



June 12, 2009

Mr. George P. Young, P.E.
Chief
Regulatory Branch
U.S. Army Engineer District, Honolulu
Fort Shafter, Hawaii 96858-5440

RE: USACE file # POH-2006-531 / Final Draft Mitigation Plan – Maui Medical Plaza at Kanaha

Dear Chief Young;

The Draft Compensatory Mitigation Plan for the Maui Medical Plaza at Kanahā (MMPK) received responses from five state and federal agencies (OOCL, DOFAW, USFWS, EPA and US-ACE). There were no public comments.

The Draft Plan discussed both on-site and off-site mitigation action. Several agencies comments applied to on-site mitigation. The US-ACE and its partner agencies, as well as DOFAW supported a shift to off-site mitigation only. The Final Draft applies only to off-site mitigation. A description of on-site design elements that off-set the .94 acre jurisdictional wetland loss and enhance protection for endangered species can be found in Appendix C for information purposes only, but, are no longer part of the compensatory mitigation process.

The biggest concern voiced by the federal agencies was a need for a greater ratio of replacement value, particularly in regards to wetland gain and water retention function. The USFWS, in particular, suggested a removal of historic fill to address a net gain in wetland acreage. This has been addressed by an increase in the acreage of invasive species removal within the pond from 1 acre to 5 acres. The additional 4 acres are a dense kiawe dominated area that has expanded into and dewatered a portion of the wetlands. It is a poor quality section of the pond, both in wetland function and as waterbird habitat.

The original depth of the wetlands is unknown. As an important fishpond of historical record, the depth was likely considerably more than its present state. Extensive infilling and dewatering was done by the military. Section 3.2.4 and Section 5.4 discuss the needs of endangered species found within the wetland and the pros and cons of fill removal and the horizontal inundation that will occur as invasive vegetation is removed from this portion of the pond. The USFWS *Draft Revised Recovery Plan for Hawaiian Waterbirds: Second Draft of Second Revision* (May 2005) goals for this Core Wetland

clearly supports shallow water habitat development. Wetland rehabilitation for drainage capture has typically produced poor quality waterbird habitat in Maui. This can be partially attributed to the depth of retention basins.

Additionally, the fill and remnant infrastructure features found within *Kanahā* are the direct result of clearly documented historical military and US-ACE action in the pond beginning in WWI and ending only with establishment of the expanded sanctuary. Removal of fill would be a remediation under EPA jurisdiction. Since 1980, and the landmark Kaho'olawe case, the military has been challenged to do remedial actions of abandoned military sites and damaged natural areas in Hawai'i as a result of military actions. The owner of Lot 8, a private citizen, should not be held responsible for cleanup of these conditions, nor the tremendous liability, costs and permitting burden that would entail with the DOH and EPA.

The Corps also noted that non-native species do not necessarily adversely impact the environment as they may provide important function. Non-native species in Hawai'i are often highly aggressive, particularly in wetlands. Left unmanaged, the kiawe, palms and grasses would recolonize and dry up much of the pond and create impenetrable thickets unusable by the waterbirds and shorebirds that currently reside or use the sanctuary. The nature of the historic environment that would have been found at *Kanahā* is described in more detail in Section 3.2.3.

The US-ACE requested a more specific planting plan. This information is located in Section 5.8; a planting map has been added for clarification. The plan, however, discourages use of a landscape architect approach, as this is a natural habitat rehabilitation project which requires a more flexible planting practice. A diagram has been included to indicate the type of planting pattern that will be used in this mitigation.

The US-ACE and EPA requested more specific performance standard metrics. MMPK appreciates the helpful suggestions of the EPA towards improving these standards and measures of success. The revised standards and subsequent monitoring methods are found in Section 6 and 8.

Although the project is now focused solely on off-site mitigation, the recommendations expressed by USFWS regarding endangered species impacts for the original on-site work have been retained both in the pond and voluntarily as BMPs for construction work.

We do not agree with the USFWS that the development parcel provides important functions as an undeveloped buffer to minimize highway disturbance. TMK (2) 3--7-011:028 is a very small fraction of the entire wetland boundary because of its corner location and is not contiguous with the wetland; a second industrial parcel runs along the fence line. The west and makai sides of the sanctuary all the way to the airport are bounded by highway with a setback of under 25ft. This is most obvious at the observation platform where waterbirds are particularly active and present on a regular basis.

We also do not agree that the mitigation plan should include a fish survey to identify potential for restoration of native aquatic fish, crustaceans and mollusks. The wetland is a large single unit dominated by non-native species (Section 3.2.4). Aquatic fauna will recruit naturally into newly rehabilitated areas. The recommendation that we assess the potential for fish recruitment through the ditches and streams that once conveyed water to the fishponds is unrealistic. These water bodies are severely interrupted in all sectors of the watershed and channelized in their lower portions through Kahului. Waters that reach the A&B canal are polluted and do not enter the pond.

We appreciate the clarifications and corrections provided by DLNR-DOFAW and the wonderful assistance of the Maui staff to work with us on this effort. We will work closely with the Maui Office on an HCP should one be necessary, and on whatever mechanism may be required for approvals in the agency. We are pleased to be able to collaborate with DOFAW on improving the quality of the sanctuary.

Finally, we would ask that the US-ACE consider their response to the Makena State Park Coastal Wetland project on Maui (2005) dated March 29, 2004 in which the Corps ruled that no permit was necessary for similar invasive species removal work.

The willingness of each of the federal and state agencies to work with us as we developed and finalized this mitigation plan has made the plan a better document and produced what we hope is a high quality mitigation effort.

Sincerely yours,

Robert T. McDaniel III
Development Partner
Maui Medical Plaza at Kanaha