The portions of the equipment that enter the water will be clean and free of pollutants;
3. Appropriate silt containment devices must be used and properly installed to avoid degradation of adjacent coral reefs, and aquatic vegetation; and
4. Dredged material must be deposited at upland sites, or at EPA designated ocean disposal sites provided sediment standards are met.
5. Dredging of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), and wetlands, is not authorized;
6. Use of hydraulic dredging (aka vacuum, suction, hopper) is not authorized;
7. Any form of blasting is not authorized; and

8. Any dredging for the purpose of connecting canals or other artificial waterways to navigable waters is not authorized.

2.2.7 Minor Discharges and Excavations

NWP # 18 authorizes minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

1. The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
2. The discharge will not cause the loss of more than 1/10 acre of waters of the United States; and
3. The discharge is not placed for the purpose of a stream diversion.

NWP # 19 authorizes minor dredging below OHW or the high tide line from navigable waters of the United States, provided the activity meets all of the following criteria:

1. The dredging involves no more than 25 cubic yards below the plane of OHW or the mean high water mark;
2. The dredging will result in no degradation of coral reefs, submerged aquatic vegetation, or wetlands; and
3. The dredging involves no connection of canals or other artificial waterways to navigable waters.

Additionally, the following conditions apply to minor discharges and excavations (dredging) covered under Pac-SLOPES:

1. The dredged or discharged material will be free of contamination; and
2. The site of excavation or discharge will contain no known forage or resting habitat for ESA-listed marine species.

2.2.8 Utility Line Installation & Repair

1. Utility line placement location and method must be designed to avoid to the greatest extent practicable, impacts to live corals, submerged aquatic or marine vegetation and other benthic organisms, and wetlands.
2. The following actions are expressly excluded from coverage under Pac-SLOPES:
 - a) New installations within the Hawaiian Islands Humpback Whale National Marine Sanctuary;
 - b) New installations in or adjacent to seagrass beds;
 - c) Installation of new or expanded outfall and/or intake structures;
 - d) Installation, removal, or abandonment of any pipeline used to convey toxic substances (e.g. crude oil or its derivatives, known toxic chemicals, etc.);
 - e) Any project that involves the installation of new power lines or other conveyances that may radiate or otherwise exude substances or energies into the marine environment;
 - f) Any projects that involve in-water trenching in the marine environment or in the lower reaches of freshwater streams and rivers where ESA-listed marine species may occur, or where downstream impacts of the trenching may impact those species or their habitats;
 - g) Any projects that require new hydrographic surveys that employ acoustic devices such as sonars and seismic profilers.

2.2.9 Outfall Structure Repair & Replacement

1. The following actions are expressly excluded from coverage under Pac-SLOPES:
 - a.) Installation of new or expanded outfall structures; and
 - b.) Relocation of existing outfall structures.

2.2.10 Bank Stabilization

1. No material will be discharged into special aquatic sites;
2. An activity will involve no more than 500 feet in total length along the bank;
3. The maximum amount of material placed shall not exceed the minimum needed for erosion protection;
4. No more than one cubic yard, per running foot, of new fill will be placed below ordinary high water (OHW) or the high tide line; and
5. All material will be placed in a manner that will avoid erosion by normal or expected high flows.

2.2.12 Road Construction, Repair, and Improvement

1. Maximum road width shall be limited to the minimum width necessary;
2. Roads shall be designed and constructed in a manner that minimizes adverse impacts on surface and marine waters due to runoff and erosion;
3. Roads shall be constructed as near as possible to pre-construction contours and elevations; and
4. Roads must be bridged or culverted in a manner that maintains surface flows with minimal modification to flow direction or velocity.

2.2.13 Bridge Repair & Replacement

1. Temporary fills must consist of stable materials, and be placed in a manner, that will not be eroded by expected high flows;
2. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations within 30 days of project completion; and
3. Installation of pilings, including steel sheetpile cofferdams, is expressly excluded from coverage under Pac-SLOPES, as is any in-water drilling.



Honolulu District
US Army Corps of Engineers

DEPARTMENT OF THE ARMY PERMIT
COMPLIANCE CERTIFICATION

File Number: POH-2016-00220

Project Title: Mala Boat Ramp Maintenance Dredging, Lahaina, Island of Maui, Hawaii

PERMIT TYPE: Final Nationwide Permit #35

NAME OF PERMITTEE: Mr. Carty Chang

DATE OF ISSUANCE: December 22, 2016

DATE OF EXPIRATION: March 18, 2017

The permittee must, upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address or via email within seven (7) days of completion of work:

Honolulu District US Army Corps of Engineers
Regulatory Office
Building 230, CEPOH-RO
Fort Shafter, HI 96858-5440
Email: CEPOH-RO@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of this permit, you are subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

Secchi Disk Monitoring Procedures for Mala Boat Ramp Maintenance Dredging

Background Information

Appropriate water quality is fundamentally important for fish, corals and aquatic plants, and muddy water may have adverse impacts on them. Turbidity is cloudiness caused by suspended or dissolved material.

Standardized measurement of water clarity helps monitor changes and communicate these changes to others. A Secchi disk (Figure 1) is a simple, standard tool used to measure water clarity. It is an 8-inch (20 centimeter) diameter, black and white disk attached to a dowel rod, PVC pipe, rope or chain. Inch or centimeter intervals are marked on the rod, pipe, rope or chain with permanent ink, paint or clamps. Secchi disk measurements tend to be easier and quicker using a rod or pipe versus a rope or chain, except when water is very clear. Very clear water may require an excessively long rod or pipe.

To obtain a measurement, the disk is lowered into the water while observing the depth at which it disappears. It is lowered some more and then raised while observing the depth at which it reappears. The Secchi disk measurement is the average of the two observations.

The date, Secchi disk measurement and source of turbidity should be recorded each time water clarity is measured. Sources of turbidity are usually sediment (brownish muddy color), phytoplankton (greenish color), humic stain (tea color from decaying leaves or plants) or some combination of these. Secchi disk measurements are most accurate when taken on relatively calm, sunny days during the middle of the day from a dock or some type of floating device such as a boat or kayak.

Secchi disk measurements provide objective means to evaluate water clarity versus subjective statements such as "It is clear," or "It is muddy." One person's clear water may be another person's muddy water. Regularly recording Secchi disk measurements indicate water clarity trends before and after management. They help monitor management success and can be useful for determining whether and when any additional treatments are necessary.

When trying to monitor water turbidity changes, Secchi disk measurements should begin prior to in-water construction activities.

Secchi Disk Monitoring Procedures

1. Contractor shall perform a minimum of five (5) daily samplings at the tip of the breakwater prior to the start of in-water work.
2. Monitoring shall be performed three (3) times per day by the same person with 8-inch (20 centimeter) diameter, black and white Secchi disk attached to a dowel rod with inch and feet intervals are marked on the rod with permanent ink or paint. One reading shall be taken at 9 A.M., the second reading at 12:00 PM and the third reading at 3:00 PM, each day.
3. The readings shall be recorded on the BMPP Inspection and Maintenance Report Form, along with the name of the sampler, date, time, weather information, tide and Kahoma Drainage Channel conditions observation. The form shall be submitted to the Project Engineer within 24 hours of the last sampling event.
4. The two (2) sampling locations will be determined by the Project Engineer, in general one sample shall be taken within the turbidity curtain, and one near the tip of the breakwater.
5. To obtain a measurement, the disk is lowered into the water while observing the depth at which it disappears. It is lowered some more and then raised while observing the depth at which it reappears. The Secchi disk measurement is the average of the two observations.

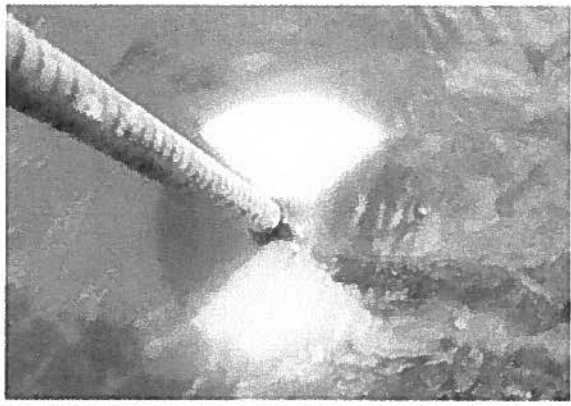


Figure 1. A Secchi disk in use

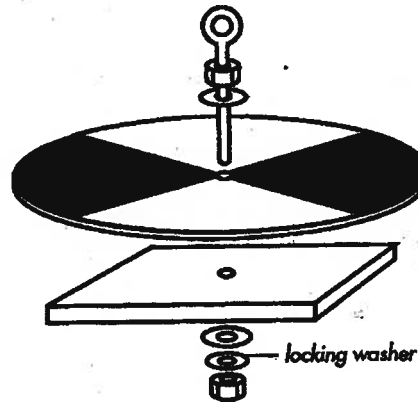


Figure 2. Secchi disk assembly

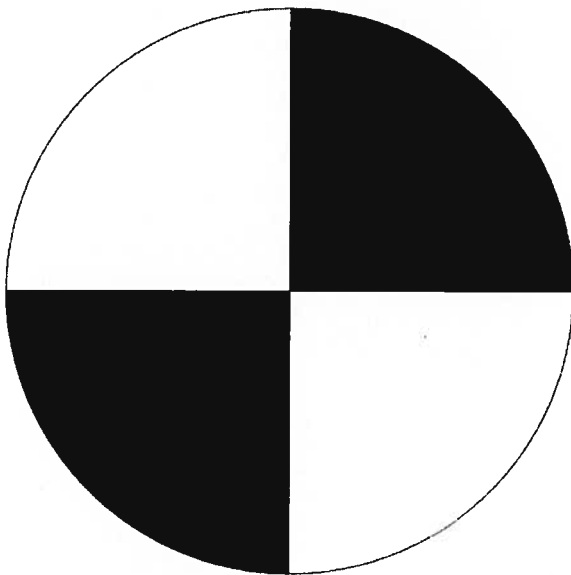


Figure 3: Secchi disk Construction:

20 cm diameter circle of acrylic disk $\frac{3}{8}$ " or $\frac{1}{2}$ " in thickness (aluminum or steel may be substituted with 15 cm circle or square of $\frac{1}{8}$ " galvanized steel (used to weight the disk).

Divide the 20 cm acrylic disk into quadrants using masking tape. Spray paint alternating quadrants black and white, so that you have a disk that is similar to that pictured below. Let the paint dry. Apply a second coat of paint if necessary.

Assemble disks with eyebolt ($\frac{5}{16}$ " in diameter). Use flat washers between disk and nut, and between steel plate and locking washer. Use $\frac{5}{16}$ " nuts at the top of the eyebolt and to bolt the steel plate on the underside of the acrylic disk.

Attach Secchi disk to a dowel rod or pipe with inch and feet intervals marked on the rod/pipe with permanent ink or paint.