



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL
for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

June 21, 2006
Honolulu, Hawaii

Application for a Stream Channel Alteration Permit (SCAP-KA-394)
Pilaa 400 LLC, Remediation Plans, James H. Pflueger
Pilaa Stream & Two Unnamed Streams
Kilauea, Kauai (TMK: (4)5-1-004: 008)

APPLICANT:

Pilaa 400, LLC
1450 South Beretania Street
Honolulu, HI 96814

LANDOWNER:

James H. Pflueger
1450 South Beretania Street
Honolulu, HI 96814

SUMMARY OF REQUEST:

The purpose of the project is to restore streams in the project area to their natural condition.

LOCATION: Exhibit 1.

BACKGROUND:

The remediation plans are the result of a consent decree brought on behalf of the Environmental Protection Agency and the State Department of Health. The complaint alleges that defendants James H. Pflueger, Pflueger Properties, and Pilaa 400 LLC, illegally discharged storm water associated with their construction activities on the Island of Kauai, Hawaii, and seeks civil penalties and injunctive relief. The consent decree requires defendants to pay a \$2 million civil penalty and to perform a Supplemental Environmental Project designed to reduce the inflow of pollution to receiving waters and improve water quality, at an estimated cost of \$200,000. Finally, the decree requires defendants to complete measures necessary to abate further discharges of pollution and to repair the damage done to waterways on their property, at a cost of

about \$5.3 million. The remediation plans are based upon input from stream and engineering professionals with expertise in stream biology and hydrology.

DESCRIPTION:

The Project involves restoration work in three different gulches designated Gulch 2 (unnamed stream), Gulch 3 (unnamed stream), and Gulch 4 (Pilaa Stream, also known as Waiakalua Stream) (Exhibit 2). The project will restore streams to more natural conditions to provide aquatic habitat for native species and protect water quality.

ANALYSIS:

The Army Corps of Engineers, Regulatory Branch, has issued a provisional verification under Section 404 of the Clean Water Act. Work may not begin until the Clean Water Branch, Hawaii State Department of Health issues a Section 401 Water Quality Certification, or waiver for the proposed activities, and the Office of Coastal Zone Management (CZM) issues a CZM consistency determination, or receives a CZM negative determination from the applicant, Mr. Pflueger.

The Hawaii CZM Program has completed its federal consistency review of the proposal to restore three gulches in Pilaa, Kauai, to more natural stream conditions, and concurs with the applicant's CZM federal consistency certification for the project.

The Department of Health, Clean Water Branch, has reviewed the Section 401 Water Quality Certification Application submitted on behalf of Mr. Pflueger, and determined that it is incomplete and deficient. They have requested more information to correct the deficiency.

The Department of Hawaiian Home Lands indicates that the project is not subject to their regulatory authority.

The Office of Hawaiian Affairs (OHA) "is supportive of efforts to repair past damage on these and other damaged streams and waterways throughout our islands to provide for native riparian plants, stream species, and traditional and customary Native Hawaiian rights associated with these resources. It is the understanding of OHA that this work is being done in accordance with a consent decree lodged on March 9, 2006 in United States, et al. v. Pflueger, et al., Civ. No. 06-00140 SPK BMK (D. Haw.). To the extent that this proposal implements that decree, OHA is particularly supportive of this effort."

The Division of Forestry and Wildlife has no objections to the project. State Parks indicates the project is not subject to their regulatory authority.

The State Historic Preservation Division is concerned that the proposed remediation plan creates several pond areas that could adversely affect six historic sites in the Gulch 4 (Pilaa Stream) area. They recommend the following conditions:

1. A qualified archaeologist should conduct a field visit and assess whether the ponds will be adversely impacted by the proposed remediation plan; and
2. A qualified archaeologist should be on site to monitor any ground disturbance during construction, and to ensure historic sites are protected. An archaeological plan shall be submitted to our division for review, comment and approval. Once approved, the project should be allowed to proceed; however, a report documenting the archaeological work shall be submitted to the State Historic Preservation Division for review and approval. The report shall include: 1) Detail drawings of burials and deposits to scale; 2) All artifacts shall be sketched and photographed; 3) Analysis of all perishable and datable remains shall be conducted; 4) Stratigraphic profiles shall be drawn and made to scale; 5) All locations of historic sites shall be on an overall map of the project area; 6) Initial significance evaluations shall be included for each historic site found; and 7) Documentation on the nature and age of the historic sites shall be done. If significant historic sites are found then proposed mitigation or preservation plans can be submitted for review and approval.

The County of Kauai, Department of Planning indicates the project is not in the Special Management Area and has no objections to the project.

The County of Kauai, Department of Public Works, indicates the remediation plans are a result of the final product from the discussion groups composed of representatives from the County of Kauai, the State Department of Health, the U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service. They do not believe a no rise determination is required since the unnamed streams have not been identified on the Flood Insurance Rate Maps as a flood prone area. Moreover, there are no existing structures and there will not be any new structures adjacent to the affected work.

At the time the submittal was prepared, staff was still awaiting comments from the U.S. Fish and Wildlife Service, the University of Hawaii – Environmental Center, Aquatic Resources, Engineering Division, and Land Division.

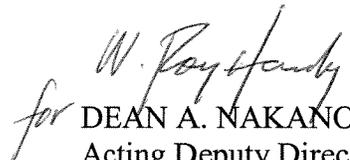
Both the Army Corps of Engineers and the Department of Health indicate they must issue Federal Clean Water Act permits to address water quality concerns (Sections 404 and 401, respectively). The staff believes that these permits will address concerns to minimize adverse impacts to Pilaa Stream and the two unnamed streams in the project area.

RECOMMENDATION:

That the Commission approve a stream channel alteration permit for the Pilaa Remediation Plans Project (TMK: 5-1-004:008) Kilauea, Kauai. The permit shall have a term of two years subject to the Commission's standard permit conditions in Exhibit 3, and the following special conditions:

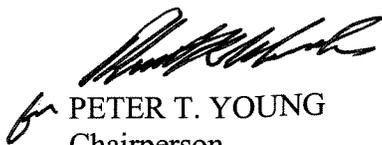
1. A qualified archaeologist should conduct a field visit and assess whether the ponds will be adversely impacted by the proposed remediation plan; and
2. If it is determined that the ponds will be adversely impacted, then a qualified archaeologist should be on site to monitor any ground disturbance during construction, and to ensure historic sites are protected. An archaeological plan shall be submitted to the State Historic Preservation Division (SHPD) for review, comment and approval. Once approved, the project should be allowed to proceed; however, a report documenting the archaeological work shall be submitted to the SHPD for review and approval. The report shall include: 1) Detail drawings of burials and deposits to scale; 2) All artifacts shall be sketched and photographed; 3) Analysis of all perishable and datable remains shall be conducted; 4) Stratigraphic profiles shall be drawn and made to scale; 5) All locations of historic sites shall be on an overall map of the project area; 6) Initial significance evaluations shall be included for each historic site found; and 7) Documentation on the nature and age of the historic sites shall be done. If significant historic sites are found then proposed mitigation or preservation plans can be submitted to the SHPD for review and approval.

Respectfully submitted,


for DEAN A. NAKANO
Acting Deputy Director

- Exhibit(s):
- 1 Location Map
 - 2 Site Map
 - 3 Standard Stream Channel Alteration Permit Conditions

APPROVED FOR SUBMITTAL:


for PETER T. YOUNG
Chairperson