



US Army Corps  
of Engineers  
Honolulu District

# Public Notice of Application for Permit

Guam Regulatory Field Office (1145b)  
PSC 455, Box 188  
FPO AP 96540-1088

PUBLIC NOTICE DATE: February 18, 2009

EXPIRATION DATE: March 20, 2009

PERMIT FILE NUMBER: POH-2006-56

Interested parties are hereby notified that an application has been received for a Department of the Army permit for certain work in waters of the United States as described below and shown on the attached plan.

APPLICANT: Commonwealth of the Northern Marianas Islands Department of Public Works

LOCATION: 15° 13' 22.83" N - 145° 43' 52.28" E

WORK: As a result of an Administrative Order by USEPA, the Puerto Rico Dump is to be closed. Closure would require the discharge of 47,790 cubic yards of clean fill material from an existing upland quarry into 2.4 acres of marine habitat environments (mangrove shoreline wetland, inter-tidal mudflats, *Enhalus* seagrass meadows, benthic substrate comprised of dump debris, and sandy bottom substrate with sparse coral and benthic algae growth). The project would be 1,845 linear feet in length. The proposed fill is associated with construction of a rock rip-rap shoreline protection structure along the two sides of the dump bordering Saipan Lagoon. The shoreline protection structure will protect the integrity of the former dump site and minimize erosion into adjacent lagoon waters during storm events.

PURPOSE: This project is necessary in order to comply with the Administrative Order on Consent between the U. S. Environmental Protection Agency and the CNMI Government dated November 1995.

MITIGATION: The applicant is required to provide mitigation in accordance with the Mitigation Guidance as described in the Special Public Notice, dated 14 February 2005. The guidelines will supplement, where necessary, existing national mitigation policy and procedures to adapt them for specific application to the Honolulu District area of responsibility and operation. The Honolulu District finds that the policy constructs established in the 1990 Mitigation MOA remain appropriate for use in Hawaii and the Pacific Ocean Region, and uses Regulatory Guidance Letter (RGL) 02-2 as guidance for evaluation of compensatory mitigation for all aquatic sites, including coral reefs, in its geographic area of responsibility. Mitigation feasibility or practicability will be based on the Section 404(b)(1)

Guidelines analysis of logistics, technology, and construction costs. Mitigation success criteria will be based on performance standards contained in the RGL 02-2. Although the national compensatory mitigation guidance was developed principally for projects involving wetlands, the Honolulu District finds that those policies and guidance are broad and flexible enough to apply to all waters of the U.S., including special aquatic sites identified in 40 CFR 230. Those guidelines and policies require that the applicant demonstrate that adverse impacts to marine resources cannot be avoided, have been minimized to the maximum extent practicable, and if the adverse impacts cannot be avoided they will be replaced upon completion of the proposed mitigation. In accordance with this guidance and these policies the applicant has proposed the following mitigation efforts to reduce impacts to the aquatic environment:

Though coral growth occurs within the footprint of the proposed rock rip-rap shoreline protection structure along the northwest side, it is growing on H-pilings that have been abandoned since the end of World War II and on bottom substrate that is an extension of the landfill. The argument is being presented that the marine coral habitat found in the Area of Potential Effects does not meet the definition of a coral reef as defined at 40 CFR 230.44 as there are no "growing portions of the reef" in this particular case. Therefore, compensatory mitigation should not be required for the loss of coral communities on artificial substrates.

To the greatest possible extent, mangrove seedlings and saplings located within the Area of Potential Effects (approximately 4,200 ft<sup>2</sup>) are proposed to be transplanted outside the impact area along the same shoreline where mangrove densities are minimal and within the same shallow water embayment. Close coordination with the National Park Service (NPS) will be required for implementation of this mitigation measure as they have management authority over the transplantation areas under consideration.

The Puerto Rico mudflat is the only area in Saipan where physical characteristics have allowed for the formation of a mudflat-type habitat. All adjacent upland property within this embayment that could be considered for conversion to mudflat habitat is under the management authority of American Memorial Park (NPS). The NPS can not allow conversion of upland into submerged lands (i.e., mud flats). Therefore, in-kind mitigation, whether on-site or off-site, is not possible under these circumstances.

Those *Enhalus* seagrasses found within the Area of Potential Effects would be transplanted just outside the impact area, in an area of similar water depth and bottom substrate. The transplanted seagrasses would be planted in an area where they could be distinguished from the naturally occurring seagrasses for monitoring purposes.

Those sandy bottom substrate areas that would be filled cannot be mitigated on site as the NPS can not allow conversion of upland into submerged lands. Therefore, in-kind and on-site mitigation is not possible under these circumstances. However, off-site mitigation may be appropriate if an area can be identified for conversion to submerged lands. This process is currently on-going.

**WATER QUALITY CERTIFICATION:** A permit for the described work will not be issued until a certification or waiver of certification as required under Section 401 of the Clean Water Act (Public Law 95-217), has been received from the Division of Environmental Quality, Commonwealth of the Northern Mariana Islands.

**COASTAL ZONE MANAGEMENT ACT CERTIFICATION:** Section 307(c)(3) of the Coastal Zone, Management Act of 1972, as amended by 16 U.S.C. 1456(c)(3), requires the applicant to certify that the described activity affecting land or water uses in the Coastal Zone complies with the CNMI Coastal Zone Management Program. A permit will not be issued until the Coastal Resources Management

Office, Commonwealth of the Northern Mariana Islands has concurred with the applicant's certification.

**PUBLIC HEARING:** Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state clearly and concisely, the reasons and rationale for holding a public hearing.

**CULTURAL RESOURCES:** The latest published version of the National Register of Historic Places (NRHP) has been consulted for the presence or absence of historic properties, including those listed in or eligible for inclusion in the National Register of Historic Places. There is a recommended eligible property within the worksite that has been designated Puerto Rico Dump. Because it has been determined to be within the project area, coordination with the State Historic Preservation Officer (SHPO) Division of Historic Preservation, CNMI Department of Community and Cultural Affairs has resulted in several recommendations that must be followed in order to comply with Section 106 review process. These recommendations are referred to in the SHPO letter dated January 20, 2009 and listed in the SHPO letter dated July 9, 2007. Consultation of the SHPO and information provided by the lead federal agency's agent constitutes the extent of cultural resource investigations by the District Engineer at this time, and he is otherwise unaware of the presence of such resources. This application is being coordinated with SHPO. Any comments SHPO may have concerning presently unknown archeological or historic data that may be lost or destroyed by work under the requested permit will be considered in our final assessment of the described work.

**ENDANGERED SPECIES:** The project area is within the known or historic range of the Green Turtle (*Chelonia mydas*), the Hawksbill Turtle (*Eretmochelys imbricata*), and the Nightingale Reed-Warbler (*Acrocephalus luscini*a). The lead federal agency, the Department of the Interior, Office of Insular Affairs, has initiated Section 7 consultations with the National Marine Fisheries Service for the sea turtles and with the U. S. Fish and Wildlife Service for the Nightingale Reed-Warbler.

Preliminarily, it appears the described activity may affect, but is not likely to adversely affect, threatened or endangered species, or their critical habitat designated as endangered or threatened, under the Endangered Species Act of 1973 (87 Stat. 844). This application is being coordinated with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Any comments they may have concerning endangered or threatened wildlife or plants or their critical habitat will be considered in our final assessment of the described work.

**ESSENTIAL FISH HABITAT:** The proposed work is being evaluated for possible effects to Essential Fish Habitat (EFH) pursuant to the Magnuson Stevens Fishery Conservation and Management Act of 1996 (MSFCMA), 16 U.S.C. *et seq.*, and associated federal regulations found at 50 CFR 600 Subpart K. The Honolulu District includes areas of EFH as Fishery Management Plans. We have reviewed the January 20, 1999, Western Pacific Fishery Management Council's Environmental Assessment to locate EFH area as identified by the National Marine Fisheries Service (NMFS). We have determined that the described activity within the proposed area will not adversely affect EFH, including anadromous fish and federally managed fishery resources.

**SPECIAL AREA DESIGNATION:** None.

**EVALUATION:** The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts that the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so, the



conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors that may be relevant to the proposal must be considered including the cumulative effects thereof. Among those considerations are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria (see Sections 320.2 and 320.3), a permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Comments on the described work, with the reference number, should reach this office no later than the expiration date of this Public Notice to become part of the record and be considered in the decision. Please contact Mr. Francis M. Dayton at (671) 339-2108 if further information is desired concerning this notice.

**AUTHORITY:** This permit will be issued or denied under the following authorities:

(X) Perform work in or affecting navigable waters of the United States – Section 10 Rivers and Harbors Act 1899 (33 U.S.C. 403).

(X) Discharge dredged or fill material into waters of the United States – Section 404 Clean Water Act (33 U.S.C. 1344). The Corps' public interest review will consider the guidelines set forth under Section 404(b) of the Clean Water Act (40 CFR 230).

() Transport dredged material for the purpose of dumping it into ocean waters - Section 103 Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413). The Corps' public interest review will consider the criteria established under authority of Section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (40 CFR Parts 220 to 229), as appropriate.

District Engineer  
U.S. Army, Corps of Engineers

Attachments



(modified from 1999 USGS Topographical map of Saipan)

**Micronesian Environmental Services**

Date February 2009

Figure No.

1 of 4

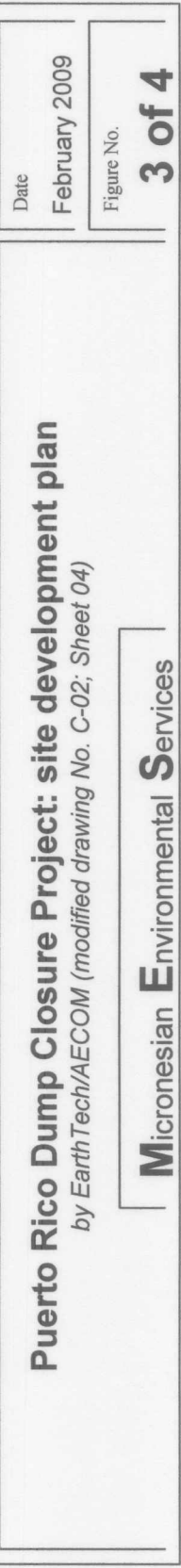


**Aerial photograph circa 1950 of Puerto Rico Dump vicinity**  
(photo marked with MIA 2 44)

**Micronesian Environmental Services**

Date  
February 2009

Figure No.  
**2 of 4**





2 TYPICAL ROAD SECTION WITH RIP-RAP  $1/4" = 1'-0"$   
C-02/03 | C-08

4  
C-02/03 | C-06 1/4" = 1'-0"  
TYPICAL SIDESLOPE CAP DETAIL & BENCH SECTION

4  
C-02/03 | C-06 1/4" = 1'-0"  
TYPICAL SIDESLOPE CAP DETAIL & BENCH SECTION

- ## NOTES
1. 1" MINIMUM SAND BUFFER LAYER TO BE MAINTAINED ON TOP OF GEOTECHNETICS AND UNDER GEOTECHNETICS (ADJACENT TO RIP-RAP).
  2. 1" MINIMUM COVER OVER UNBURIED SHAFT. COARSEST VEGE-TATIVE COVER MAY SHALL BE MAINTAINED OVER COARSEST VEGE-TATIVE COVER.
  3. TERRACE SPECIFICATIONS: PREPARE GROUND SURFACE PRIOR TO PLACEMENT OF FILL PER DISTURBANCE.
  4. RIP-RAP/ COBBLE SHALL BE PLACED AT LEAST 2'-1/2' FEET IN THE SMALLEST DIMENSION. RIP-RAP SHALL BE COMPOSED OF COMPOSITE LIMESTONE OR GRANITE ROCK.
  5. RIP-RAP MAY BE PLACED SIMULTANEOUSLY WITH COBBLE FILL AND SAND FILL.
  6. SLOPE ANGLE SHALL BE NO STEEPER THAN A RATIO OF 3:1, 3" HORIZONTAL TO 1" VERTICAL, EXCEPT IN AREAS OF RIP-RAP (2:1).

## NOTES

**Puerto Rico Dump Closure Project: typical details for rip-rap shoreline protection structure**  
*by Earth Tech/AECOM (modified drawing No. C-08; Sheet 10)*

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Figure No.  
**4 of 4**

Date: \_\_\_\_\_

February 2009

Figure No.

4 of 4