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Janice E. Castro
Director, DCRM

December 17, 2020

Ref No: PLN21-002

Linda Speerstra
Chief, Regulatory Office
U.S. Department of the Army
Honolulu District, U.S. Army Corps of Engineers
Fort Shafter, HI 96858-5440

Re: Commonwealth of the Northern Mariana Islands (CNMI) Coastal Zone Management (CZM) Federal Consistency Determinations (CDs) for 2020 Nationwide Permits (NWP) Reissuance

Dear Ms. Speerstra,

The CNMI Division of Coastal Resources Management (DCRM) has reviewed the U.S. Army Corps of Engineers (USACE) proposed reissuance of the 52 NWP's and five new NWP's, as well as the general and regional conditions applicable for the Honolulu District (POH). As the CNMI's coastal zone includes all land and waters extending seaward up to three nautical miles, 15 C.F.R. § 923.31(a)(7), proposed activities and changes authorized by these NWP's and their conditions have the potential to have significant effects throughout the entire CNMI jurisdiction. DCRM received the USACE CD on September 23, 2020 and in accordance with 15 C.F.R. § 930.36(b) was given a 90-day period for Coastal Zone Management Act (CZMA) federal consistency review through Section 307 of the CZMA.

Each of the reissued and new NWP's were analyzed in context with the applicable general and regional conditions set forth by USACE in the Proposal to Reissue and Modify Nationwide Permits, 85 Fed. Reg. 57,298 (Sept. 15, 2020); the POH request for comments on the NWP issuance and POH regional conditions, and subsequent correspondence with USACE. DCRM regulations require issuance of an Area of Particular Concern (APC) Permit or Major Siting Permit for many of the activities covered by NWP's when applicable, however this does not preclude compliance with 15 CFR 930 for direct federal activities. DCRM is hereby issuing concurrences with conditions for certain NWP's, and denying concurrences for certain other NWP's in response to the USACE CD that the proposed NWP's are consistent to the maximum extent practicable with enforceable policies of the state CZMA programs, 85 Fed. Reg. at 57,363-64, which includes the federally approved CNMI CZM Program.

CONCURRENCES ISSUED WITH CONDITIONS

The following list of NWP's are conditionally issued federal consistency concurrences. If a proposed activity authorized by a NWP falls under any of the CZM conditions applicable to the

NWP listed below, individual CZM review or verification is required for this activity. These listed NWPS are:

NWP 3. Maintenance
NWP 5. Scientific Measurement Devices
NWP 6. Survey Activities
NWP 9. Structures in Fleeting and Anchorage Areas
NWP 10. Mooring Buoys
NWP 11. Temporary Recreational Structures
NWP 14. Linear Transportation Projects
NWP 22. Removal of Vessels
NWP 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
NWP 28. Modifications of Existing Marinas
NWP C. Electric Utility Line and Telecommunications Activities
NWP D. Utility Line Activities for Water and Other Substances

For all of the NWPs on this list of Concurrences Issued With Conditions, concurrences are granted upon the following three conditions:

- 1) Individual consistency determinations must be conducted for projects which propose activities that will or are likely to result in permanent loss of wetland or other special aquatic site within the proposed project area, including but not limited to vegetated shallows including seagrass beds, coral reefs, and streams.
- 2) Individual consistency determinations must be conducted for projects which include discharges of dredged or fill material in any wetland or other special aquatic site within the proposed project area, including but not limited to vegetated shallows including seagrass beds, coral reefs, and streams.
- 3) For all applicable NWPs that require a PCN from this list (NWPs 3, 14, 22, 27, C, and D) USACE will provide a copy of the complete Department of the Army (DA) application and/or PCN, and a statement as to which NWP will be verified for the project.

These conditions are necessary to ensure consistency with the enforceable policies of the CNMI's Coastal Management Program listed in Appendix A of DCRM's Procedures Guide for Achieving Federal Consistency with the CNMI Coastal Management Program, as such guide may be updated from time to time. These enforceable policies include the CNMI Coastal Resource Management Rules and Regulations in NMIAC Chapter 15-10, which protect wetlands and other special aquatic sites including vegetated shallows including sea grass beds and coral reefs pursuant to NMIAC §§ 15-10-315 and -335 and protect wetlands and streams pursuant to NMIAC § 15-10-330, and the DEQ Water Quality Standards in NMIAC Chapter 65-130, which protect water quality of CNMI waters including surface waters and ground water, among other provisions.

If the requirements for conditional concurrences specified in 15 C.F.R. § 930.4(a)(1)-(3), are not met, then all parties shall treat these conditional concurrences as an objection pursuant to the

relevant subpart of 15 C.F.R. Part 930, including subpart C (for federal agency activities), D (for activities requiring a federal license or permit), or F (for federal assistance to State and local governments), as applicable.

These CZMA conditional concurrences do not represent an endorsement of the project, nor do they in any way exempt proposed activities from local licensing or permitting that may be required or convey approval under regulations administered by any other CNMI department or agency.

DENIED

The following NWP are denied concurrence. Proposed activities that are authorized by these NWP will be reviewed individually by the CNMI CZM Program for consistency. This list includes: 1) NWP that are Revoked by Regional Condition 1 or Reserved and are therefore denied because these are not applicable for use in the CNMI; and 2) NWP determined by the CNMI CZM program to require individual CZMA Section 307 review on the grounds that DCRM has insufficient information to identify CZMA federal consistency compliance with approved enforceable policies because the activities have not been recently authorized by NWP in the CNMI and therefore potential impacts to APCs and other coastal resources for newly proposed projects remain unknown.

Revoked or Reserved:

- NWP 21. Surface Coal Mining Activities: Revoked by RC 1
- NWP 24. Indian Tribe or State Administered Section 404 Programs: Revoked by RC 1
- NWP 26. Reserved
- NWP 30. Moist Soil Management for Wildlife: Revoked by RC 1
- NWP 34. Cranberry Production Activities: Revoked by RC 1
- NWP 44. Mining Activities: Revoked by RC 1
- NWP 47. Reserved
- NWP 49. Coal Remining Activities: Revoked by RC 1
- NWP 50. Underground Coal Mining Activities: Revoked by RC 1
- NWP 52. Water-Based Renewable Energy Generation Pilot Projects: Revoked by RC 1

Require Individual CZMA Section 307 Review:

- NWP 1. Aids to Navigation
- NWP 2. Structures in Artificial Canals
- NWP 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 7. Outfall Structures and Associated Intake Structures
- NWP 8. Oil and Gas Structures on the Outer Continental Shelf
- NWP 12. Oil or Natural Gas Pipeline Activities
- NWP 13. Bank Stabilization
- NWP 15. U.S. Coast Guard Approved Bridges
- NWP 16. Return Water From Upland Contained Disposal Areas
- NWP 17. Hydropower Projects
- NWP 18. Minor Discharges
- NWP 19. Minor Dredging
- NWP 20. Response Operations for Oil or Hazardous Substances

NWP 23. Approved Categorical Exclusions
NWP 25. Structural Discharges
NWP 29. Residential Developments
NWP 31. Maintenance of Existing Flood Control Facilities
NWP 32. Completed Enforcement Actions
NWP 33. Temporary Construction, Access, and Dewatering
NWP 35. Maintenance Dredging of Existing Basins
NWP 36. Boat Ramps
NWP 37. Emergency Watershed Protection and Rehabilitation
NWP 38. Cleanup of Hazardous and Toxic Waste
NWP 39. Commercial and Institutional Developments
NWP 40. Agricultural Activities
NWP 41. Reshaping Existing Drainage Ditches
NWP 42. Recreational Facilities
NWP 43. Stormwater Management Facilities
NWP 45. Repair of Uplands Damaged by Discrete Events
NWP 46. Discharges in Ditches
NWP 48. Commercial Shellfish Mariculture Activities
NWP 51. Land-Based Renewable Energy Generation Facilities
NWP 53. Removal of Low-Head Dams
NWP 54. Living Shorelines
NWP A. Seaweed Mariculture Activities
NWP B. Finfish Mariculture Activities
NWP E. Water Reclamation and Reuse Facilities

While Clean Water Act Section 401 federally authorizes Water Quality Certifications (WQCs) for relevant federal actions in the CNMI, and WQCs are issued pursuant to a separate review process from the CZMA Section 307 federal consistency process, there is a great deal of overlap between the two processes. The WQCs are integrated into the CNMI's enforceable policies through the DEQ Water Quality Standards (NMIAC Chapter 65-130), as noted in § 65-130-010 Anti-degradation Policy, § 65-130-605 Application for Water Quality Certification, § 65-130-615 Determination of Water Quality Certification, and § 65-130-620 Water Quality Certification & General Provisions, among other sections of NMIAC Chapter 65-130. Those same standards must therefore be applied in reviewing activities authorized by a NWP that fall under any of the listed CZM conditions triggering individual CZM review or verification, and in reviewing activities that would be authorized by NWPs that have been denied WQC by BECQ-DEQ.

DCRM appreciates the collaborative efforts of USACE throughout the CZMA federal consistency process for the proposed NWPs, and looks forward to continuing to work with USACE. DCRM may request further coordination on a case-by-case basis and encourage early coordination to ensure consistency with CNMI programs and management objectives.

If you have any questions or need additional information, please contact Arthur Charfauros at (670) 664 8324 or fedcon@dcrm.gov.mp.

Sincerely,

JANICE E. CASTRO
Director
Division of Coastal Resources Management

Attachment: Summary of CZMA Determination for Nationwide Permits

cc: Albert Williams – Regulatory Project Manager, USACE-POH
Kerry Kehoe – Federal Consistency Specialist, NOAA-OCM
Eliceo Cabrera – Administrator, CNMI BECQ
Jonathan Arriola – Director, CNMI BECQ-DEQ
Larry Maurin – Water Quality Manager, CNMI BECQ-DEQ

Summary of CZMA Determination for Nationwide Permits

Nationwide Permits	CZMA Determination
1. Aids to Navigation	Denied
2. Structures in Artificial Canals	Denied
3. Maintenance	Concurrence With Conditions
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Denied
5. Scientific Measurement Devices	Concurrence With Conditions
6. Survey Activities	Concurrence With Conditions
7. Outfall Structures and Associated Intake Structures	Denied
8. Oil and Gas Structures on the Outer Continental Shelf	Denied
9. Structures in Fleeting and Anchorage Areas	Concurrence With Conditions
10. Mooring Buoys	Concurrence With Conditions
11. Temporary Recreational Structures	Concurrence With Conditions
12. Oil or Natural Gas Pipeline Activities	Denied
13. Bank Stabilization	Denied
14. Linear Transportation Projects	Concurrence With Conditions
15. U.S. Coast Guard Approved Bridges	Denied
16. Return Water From Upland Contained Disposal Areas	Denied
17. Hydropower Projects	Denied
18. Minor Discharges	Denied
19. Minor Dredging	Denied
20. Response Operations for Oil or Hazardous Substances	Denied
21. Surface Coal Mining Activities	Denied (N/A)
22. Removal of Vessels	Concurrence With Conditions
23. Approved Categorical Exclusions	Denied
24. Indian Tribe or State Administered Section 404 Programs	Denied (N/A)
25. Structural Discharges	Denied
26. [Reserved]	Denied (N/A)
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities	Concurrence With Conditions
28. Modifications of Existing Marinas	Concurrence With Conditions
29. Residential Developments	Denied
30. Moist Soil Management for Wildlife	Denied (N/A)
31. Maintenance of Existing Flood Control Facilities	Denied
32. Completed Enforcement Actions	Denied
33. Temporary Construction, Access, and Dewatering	Denied
34. Cranberry Production Activities	Denied (N/A)

35. Maintenance Dredging of Existing Basins	Denied
36. Boat Ramps	Denied
37. Emergency Watershed Protection and Rehabilitation	Denied
38. Cleanup of Hazardous and Toxic Waste	Denied
39. Commercial and Institutional Developments	Denied
40. Agricultural Activities	Denied
41. Reshaping Existing Drainage Ditches	Denied
42. Recreational Facilities	Denied
43. Stormwater Management Facilities	Denied
44. Mining Activities	Denied (N/A)
45. Repair of Uplands Damaged by Discrete Events	Denied
46. Discharges in Ditches	Denied
47. [Reserved]	Denied (N/A)
48. Commercial Shellfish Mariculture Activities	Denied
49. Coal Remining Activities	Denied (N/A)
50. Underground Coal Mining Activities	Denied (N/A)
51. Land-Based Renewable Energy Generation Facilities	Denied
52. Water-Based Renewable Energy Generation Pilot Projects	Denied (N/A)
53. Removal of Low-Head Dams	Denied
54. Living Shorelines	Denied
A. Seaweed Mariculture Activities	Denied
B. Finfish Mariculture Activities	Denied
C. Electric Utility Line and Telecommunications Activities	Concurrence With Conditions
D. Utility Line Activities for Water and Other Substances	Concurrence With Conditions
E. Water Reclamation and Reuse Facilities	Denied