

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: June 27, 2007
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson Allan A. Smith called the meeting of the Commission on Water Resource Management to order at 1:08 p.m.

The following were in attendance and/or excused:

MEMBERS: Mr. Allan A. Smith, Dr. Chiyome Fukino, Ms. Meredith Ching, Ms. Stephanie Whalen, Dr. Lawrence Miike

STAFF: Ken Kawahara, Roy Hardy, Lenore Nakama, Ed Sakoda, Dean Uyeno, Robert Chong, Charlie Ice

EXCUSED: Mr. James Frazier, Mr. Neal Fujiwara

COUNSEL: Colin Lau, Esq.

OTHERS: Beth Ann Coller, Kent Harada, Bill Wong, David Bills, Dr. Jim Anthony, Steve Bowles, Garrick Iwamuro, Randall Lau, Charlyn Dote, Milton Iha, Mike Nelson, Koa Kaulukukui, Kahi Kahakui, Aarin Gross, Makia Minerbi, Roscoe Ford, Dr. Jonathan Scheuer, John Ford, Grant Arnold, Tom Nance, Gordon Tribble, Juliet Kazanjian

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

A. APPROVAL OF MINUTES

1. April 18, 2007
2. May 10, 2007

MOTION: (Whalen/Ching)
To approve the minutes.
UNANIMOUSLY APPROVED

B. ANNOUNCEMENTS/ADMINISTRATION

Mr. Hardy made the following announcements:

The Na Wai Eha contested case hearing on the high-level ground water and interim instream flow standard amendment on Maui has been scheduled and will begin in December.

The facilitator for the Molokai Working Group is Mediation Services of Maui.

On the Big Island, reactivation of the Lalakea Ditch is being considered to help relieve the loss of the Lower Hamakua Ditch from the October 2006 earthquake damage and is proceeding under the Governor's emergency proclamation whereby permits are not necessary from the Commission until the proclamation is rescinded.

H.B. 400 is not on the Governor's veto list and should be signed on July 10, 2007. H.B. 400 would provide \$4M to the counties for drought mitigation planning.

The USGS, in cooperation with OHA, recently published a study on water needs for wetland kalo cultivation. The study is available on the USGS' website.

Congratulations to Lenore Nakama who was selected as the Planning Branch Chief for the Commission.

Continued interviews this week for vacancies for Geologist I and II.

The departure of Commissioner Stephanie Whalen, thanked and congratulated her for her dedicated service to the Commission for the past four years, and looked forward to her continued comments on important water issues.

Interim Chairman, Allan Smith, on behalf of the board, thanked Ms. Whalen for her unselfish and outstanding service.

1. Chairperson's Recommendation, Approval of Mr. Ken C. Kawahara, P.E., Deputy to the Commission on Water Resource Management

Deputy Attorney General Colin Lau advised that since this topic involved the proposed hiring of an officer or employee that may involve privacy matters, Mr. Kawahara may chose to have the session held in executive session pursuant to HRS §92-5, (a)(2).

Interim Chairman Allan Smith asked Mr. Kawahara what his preference was.

Mr. Kawahara responded that he would prefer to hold his confirmation hearing in public.

Mr. Ken Kawahara stated that he held a degree in Engineering from the University of Hawaii at Manoa and is a licensed Professional Engineer in the State of Hawaii. Prior to coming to the Department of Land and Natural Resources (DLNR), Mr. Kawahara was employed by the City and County of Honolulu, Department of Environmental Services, in the Regulatory Control Branch.

Mr. Kawahara is a member of the American Water Works Association, the Hawaii Water Environment Association, and the Western Regional Pollution Prevention Network that included California, Hawaii, Arizona, and Nevada. Mr. Kawahara also stated that he was a member of the Pacific Century Fellows, Class of 2007.

Mr. Kawahara looks forward to working on and updating the Hawaii Water Plan, mentioned sustainability, watershed management and the need to work within different watersheds to manage and address those resources. Mr. Kawahara pledged to manage and communicate with the many different parties involved, share his knowledge and experience of his staff, and work with the Commissioners to do what was right for Hawaii.

Dr. James Anthony, Executive Director of Hawaii-Laieikawai Association. Inc stated that in the management of natural resources, there was no position that was as important as that of the Deputy of the Commission on Water Resource Management (Commission). He stated that he was a public interest veteran of the water policy wars that covered seven former Deputy Directors going back at least a decade and a half.

Dr. Anthony stated that the candidate, if approved, should be appointed subject to performance conditions which provide a roadmap of performance milestones of achievements to be reviewed by the Commission within a year. Dr. Anthony had carefully reviewed the candidate's qualifications, had a telephone conversation with him, and listened very carefully to his public presentation, and recommended that the candidate should not be appointed to the position.

Dr. Anthony mentioned several outstanding issues that have not been addressed by the Commission including the funding status for the Hawaii Water Plan that the Commission must address.

Mr. William Wong, retired program manager and branch chief of the Department of Health, Environmental Management Division, Safe Drinking Water Branch, supported Mr. Ken Kawahara for the position of Deputy Director for the Commission. Mr. Kawahara's engineering background would help protect water resources in the State of Hawaii, and his ability to communicate with many parties would help resolve issues and would make good decisions for Hawaii.

Mr. Garrick Iwamuro, Golf Course System Administrator, Department of Enterprise Services, City and County of Honolulu, supported Mr. Ken Kawahara as the Deputy Director for the Commission. Mr. Kawahara educated Mr. Iwamuro on the City's programs and showed a great passion for protecting the environment. The R-1 water program that Mr. Kawahara was involved with, benefited the City and the private golf courses in the Ewa Plain by utilizing recycled water and biosolid compost to protect Oahu's limited water resources.

Ms. Charlyn Dote, Program Manager for the non-profit Pacific Century Fellows Program, testified in support of Mr. Ken Kawahara. She stated that Mr. Kawahara was unanimously selected to participate in this program by sixteen judges, and his selection was a testimony to his fine character and potential for success. Mr. Kawahara had three qualities that were

essential to a successful leader: integrity, humility, and community service. Mr. Kawahara spearheaded many community projects that benefited the environment and was involved in educational causes and coaching. Mr. Kawahara listened to all points of view before making any recommendation, was committed to “malama i ka aina” and had much to offer with his well rounded background, his communications skills, and character strengths.

Dr. Jonathan Likeke Scheuer from the Office of Hawaiian Affairs (OHA) stated that the deputy position was one of the most important ones in the state. Although communication is very important in dealing with water resource issues, the deputy’s ultimate duty was to advise the Commissioners on how to fulfill their role as trustees of the public trust in water in Hawaii. This also required enforcing public trust benefits over various private parties that would like to take advantage of these benefits.

Ms. Kahi Kahakui representing Kai Makana, a non-profit organization whose goal is saving the ocean, spoke in support of Ken Kawahara and the assistance that Mr. Kawahara always provided to their non-profit organization.

Mr. Milton Iha, Supervising Wastewater Service Investigator with the Department of Environmental Services, City and County of Honolulu, worked with Mr. Kawahara for 10 ½ years, sympathized with Dr. Anthony’s concerns, and emphasized Mr. Kawahara’s diligence in adhering to policy, rules and procedures regarding environmental compliance. Mr. Iha stated that Mr. Kawahara had excellent leadership qualities, exceptional communicative skills, honesty and integrity and had gained the respect of those who worked for and with him.

Interim Chairman Allan Smith stated that the Deputy served at the pleasure of the Commission and asked what the Commissioners wanted to do.

Commissioner Miike stated that he was grateful that a nomination for the Deputy Director was finally in place and explained how hard it was to find the perfect candidate. Commissioner Miike also stated that no one could meet the requirements that Dr. Anthony had posed. The Chairman nominated and the Commission approved. Commissioner Miike stated that he did not want to place performance milestones on this appointment.

Commissioner Miike moved to accept the Chairman’s recommendation on the nomination of Mr. Kawahara.

MOTION: (Miike/Ching)

To approve the submittal as recommended by staff.

UNANIMOUSLY APPROVED

C. GROUND WATER REGULATION

- 1. Ko Olina Intangibles, LLC/Ko Olina Development, LLC, APPLICATION FOR A WATER USE PERMIT, Ko Olina Saltwater Well (Well No. 1906-12), TMK 9-1-57:24, WUPA No. 810, New Use for 6.525 mgd of Saltwater (Initial fill, Make-up, and Tank Cooling for a Marine Attraction; Air Conditioning Heat Exchange for**

Buildings; and Bottled (Desalted) Water), Ewa-Kunia Ground Water Management Area, Oahu

PRESENTATION OF SUBMITTAL: Lenore Nakama

RECOMMENDATIONS:

Due to the applicant's ability to demonstrate consistency with the criteria to obtain a water use permit, staff recommends that the Commission approve the issuance of Water Use Permit No. 810 to Ko Olina Intangibles, LLC/Ko Olina Development, LLC for the reasonable and beneficial use of 6.525 million gallons per day of saltwater for initial fill, make-up, and tank cooling for marine attraction; air conditioning heat exchange for buildings; and bottled water from the Ko Olina Saltwater Well (Well No. 1906-12), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.
2. Standard Condition 16, requiring the submittal of a water shortage plan, is waived.
3. Standard Condition 10 is modified to exempt the permittee from the requirement to install a flowmeter and submit monthly water data reports. The permittee may estimate pumpage and submit annual reports using the attached form (Attachment C).
4. The applicant should contact the Underground Injection Control program at 586-4258 regarding the subsurface disposal of waste water from the attraction, heat exchange, or bottled water operations.

Ms. Nakama distributed an amended Exhibit 3, showing revised build-out projections.

Ms. Nakama also distributed recently-received review comments from Office of Hawaiian Affairs (OHA). Ms. Nakama stated that she had a chance to discuss the review comments with OHA and felt that many of the concerns were addressed.

Mr. Grant Arnold of OHA agreed that most of OHA concerns had been addressed by staff, except the water license fee requirement.

Commissioner Miike asked if there is fresh water located where the well is being drilled.

Ms. Nakama stated that the completion report did not indicate that fresh water was encountered during the drilling. However, the report indicated an initial caprock water level of 0 feet above mean sea level, which would probably fluctuate depending on the tide. Consultant Tom Nance stated the upper 200 or so feet is limestone with a water level about equal to mean sea level. After drilling through the caprock, the water level rose to about 3-4 feet above mean sea level. At 450 feet down, the transition zone was encountered, and at

620 feet, pure sea water was encountered.

MOTION: Whalen/Ching)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED

E. STREAM PROTECTION AND MANAGEMENT

1. After-the-Fact, Application for a Stream Channel Alteration Permit (SCAP-OA-398), Ms. Beth-Ann Coller and Mr. Kent Harada, Heeia Stream, Kaneohe, Oahu, TMK: (1) 4-6-026:060

PRESENTATION OF SUBMITTAL: Ed Sakoda

Mr. Sakoda discussed the After-the-Fact Application to construct and repair a wall on Heeia Stream in Kaneohe, Oahu and described the chronology of events from February 2004 to September 2006 listed in the submittal. In discussing the SCAP, it was noted that the applicants admitted ignorance of State and City permitting requirements.

RECOMMENDATIONS:

That the Commission:

1. Find that the previous owners, Dana and Larry Riley, were in violation of Hawaii Revised Statutes §174C-71(3) (A) for constructing a concrete rubble masonry retaining wall on Heeia Stream without the necessary Stream Channel Alteration Permit.
2. Acknowledge that the applicant, Coller/Harada, purchased the property at 46-287 Auna Street from Dana and Larry Riley in August 2005 after the Rileys had built the concrete rubble masonry retaining wall on Heeia Stream without the necessary Stream Channel Alteration Permit.
3. Waive the Commission's Civil Penalty Guideline (G01-01) for a \$250.00 fine for a first time, non-repeat violation for one incident, without gravity component because the applicant, Coller/Harada, purchased 46-287 Auna Street after the concrete rubble masonry retaining wall had been built on Heeia Stream.
4. Find that Mr. Roscoe Ford was in violation of Hawaii Revised Statutes §174C-71(3) (A) for constructing a concrete rubble masonry retaining wall on Heeia Stream without the necessary Stream Channel Alteration Permit.
5. Impose a reduced fine on Mr. Roscoe Ford of ~~\$500.00~~ \$250.00 following the Commission's Civil Penalty Guideline (G01-01) based on a first time, non-repeat violation for one incident, with gravity and without mitigative components.
6. Issue a written warning to the applicant, Coller/Harada, indicating any future

- violations involving the alteration of stream channels or stream diversions without the necessary stream channel alteration permit or stream diversion works permit may be considered repeat violations with fines up to \$5,000 for each day of violation.
7. Issue a written warning to Mr. Roscoe Ford indicating any future violations involving the alteration of stream channels or stream diversions without the necessary stream channel alteration permit or stream diversion works permit may be considered repeat violations with fines up to \$5,000 for each day of violation.
 8. Approve an After-the-Fact Stream Channel Alteration Permit to construct a concrete rubble masonry retaining wall on Heeia Stream, Kaneohe Oahu, (TMK: (1) 4-6-026:060). The permit shall be valid for two years subject to the Commission's standard conditions in Exhibit 7 (standard conditions 4 to 7 do not apply to this after-the-fact permit).

MOTION: (Miike/Whalen)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED

2. EMERGENCY AUTHORIZATION/After-the-Fact, Application for a Stream Channel Alteration Permit, for Retaining Wall Footing Repair (SCAP-OA-400), Ms. Beth-Ann Collier and Mr. Kent Harada, Heeia Stream, Kaneohe, Oahu, TMK: (1) 4-6-026:060

PRESENTATION OF SUBMITTAL: Ed Sakoda

Mr. Sakoda stated that the applicant applied for an Emergency Authorization/After-the-Fact Stream Channel Alteration Permit (SCAP) to repair the footing for a retaining wall on Heeia Stream. An After-the-Fact SCAP for the same retaining wall was processed separately (SCAP-OA-398).

Mr. Sakoda gave a chronology of events regarding this SCAP. The wall had been built by July 2005. Beth-Ann Collier and Kent Harada (Collier/Harada) purchased the property in August 2005. The state received a record-breaking amount of rainfall in March and April 2006 that contributed to the damage of the retaining wall footing. On October 5, 2006, Collier/Harada submitted a SCAP application to repair the footing. Commission, Army Corps of Engineers, and Department of Health – Clean Water Branch staff inspected the site on October 13, 2006. Collier/Harada requested authorization for emergency repair on October 19, 2006. Staff issued an emergency authorization on October 23, 2006.

RECOMMENDATION:

That the Commission approve an Emergency Authorization/After-the-Fact Stream Channel Alteration Permit for repair of the footing for a retaining wall on Heeia Stream, Kaneohe, Oahu. The permit shall be valid for two years subject to the Commission's standard conditions in Exhibit 6 (standard conditions 4 to 7 do not apply to this after-the-

fact permit).

MOTION: (Fukino/Whalen)
To approve the submittal as recommended by staff
UNANIMOUSLY APPROVED

3. Application for an After-the-Fact, Stream Channel Alteration Permit (SCAP-OA-403), Mr. Regis Osumi, Streambank Maintenance and Stabilization, Manoa Stream, Honolulu, Oahu, TMK: (1) 2-9-067:008

PRESENTATION OF SUBMITTAL: Ed Sakoda

Mr. Sakoda gave the background on the application for an After-the-Fact SCAP for Mr. Regis Osumi from January 27, 2006, to March 2007, and summarized the permit violation and the Commission’s Civil Penalty Guidelines outlined in the submittal. The staff recommended fine was \$250, limited to a single day minimum with a mitigative reduction of \$100. The total recommended fine was \$150.

RECOMMENDATION:

- 1) Find the applicant in violation of Hawaii Revised Statutes §174C-71(3) (A) for constructing a grouted rip-rap wall on Manoa Stream without the necessary Stream Channel Alteration Permit.
- 2) Impose a \$150.00 fine on the applicant based on the Commission’s Civil Penalty Guideline (G01-01) for a first time, non-repeat violation for one incident, without gravity and with mitigative components.
- 3) Issue a written warning to the applicant indicating any future violations involving the alteration of stream channels or stream diversions without the necessary stream channel alteration permit or stream diversion works permit may be considered repeat violations with fines up to \$5,000 for each day of violation.
- 4) Approve an After-the-Fact Stream Channel Alteration Permit to construct a grouted rip-rap wall on Manoa Stream, Honolulu, Oahu, (TMK: (1) 2-9-067:008). The permit shall be valid for two years subject to the Commission’s standard conditions in Exhibit 5 (standard conditions 4 to 7 do not apply to this after-the-fact permit).

MOTION: (Miike/Ching)
To approve the submittal recommended by staff
UNANIMOUSLY APPROVED

4. After-the-Fact, Application for a Stream Channel Alteration Permit (SCAP-OA-407), Mr. Randall Lau, Construction of a Concrete Rubble Masonry Wall, Nuuanu Stream, Nuuanu, Oahu, (TMK: (1) 2-2-036:042)

PRESENTATION OF SUBMITTAL: Ed Sakoda

Mr. Sakoda stated that the applicant constructed a retaining wall on his property to prevent erosion and to save a tree on his property from being undermined further. The City and County issued a Notice of Violation to the applicant and asked that his wall be removed and the area restored to its original condition. Agency reviews outlined in the submittal were described.

Mr. Sakoda summarized the permit violation and the Commission's Civil Penalty Guidelines outlined in the submittal. The staff recommended fine was \$250, limited to a single day minimum with a mitigative reduction of \$50. The total recommended fine was \$200.

The applicant stated that he purchased the property with no intent to build a wall; however, his neighbor across the stream asked him to take care of the trees that were over 100 feet tall on the applicant's property. During heavy rains the neighbor was afraid that the trees on the applicant's property would fall on his home causing damage and maybe a life. Consequently, the applicant went ahead and built the wall.

RECOMMENDATION:

That the Commission:

1. Find the applicant in violation of Hawaii Revised Statutes §174C-71(3)(A) for constructing a concrete rubble masonry wall on Nuuanu Stream without the necessary stream channel alteration permit.
2. Impose a fine on the applicant of \$200.00 following the Commission's Civil Penalty Guideline (G01-01) based on a first time, non-repeat violation for one incident, without gravity and with mitigative components.
3. Issue a written warning to the applicant indicating any future violations involving the alteration of stream channels or stream diversions without the necessary stream channel alteration permit or stream diversion works permit may be considered repeat violations with fines up to \$5,000 for each day of violation.
4. Approve an After-the-Fact Stream Channel Alteration Permit to construct a concrete rubble masonry wall on Nuuanu Stream, Nuuanu, Oahu, (TMK: (1) 2-2-036:042). The permit shall be valid for two years subject to the Commission's standard conditions in Exhibit 5 (standard conditions 4 to 7 do not apply to this permit).

MOTION: (Whalen/Miike)

To approve the submittal as recommended by staff

UNANIMOUSLY APPROVED

5. Application for a Stream Channel Alteration Permit (SCAP-HA-408), Mr. Mike Penney, Construction of Ford Crossing for Hapuna Well No. 4, Waiulaula Stream (also Waikoloa Stream), Kamuela, Hawaii, (TMK: (3) 6-2-001:051)

PRESENTATION OF SUBMITTAL: Ed Sakoda

Mr. Sakoda stated that the applicant applied for a Stream Channel Alteration Permit (SCAP) to construct a ford crossing for Hapuna Well No. 4 across Waiulaula Stream in Kamuela, Hawaii and described the project and the agency reviews

RECOMMENDATION:

That the Commission approve a Stream Channel Alteration Permit to construct a ford crossing for Hapuna Well No. 4 across Waiulaula Stream (also Waikoloa Stream), Kamuela, Hawaii. The permit shall have a term of two (2) years subject to the Commission’s standard permit conditions in Exhibit 5, and the following special conditions:

- 1. The design and installation of the box culvert boxes should be level and conform to the stream channel bottom to avoid an overhang that inhibits upstream migration.
- 2. Lands denuded of vegetation should be planted or covered as quickly as possible to prevent erosion.

MOTION: (Ching/Whalen)
To approve the submittal as recommended by staff
UNANIMOUSLY APPROVED

H. NEXT COMMISSION MEETINGS (TENTATIVE)

- 1. September 19, 2007
- 2. October 17, 2007

The meeting adjourned at 3:10 P.M.

Respectfully submitted,

PAULYNE K. ANAKALEA
Secretary

APPROVED AS SUBMITTED:

KEN C. KAWAHARA

Minutes

June 27, 2007

Deputy Director