

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: May 16, 2012
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

Chairperson William Aila, Jr. called the meeting of the Commission on Water Resource Management to order at 9:07am.

The following were in attendance:

MEMBERS: Mr. William Aila, Jr., Mr. Neal Fujiwara, Mr. Ted Yamamura, Ms. Loretta Fuddy, Mr. William Balfour, Dr. Lawrence Miike

ABSENT: Mr. Sumner Erdman

STAFF: William Tam, Lenore Ohye, Roy Hardy, Ryan Imata, Denise Tu, Robert Chong, Dean Uyeno, and Neal Fujii

COUNSEL: Linda Chow, Esq.

OTHERS: Yvonne Izu (Morikawa Lau & Fong), David Austin, Helga Preiss, John Pataye, Craig Mikkelsen (Metzler Contracting), Mike Okamoto (R.M. Towill), Brian Takeda (R.M. Towill), Karen Chun (HDOT), Alvin Takeshita (HDOT), Robert Palmer, Kimberly Manago (Fukunaga & Assoc.), Lance Fukumoto (Fukunaga & Assoc.), Juliana Kohl, Keith Kohl, Sherri Hiraoka (Townscape), Moana Kea Klausmeyer-Among, Jonathan Scheuer, Sen. Malama Solomon, Kaleo Manuel (DHHL), Bruce Tsuchida (Townscape), Kathy Sokugawa (DPP), Randolph Hara (DPP), Barbara Natale (Group 70), Cami Kloster (Group 70), Barry Usagawa (HBWS)

A. APPROVAL OF MINUTES

March 28, 2012

MOTION: (Fuddy/Balfour)
To approve the minutes.
UNANIMOUSLY APPROVED.

B. ANNOUNCEMENTS

The June 20, 2012 Commission Meeting has been rescheduled to Thursday, June 21, 2012.

Chairperson, William Aila, Jr. welcomed new Commissioner Ted Yamamura.

Deputy Director, William Tam introduced Mr. Basil Gomez as the new Branch Chief for Stream Protection and Management (SPAM). Dean Uyeno (Commission on Water Resource Management) introduced new CWRM staff members Denise Tu (Hydrologist) and intern Amanda Sawa.

C. GROUND WATER REGULATION

1. Application for After-the-Fact Well Construction and Pump Installation Permits, Kukio 88 Well (Well No. 4859-10), Well Construction: 11.75-inch Casing Diameter, 135-ft Deep Well Pump Installation: 16.8 gpm for landscape irrigation use, TMK (3) 7-2-020:021 088, 72-157 Holo Kula Place, Hawaii

SUBMITTAL PRESENTATION by: Ryan Imata

Ryan Imata (Commission on Water Resource Management) handed out an amended recommendation and supporting Exhibit 6A.

AMENDED STAFF RECOMMENDATION:

That the Commission:

- A. Find that Mr. John Pataye (landowner), Delima Drilling, and Metzler Contracting are each in violation of Commission H.A.R. §13-168-12(a).
- B. Fine the landowner, Mr. Pataye, a total of \$400 (see revised Exhibit 6a). Payment due within 30 days.
- C. Fine the well construction contractor, Delima, \$500 (see revised Exhibit 6a). Payment is due within 30 days.
- D. Fine the pump installation contractor, Metzler, \$500 (see revised Exhibit 6a). Payment is due within 30 days.
- E. Issue an after-the-fact well construction and pump installation permit to Beylik Drilling and Pump Service (applicant) for Kukio 88 Well (Well No. 4859-10), subject to the standard conditions in Exhibit 3 and the following special condition:
 - “1. That the permit will only be issued after the landowner, Mr. Pataye pays the fine (Recommendation B above).”
- F. Suspend any process or application by the applicant landowner until the fine under Recommendation B is paid.
- G. Suspend processing any application by Delima Drilling and Metzler Contracting until the fines under Recommendations C & D are paid.

Mr. Imata explained that this is an application for an After-the-Fact Well Construction and Pump Installation Permit for the Kukio 88 Well. The applicant is Beylik Drilling and the landowner is John Pataye. The well was drilled on July 9,

2007 without a permit by an unlicensed driller, Delima Drilling. The pump was installed on August 12, 2008 by Metzler Contracting, who is properly licensed to do this work. The initial application was submitted on March 3, 2011 in response to a due diligence review for the sale of the property where it was discovered that no permits had been obtained for the well construction and pump installation. Before the Commission could take action, several outstanding issues needed to be addressed including, the need for a Special Management Area Permit (SMAP), the lack of well completion reports detailing the construction of the well, and not identifying a drilling contractor to perform the work. The Kukio Association's declaration of covenants, do not allow property owners to drill their own wells, but the Commission can still issue a permit.

Attached to the application was a letter from Mr. Pataye (property owner), stating that the general contractor (Metzler Construction) advised him that no permit would be required for the well construction. Follow-up correspondence from the Kukio Association, dated September 9, 2011, said they had no objections to the construction of the well. On December 13, 2011, a letter received from the County of Hawaii's Planning Department stated that a SMAP was not required. On March 16, 2012, Beylik Drilling, on behalf of the applicant and contractor, submitted a new After-the-Fact permit application, along with data including completion reports and a filing fee. The application was accepted on March 29, 2012.

HAR §13-168-12(a) states that no well shall be constructed and no pump equipment shall be installed without an appropriate permit from the Commission. Copies of the application were sent out for agency review and the CWRM has not received comments from the Department of Health (DOH).

There are 24 other wells within a mile of the well (Exhibit 1). The wells are primarily brackish and used for landscape irrigation. Staff does not anticipate any adverse impacts to water resources from pumping of the well. However, there could be cumulative impacts in the area on nearby anchialine ponds.

Beylik Drilling completed the as-built well section with information gathered from several sources including a well video log and statements from both Delima and Mr. Pataye. The only parameter the CWRM can verify from the completion report is the integrity of the well and the grout around the annular space between the borehole and the casing. If constructed improperly, this could be a source of contamination, but would only be a concern if there were potable sources nearby.

Based on Beylik's reported construction details, the well was constructed in compliance with the Hawaii Well Construction and Pump Installation Standards and there is no EA triggered.

An amended fine calculation sheet was distributed to the Commissioners along with a revised recommendation for the fine schedule. The two violations are 1) the construction of the well without a Well Construction Permit and 2) the installation of a pump without the Pump Installation Permit. For Mr. Pataye, it would be beneficial to obtain the permit prior to selling his property. As a minimum component, the CWRM recommends a fine of \$250.00 in accordance with the CWRM penalty guidelines. For each violation there is a finding of \$250.00 per day. The infractions were not repeat violations and do not appear in a Designated Water Management Area. Therefore, the base fine would be \$250.00 per day. Exhibit 6A

described the revisions to the fee schedule. The gravity factor was applied to the contractor since the contractor should have known that a permit was required. On June 17, 2008 (prior to the work that was done on the well), the pump installer had applied for and obtained a pump installation permit. Therefore, Metzler Construction should have known that a pump installation permit was required. The CWRM recommends a gravity component of \$250.00 for the contractor. Since Mr. Patatye sought to bring the well into compliance with the laws, the CWRM recommends applying a mitigation component of \$50.00 to each violation. Based on the good faith of the landowner and because it is a first-time violation for the contractor, staff is recommending a fine of one day. The permit will be issued after Mr. Patatye pays the fine.

(DISCUSSION)

Commissioner Balfour expressed his concerns about the fines stating that Delima Drilling should have known better. He said that After-the-Fact violations need to be taken more seriously and there is a large disconnect between violations and the fines. Commissioner Balfour suggested that the CWRM reassess their fine schedule and fees.

Commissioner Miike said he agreed with Commissioner Balfour's concerns. The \$250.00 per day penalty is nothing compared to the \$5,000 per day maximum fine. He said he did not think Delima Drilling and Metzler Contracting should be fined the same amount as the homeowner and is not satisfied with the fines for the contractors. Commissioner Miike said he would like to see a change in the guidelines to reflect the increase from \$1,000 to \$5,000 and asked CWRM staff to apply penalties beyond the one day minimum.

Commissioner Yamamura agreed with the prior speakers and said the minimum fine of \$250.00 is not sufficient. He asked if both contractor names were going to be submitted to the Department of Commerce and Consumer Affairs (DCCA).

Mr. Imata replied "yes" as part of the original recommendations.

Commissioner Miike added that he felt the DCCA would not do much to address the complaints but said it would go on their record.

Yvonne Izu (Morikawa Lau & Fong) spoke on behalf of the landowner. Ms. Izu appreciates that the CWRM staff amended the original recommendation to distinguish between the fault of the contractors and the landowner.

Craig Mikkelsen (Metzler Contracting) said he did not wish to contest the findings of the staff submittal and accepts responsibility.

Commissioner Miike asked if the pump installation was subcontracted.

Mr. Mikkelsen responded "that is correct."

Commissioner Miike asked why Metzler Contracting did not check to see if the subcontractor was licensed to do pump installation.

Mr. Mikkelsen responded that from his recollection it was an oversight on the part of Metzler.

Commissioner Miike asked if the previous installation done by Metzler Contracting was also subcontracted.

Mr. Mikkelsen said that the project was intended for potable water, whereas this one was strictly for irrigation.

Commissioner Miike asked whether or not Metzler Contracting is aware that a permit is required regardless of how the water will be used.

Mr. Mikkelsen said he could not speak for others.

Chairperson Aila, Jr. asked if Mr. Mikkelsen was aware that he needs to have a permit.

Mr. Mikkelsen said “absolutely yes.”

Commissioner Miike thanked Mr. Mikkelsen for showing up to the meeting.

Commissioner Balfour suggested changing the fines.

Commissioner Miike suggested voting on the fine for the homeowner first.

Chairperson Aila, Jr. reminded the Commissioners that they are allowed to modify a recommendation.

Jonathan Scheuer stated that the reason more can not be done by the Commission staff is the lack of funds. He stated that if you multiple the number of violations by the number of days and the potential fine per violation of \$5,000, the maximum fine in this case would be closer to \$18 million. He said the homeowner is selling the house for \$15 million.

Commissioner Miike suggested modifying the fine for the homeowner.

Commissioner Fujiwara asked if the contractors would need to pay their fines before the permit could be approved.

Mr. Imata said the revised wording of the recommendations C & D suggested deferring the contractor fines to a later date and voting today on the fine for the homeowner. He clarified the fine schedule stating that while the first violation is relatively small, the second violation sets in motion the gravity component, which would ramp up fines incrementally over time.

Commissioner Fuddy asked if there was a new fine structure in place.

Mr. Imata responded that the statutory rules state a fine increase from \$1,000 to \$5,000, but the guidelines were not revised to reflect the same increase. The CWRM has talked about revising internal policies relating to fines.

Commissioner Miike moved to accept staff recommendation on the fine for the homeowner and defer the fines for Delima Drilling and Metzler Contracting.

Commissioner Fuddy asked if the Commissioners would be accepting staff recommendation for A and B and deferring decisions on C through G.

Mr. Imata clarified that the amended recommendation would keep items A, B, E, and F the same, defer items C and D, and amend G to say “suspend processing any application by Delima Drilling and Metzler Contracting until the process to address items C and D is completed.”

AMENDED RECOMMENDATION:

That the Commission:

- A. Find that Mr. John Pataye (landowner), Delima Drilling, and Metzler Contracting are each in violation of Commission H.A.R. §13-168-12(a).
- B. Fine the landowner, Mr. Pataye, a total of \$400 (see revised Exhibit 6a). Payment due within 30 days.
- C. Defer action on Delima Drilling until a later date.
- D. Defer action on Metzler Contracting until a later date.
- E. Issue an after-the-fact well construction and pump installation permit to Beylik Drilling and Pump Service (applicant) for Kukio 88 Well (Well No. 4859-10), subject to the standard conditions in Exhibit 3 and the following special condition:
 - “1. That the permit will only be issued after the landowner, Mr. Pataye pays the fine (Recommendation B above).”
- F. Suspend any process or application by the applicant landowner until the fine under Recommendation B is paid.
- G. Suspend processing any application by Delima Drilling and Metzler Contracting until the process to address item C is completed.

MOTION: (Miike/Fujiwara)
To approve the amended submittal.
UNANIMOUSLY APPROVED.

D. STREAM PROTECTION AND MANAGEMENT

1. **Application for Stream Channel Alteration Permit (SCAP.2621.3) for Temporary By-Pass Roads and Replacement of Makaha Bridges 3 and 3A, Makaha Stream, Makaha, Oahu (TMKs: (1) 8-4-1-001:012, 8-4-002:045 and 47, 8-4-008:020 and 8-4-018:014)**

SUBMITTAL PRESENTATION by: Robert Chong

Robert Chong (Commission on Water Resource Management) introduced Item D-1 as an Application for a Stream Alteration Permit requested by the Department of Transportation (DOT) and the consultant R.M. Towill. Several

land owners are involved, including the City and County of Honolulu, HRT Kili Drive LLC, Moana Kea Among, Amalia Barboza, and Robert Palmer. Written comments were received this morning from some of the property owners. The request is for a Stream Channel Alteration Permit (SCAP) for a temporary by-pass road and the replacement of Makaha Bridges 3 and 3A. The wooden bridges were built in 1937 and need to be replaced to comply with current standards set forth by the American Association of State Highway and Transportation Officials.

In this area, the Makaha Stream is an intermittent stream. However, in the upper reaches, Makaha Stream is a perennial stream and is home to 'o'opu and 'opae. A FEMA drainage study indicated that the existing bridges do not have the hydraulic capacity to accommodate a 100-year flood event. Adjacent properties are located within the 100-year flood plain, and the new bridge structures will be designed to accommodate such an event. Studies have been done to ensure that the structural integrity of the bridges will accommodate the 100-year flood event without increasing flooding to the adjacent properties. The two new bridges will have 12-foot wide lanes and a 10-foot wide shoulder to accommodate pedestrians and bicyclists. Bridge A will be widened from 42 feet to 89 feet, and Bridge 3A will be widened from 59 feet to 67.5 feet. There are no major issues from the agency reviews. However, CWRM received comments and objections from the property owners. DOT and R.M. Towill have been working with Ms. Among and Mr. Palmer to obtain the necessary right-of-way. These property owners are opposed to the project because they feel DOT is conspiring against them to the benefit of other property owners. If the DOT is unable to negotiate a temporary right-of-way with the property owners, DOT will use eminent domain. R.M. Towill and DOT have met with the Kohls (property owners in the area) about their concerns that the project will increase the flooding potential to their property. Staff is recommending that DOT obtain a No-Rise Certification from the City and County of Honolulu, which states that the project will not increase flooding. The CWRM staff has also met with the Kohls and informed them that the stream hydraulics and bridge engineering should be addressed by DOT and the Department of Planning and Permitting for the City and County of Honolulu.

Staff is recommending that the SCAP be approved subject to the DOT acquiring the necessary rights-of-way and construction easements, as well as obtaining a No-Rise Certification from the City and County of Honolulu.

RECOMMENDATION:

That the Commission:

Approve the SCAP permit for a temporary by-pass road and replacement of Makaha Bridges 3 and 3A in Makaha, Oahu, subject to the following conditions:

1. HDOT must obtain the necessary rights-of-way and construction easements prior to construction.
2. HDOT must obtain a No-Rise Certification from the City and County of Honolulu Department of Planning and Permitting, prior to construction.
3. Standard Conditions in Exhibit 9 (see Staff Submittal)

(DISCUSSION)

Commissioner Balfour asked for clarification on what the City and County needed to provide.

Mr. Chong responded “a No-Rise Certification,” which means the project will not increase the flooding levels.

Commissioner Balfour expressed the need to repair Bridges 3 and 3A stating that they are in horrible condition and a danger to public health and safety.

Commissioner Miike noted the request for a contested case.

Commissioner Fujiwara stated that one of the concerns of the property owners is the realignment of the stream. He asked if the DOT plans include realigning the stream.

Mr. Chong responded that the improvements will follow the existing contours of the stream, but the stream bank will need to be widened to accommodate the widening of the bridge.

Commissioner Fujiwara asked R.M Towill and DOT to explain the realignment.

Brian Takeda and Michael Okimoto from R.M. Towill showed exhibits depicting the project area and the realignment.

Chairperson Aila, Jr. asked R.M. Towill to specifically address the question about the widening.

Mr. Takeda responded that the question relates to Bridge 3. He pointed out Bridge 3 and said the current channel cannot accommodate a 100-year flood. Widening the bridge will bring the level of the floodwaters down.

Mr. Okimoto said they are holding the existing bank of the stream on the residents’ side (Waianae), and widening towards the Kaena Point side.

Chairperson Aila, Jr. asked if there was any widening occurring on the Waianae side of the stream.

Mr. Okimoto said “no,” they are trying to hold the bank on the Waianae side of the stream to minimize the impact to the residents.

Chairperson Aila, Jr. restated that the widening would be occurring on the opposite side.

Mr. Okimoto replied “yes, that is correct.”

Mr. Chong pointed to Exhibit 5 detailing the proposed work.

Commissioner Yamamura asked if the bank was armored.

Mr. Takeda responded that there are portions upstream and downstream of the existing bridge that has grouted stone.

Commissioner Yamamura asked if the project would provide greater lateral protection to the adjoining property after completion.

Mr. Takeda responded “yes.” A portion of the rip-rap will be restored and replaced.

Commissioner Miike pointed to Exhibit 1C to show the encroachment to the private property owner. He asked if a portion of the Among and Palmer property would be taken.

Mr. Okimoto responded “yes.” Their property lines sit within the stream, which is why a portion of their properties must be acquired. A right-of-way is required for the stream widening.

Chairperson Aila, Jr. asked DOT if the bridges in question are part of a bill before the Governor that would exempt 10 bridges from environmental review.

Alvin Takeshita (Highways Administrator for DOT) confirmed that the Makaha Bridges 3 and 3A are on the list of bridges mentioned in SB3010. Mr. Takeshita could not say if the bill would apply to the project.

Chairperson Aila, Jr. commented that if SB3010 were signed into law, it would likely supersede the application currently before the Commission and void any action.

Mr. Takeshita acknowledged that this might be true.

Resident and property owner, Keith Kohl, distributed maps to the Commissioners and pointed out his house. Mr. Kohl disputed the claim that DOT and R.M. Towill had met with him to discuss his concerns. He said his property has been excluded from the project area. He expressed concerns that the current height of the rip-rap would not be sufficient to protect his property from a flood event. Mr. Kohl disagreed with statements by R.M. Towill and said he had not met with them since 2008. Mr. Kohl handed out a two-page letter asking R.M. Towill and DOT to release data from the flood drainage study that could potentially lead to Mr. Kohl’s property being rezoned. Mr. Kohl went on to communicate his fears concerning the design of the rip-rap along the embankment and how the project could result in future threats to his property.

Chairperson Aila, Jr. informed Mr. Kohl that the Commission would not be able to resolve his disagreement with DOT and R.M. Towill. He reiterated that SB3010 was awaiting the Governor’s signature.

Mr. Kohl said the project violates the Land Court Order to put artificial rip-rap in the streambed.

Chairperson Aila, Jr. acknowledged Mr. Kohl’s request for a contested case hearing.

Mr. Kohl replied that it is the Amongs who are requesting a contested case. He said he would need to see the data before he could submit his own request for a contested case.

Commissioner Miike said Mr. Kohl could become an interested party should there be a contested case.

Commissioner Fujiwara asked Mr. Kohl if his property had ever been damaged.

Mr. Kohl replied “of course.” He said there was a major flood in 2008.

Commissioner Fujiwara asked if the flood was due to the bottleneck near the bridge.

Mr. Kohl answered the flood was a rare event. He said there have been high flow events in the past that started to eat away at the bank. He expressed his concern about the 10 foot rip-rap wall ending at his property line and the likelihood that this will lead to erosion on his side and prevent the opposite bank from eroding. Mr. Kohl reiterated the lack of communication with R.M. Towill and DOT and his proposal to extend the rip-rap wall.

Ms. Moana Kea Klausmeyer-Among introduced herself as one of the property owners on the makai side of Bridge 3. She informed the Commission that she had rescinded her permission on the SCAP permit and believed that she had been lied to by DOT and R.M. Towill. She said they conducted an Environmental Assessment (EA) when they had promised to conduct an Environmental Impact Statement (EIS). Ms. Among said she would like to stop the project and make it right for the community. She said the concerns of the community have been ignored and that she never agreed to alter the stream. Ms. Among articulated her concerns about the beach and by-pass road and said she submitted a letter about a year ago chronologically listing activities that had previously taken place. She expressed her frustration with the lack of communication and asked that the permit be denied.

Mr. Robert Palmer introduced himself as one of the property owners next to the bridge. Mr. Palmer conveyed his fears about rezoning a floodplain into residential and listed off his various concerns, including those that would lead to a loss in property value. He suggested moving the floodway of the bridge forward 50 feet, removing the rip-rap on Kili Drive, and putting rip-rap along Farrington Highway to guide the water to the other bridge. Mr. Palmer agreed that the bridge needs to be repaired, yet is concerned about re-designating a floodplain and the impact the project would have on his property. He said he has not had any discussions with R.M. Towill or the DOT.

Juliana Kohl introduced herself as a professional engineer and opposed the project based on the current design. She described her concerns using various maps to illustrate features of the project. She pointed out the property lines adjacent to the bridge and stream. The bridge may not be able to support flood waters during a heavy rainstorm event. Ms. Kohl reiterated previous concerns raised by other members of the public, including the design of the bridge, placement of the rip-rap, and the potential impacts to homeowners.

Robert Chong reread the staff recommendation.

Commissioner Miike asked if the DOT would be willing to sit down with the property owners to work through their concerns or let the Commission vote on the recommendation and have the property owners file for a contested case.

Mr. Takeshita from the DOT stressed the importance of fixing the bridge. He recommended taking a step back before changing the design and deferred to the Commission to make the final decision.

Commissioner Miike asked Chairperson Aila, Jr. if SB3010 would annul a decision made by the Commission.

Chairperson Aila, Jr. said he believed it would, and asked Linda Chow (Deputy Attorney General) what she thought.

Ms. Chow admitted that she had not read the bill, but responded “yes” she believes it would.

Commissioner Fuddy asked if it would be wise to defer until the Governor signs or vetoes the bill.

Commissioner Fujiwara suggested making a motion to defer.

Commissioner Balfour said he would like to have the DOT and R.M. Towill give the Commissioners a presentation since there appears to be some conflicting information.

Commissioner Miike summarized the two key issues asking why the rip-rap on one side of the stream is higher and why the project cut into residential land when there is undeveloped land on the other side. He asked if the DOT and R.M. Towill had considered building a bridge underneath the private driveway to restore the natural flow.

Mr. Takeshita emphasized that the DOT will not be raising or lowering the existing bank elevations.

Commissioner Miike asked why the DOT would keep one side higher than the other and allow flooding into a developed area.

Mr. Takeshita said the project is not an attempt to solve the flood control issues for the Makaha Valley. The mission of the DOT is to improve the bridge and not to undertake other responsibilities.

Commissioner Miike said he agrees that everyone supports replacing the old bridges. However, the residents would also like to see the project account for the 100-year flood and consider the effect on the adjoining land owners.

Brian Takeda from R.M. Towill explained the results of the drainage study to understand the floodwaters after bridge reconstruction. He pointed out the proposed widening to help control floodwaters and improve flow under both bridges. Mr. Takeda rejected the implication that the project would help clear the area out for private landowners.

Commissioner Balfour expressed that maintaining the uneven height of the rip-rap on both sides does not make sense. He said if the rip-rap is going to be redone it should be redone so that both sides are even.

Commissioner Fujiwara said he hoped the parties can get together to resolve their differences before going to a contested case.

**MOTION: (Fujiwara/Fuddy)
To defer the submittal.
UNANIMOUSLY APPROVED.**

2. Application for After-the-Fact Stream Channel Alteration Permit (SCAP.3493.8) for a Rock Retaining Wall at 168 Kapaa Street, Ainako Branch Stream, Hilo, Hawaii, TMK: (3) 2-5-024:012

SUBMITTAL PRESENTATION by: Robert Chong

Robert Chong (Commission on Water Resource Management) introduced Item D-2. The Ainako Stream is a spring-fed stream that starts 0.4 miles upstream from the Ainako Bridge. The water travels downstream to a wooded area. On the main Ainako Stream is a diversion that allows water to go into the Ainako Branch Stream. The diversion on the Ainako Stream is the subject of a contested case hearing involving Commissioner Miike, but is not part of this After-the-Fact SCAP application. In 1991, Yoshimura Inc., Engineering and Planning prepared a flood hazard study for the applicant. The base flood elevation is 654.5. Yoshimura Inc. also prepared grading plans for the applicant which was approved by the Hawaii County Public Works Department along with a building permit. In 2008, the applicant built a rock retaining wall on the property that was longer than the retaining wall shown on the grading plans prepared in 1991. CWRM staff became aware of the rock retaining wall when conducting the field investigation for the contested case hearing. CWRM notified the applicant that an After-the-Fact Permit was required, and the applicant submitted an application for an After-the-Fact Permit. Chapter 343 does not apply because it is on private property.

Summary of Total Recommended Fines:

Minimum Component:	\$250.00/day
Gravity Component:	\$0
Mitigative Component:	(\$200)
<u>Duration</u>	<u>1 day</u>
Total Fine:	\$50

There are no recommended alternative penalties.

RECOMMENDATION:

That the Commission:

1. Approve the After-the-Fact Stream Channel Alteration Permit for a rock retaining wall on Ainako Branch Stream at 168 Kapaa Street in Hilo, Hawaii (TMK: (3) 2-5-024:012) with the following special conditions:
 - a) Issuance of the permit is subject to payment of the fines under Permit Violation (Recommendation 3.) within 30 days. Failure to pay the fine within 30 days of Commission action may result in further fines and violations.
 - b) Standard Conditions 4 to 8 do not apply to this permit.

(DISCUSSION)

Commissioner Miike commented that the house is built very close to the stream and asked if there was a setback.

Sen. Malama Solomon, the daughter of the property owner, replied that the neighbor diverted the stream. She said they became aware of the issue when the neighbor’s septic tank began leaking into their lot. County engineers determined that it was okay. The rock wall was part of the landscape design to help with the flooding.

Commissioner Miike asked if the CWRM staff had contacted the neighbor who diverted the stream.

Roy Hardy (Commission on Water Resource Management) said that staff met with the neighbor who stated he did not regrade his lot. There has been no documentation presented by either party. It is one person’s word against another.

Commissioner Miike said he agrees with the analysis and recommendation, but in the future would like to see the fines increased.

Sen. Solomon commented on the Makaha bridges and SB3010 saying the bill was intended to protect public safety.

Commissioner Balfour again raised the subject of fines stating that the County of Hawaii should be fined since they approved the original plans.

**MOTION: (Fujiwara/Fuddy)
To approve the submittal.
UNANIMOUSLY APPROVED.**

At 11:08am Chairperson Aila, Jr. appointed Commissioner Miike as acting Chair and left the meeting.

3. Application for After-the-Fact Stream Channel Alteration Permit (SCAP.3431.2) for a Culvert Crossing, Unnamed Waioli Stream Channel, Hanalei, Kauai, TMK: (4) 5-5-008:002

SUBMITTAL PRESENTATION by: Robert Chong

Robert Chong (Commission on Water Resource Management) introduced Item D-3 as a request for a 30 inch, corrugated, metal pipe culvert across an unnamed Waioli Stream Channel in Hanalei, Kauai. The culvert crossing was built over 20 years ago, and there is a long history of illegal activities.

There was a finding of violation for \$250.00. There is no Gravity Component. Staff is recommending a \$100.00 reduction for no-significant risk to the environment and a \$100.00 reduction for good faith effort in applying for an After-the-Fact Permit. Duration is one day and there is no alternative settlement penalty.

Summary of Total Recommended Fines:

Minimum Component:	\$250.00/day
Gravity Component:	\$0
Mitigative Component:	(\$200)

<u>Duration</u>	<u>1 day</u>
Total Fine:	\$50

RECOMMENDATION:

That the Commission:

1. Approve an After-the-Fact Stream Channel Alteration Permit for a 30-inch, corrugated, metal pipe culvert across an unnamed Waioli Stream Channel in Hanalei, Kauai.

(DISCUSSION)

Commissioner Miike asked if the previous owner was in jail.

Mr. Chong responded he did not know.

Commissioner Miike asked Mr. Chong to explain the culvert.

Mr. Chong replied that the culvert is on State land and is needed to cross over to the applicant's parcel. It was installed by Mr. Bonar 20 years ago.

Commissioner Yamamura reiterated the need to revisit the fine issue.

Commissioner Miike asked if the applicant was present.

Mr. Chong responded "no."

Commissioner Miike agreed with the other Commissioners that the fines need to be increased and enforced to a greater degree.

MOTION: (Fuddy/Balfour)

To approve the submittal.

UNANIMOUSLY APPROVED.

E. UPDATES AND BRIEFINGS**1. Hawaii Water Plan: Overview**

Lenore Ohye (Commission on Water Resource Management) gave a brief overview of the Hawaii Water Plan to provide context for the next agenda items. The Hawaii Water Plan recognizes a need for long-range planning and seeks to set water resource policies to ensure the proper conservation and development of water resources, obtain maximum beneficial use, ensure adequate water quality, control water for public purposes, provide for the Department of Hawaiian Home Lands, and recognize the need to connect land and water use planning. There are five components to the Hawaii Water Plan. Each one is prepared by a different state and county agency.

The Water Resource Protection Plan (WRPP) is the only plan prepared by the Commission on Water Resource Management (CWRM) and is intended to protect and sustain statewide ground water resources, watershed, and natural stream environments. The WRPP looks at water quantity and how much water must remain in the system to provide for future generations. The Plan was updated in 2008 and sets protection policies, such as the establishment of hydrologic units and sustainable yields for each of the islands to prevent over-pumping. The CWRM has regulatory programs that help to implement the WRPP policies, and monitoring programs to assess the efficacy of existing regulations and where additional regulations may be needed to protect water resources. CWRM also conducts studies on aquifer recharge, wastewater reuse, as well as drought mitigation planning.

The Water Quality Plan is prepared by the Department of Health (DOH) and is intended to protect and enhance water quality. It is governed by the Safe Drinking and Clean Water Acts. Programs include source water assessment where potential contaminating activities are identified for public water system capture areas and the DOH will recommend best management practices to protect water resources. There are also regulatory programs to control groundwater contamination.

The Department of Land and Natural Resources' Engineering Division prepares the State Water Projects Plan (SWPP) which provides the framework for planning state water projects. The Engineering Division surveys each state agency about their existing needs and proposed demand to come up with a water development strategy for the next 20 years. The SWPP was last updated in 2003, and a partial update is currently underway. A briefing on the update is the next agenda item.

The Agricultural Water Use and Development Plan (AWUDP) is prepared by the Department of Agriculture (DOA). This component looks at repairing irrigation systems in the state. The focus is to ensure that the irrigation systems are maintained and future agricultural needs are taken into account. The AWUDP was last updated in 2004. The next update will prioritize improvements.

The final component of the Hawaii Water Plan is the County Water Use and Development Plans (WUDP). The main objective is to set forth the allocation of water use. The county WUDPs need to consider existing and future land uses and be consistent with the WRPP and state and county land use policies. The WUDPs must be adopted by county ordinance in addition to formal adoption by the CWRM.

The Hawaii Water Plan was mandated when the Water Code was adopted in 1987 and required plans to be prepared within three years. The Legislature provided funds for the initial development of the Hawaii Water Plan components, which were adopted by the CWRM in 1990. Due to shortcomings in the 1990 plans, the CWRM required the 1990 plans to be updated within two years. In 1992 new plans were prepared but the CWRM did not adopt those plans because they were too fragmented and narrowly focused, which made integration of the parts difficult. There was also inadequate consideration of uncertainty and a

failure to identify tradeoffs. Since then, the Legislature has not provided funding, which has led to delays in further updating the plans.

In 2000 the CWRM adopted a statewide framework for updating the Hawaii Water Plan to address the issues raised in the 1992 drafts. It established recommended plan elements to allow for better integration and advocated an integrated resource planning approach, which encompasses various planning principles including that all sources of water be identified (e.g. conservation, storm water, wastewater, grey water, etc.) to determine the appropriate mix of resources and strategies to address increasing demand. Because the Framework provides for flexibility in the counties' approach for updating WUDPs, project descriptions of each county's WUDP must be approved by the Commission prior to any update.

The Commission will be holding a public hearing on the City and County of Honolulu's WUDP update for the Ko'olaupoko region in Waimanalo on July 18, 2012 prior to coming before the Commission for adoption. A briefing on the update is scheduled later on this agenda. The Lanai WUDP hearing will be held on June 13, 2012 on Lanai.

2. State Water Projects Plan Update: Briefing

Carty Chang, Chief Engineer for the Department of Land and Natural Resources Engineering Division, said the Engineering Division has requested funding since 2007 to conduct regular updates to the State Water Projects Plan. In 2008, the DLNR used a portion of its Special Land Development Fund to update the plan. Additional funding was requested and approved by the 2012 Legislature (pending Governor approval) and will be used to look at land under the Department of Hawaiian Home Lands (DHHL) and eventually North Kona.

Lance Fukumoto (Fukunaga & Associates) gave an overview of the State Water Projects Plan (SWPP) Update. The objective of the SWPP is to provide a framework for planning and the implementation of water development programs. It is also intended to determine the projected water demands for state projects. The DLNR Engineering Division is overseeing the preparation of the update. Mr. Fukumoto acknowledged Kaleo Manuel from DHHL and Jonathan Scheuer, DHHL consultant.

The SWPP was last updated in 2003 and a lack of funding has delayed further updates. The current update will focus on DHHL projects because DHHL has an active project list and is not bound by county zoning laws. The key task is to inventory existing DHHL water systems and sources, including well and stream diversions, identify DHHL proposed projects and developments, assess future water demand, and develop three scenarios based on low, medium and high demand. Preliminary steps included a review of the 2003 SWPP update and an initial meeting with DHHL. Data was compiled into a database using GIS technology to map out current and future development and proposed uses.

Some of the challenges include that DHHL project managers administer projects over a 5-year timeframe, while the Hawaii Water Plan uses a 20-year timeframe. In

addition, the data does not account for low, medium, or high demand. More data is needed to refine the projected demands and generate a list of long-term projects. There are four DHHL Island Plans developed between 2002 and 2004. The Island Plans break down the DHHL tracts into 10 land use designations and identifies priority tracts and proposed phasing. Water demands were applied to each designated land use but the Island Plans are not current. The Island Plan for Oahu is currently in development and will refer to the current project list. Mr. Fukumoto showed maps of each island, the locations of DHHL lands, and estimated potable and non-potable demands to 2031. The 2031 water demands are projected to range from 3000 gallons per day to 1.3 mgd. The next steps are to refine demand projections, identify water development strategies, and report writing. Completion of the SWPP update is scheduled for fall 2013.

F. PLANNING

1. **Ewa Watershed Management Plan: Updating the City and County of Honolulu Water Use and Development Plan – Request for Approval of the Scope of Work**

SUBMITTAL PRESENTATION by: Lenore Ohye

RECOMMENDATION:

That the Commission:

1. Approve the City and County of Honolulu’s Scope of Work for the Ewa Watershed Management Plan.
2. Require that the City and County of Honolulu, prior to the commencement of the remaining watershed plans for south Oahu (Central Oahu, Primary Urban Center, and East Honolulu), submit proposed scopes of work (i.e., “Project Descriptions”) for those regional areas to the Commission for review and approval.
3. Authorize staff to participate in meetings and/or workshops, as necessary, with pertinent State and County agencies to facilitate implementation of statutory and framework provisions for updating Oahu’s County Water Use and Development Plan.

Sherri Hiraoka (Townscape, Inc.) was introduced as the consultant for the Honolulu Board of Water Supply (HBWS). Ms. Hiraoka passed out copies of the project fact sheet giving an overview of the planning process. It summarized the goals of the watershed management plans and outlined the boundaries of each planning district. She explained the five phases of the Ewa Watershed Management Plan. Each district plan has the same goals and objectives however the sub-objectives are specific to each district. There are several existing master plans for the Ewa region, which can be used to predict future water demands. The ultimate demand scenario considers full build-out within 40 or 50 years. Townscape, Inc. intends to brief the Commission on the public review draft and prior the public hearing which is part of the Commission’s approval process. Regular update meetings are scheduled with the CWRM staff once a month.

(DISCUSSION)

Commissioner Miike asked the HBWS about the implementation phase and if it refers to specific actions that may need Commission approval.

Barry Usagawa (HBWS) said this would probably refer to annual budgets and the long-range Capital Improvement Plan (CIP).

Jonathan Starr asked if the plan would take into account R-1 and R-2 reclaimed water.

Lenore Ohye replied “yes.” As an integrated water resource plan it will try to look at all the different water resources available to the county.

**MOTION: (Fujiwara/Balfour)
To approve the submittal.
UNANIMOUSLY APPROVED.**

G. NEXT COMMISSION MEETINGS (TENTATIVE)

1. June 21, 2012 RESCHEDULED from June 20, 2012
2. July 18, 2012

Acting Chairperson, Lawrence Miike, adjourned the meeting at 11:55am.

Respectfully submitted,

KATIE ERSBAK

APPROVED AS SUBMITTED:

WILLIAM M. TAM
Deputy Director