



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

September 19, 2007
Honolulu, Hawaii

After-the-Fact
Application for a Stream Channel Alteration Permit (SCAP.1748.2)
Ms. LeeAnn Stonebreaker/Mr. Michael Bermeister
Tropic Works Productions, Inc.
Construction of a Temporary Footbridge
Kapaa Stream, Kapaa, Kauai
TMKs: (4) 4-7-002:001 and (4) 4-6-009:044

APPLICANT:

Ms. LeeAnn Stonebreaker/Mr. Michael Burmeister
Tropic Works Productions, Inc.
Kuhio Highway, PMB #293
Kapaa, Kauai 96746

LANDOWNER/LESSEE:

Falko Properties
Attention: Mr. Shawn Smith 4-1191
6191 Hauaala Road
Kapaa, Kauai 96746

AGENT:

Mr. Tom Fee/Mr. Rob James
Helber Hastert & Fee, Planners
733 Bishop Street, Suite 2590
Honolulu, HI 96813

SUMMARY OF REQUEST:

After-the-Fact Application for a Stream Channel Alteration Permit (SCAP) for the construction and removal of a temporary pedestrian footbridge across Kapaa Stream.

LOCATION: Exhibit 1.

BACKGROUND:

The site is in the Kapaa district of Kauai, within the agricultural district, approximately two miles upland of Kuhio Highway, and is accessible via Hauaala Road.

Approved by Commission on
Water Resource Management
at the meeting held on
SEP 19 2007

Item D3

The location was picked because it provided the production company a “forest look” that they were unable to find elsewhere on Kauai that could accommodate a long tracking shot of the actors moving through deep forest from a vantage point above. It also provided other options for tracking shots while they were on-site. Tropic Works is also filming other scenes on and around the property (not involving streams). After an exhaustive search, this was the only location that best fit the Director’s vision for this movie. Tropic Works determined that a temporary footbridge was needed to access the filming site for personnel safety reasons; the stream channel banks were too steep to traverse and the cobbly stream floor would have posed a hazard to the film crew. Due to an oversight, Tropic Works is only now requesting a review by the Commission.

Construction of the footbridge began on August 17, 2007 and the structure was removed August 28, 2007. Before and after photographs were taken to document return to pre-construction conditions (see Exhibit 2). Use of the footbridge was only for temporary pedestrian access across the stream; it was not capable of supporting vehicles and was not part of the film.

DESCRIPTION:

The wooden bridge was approximately 96 feet long and 4 feet wide. The stream was approximately 64 feet wide under the bridge at water level and about 78 feet wide between the tops of the stream banks. Water depth under the bridge was approximately 12 inches. Maximum height of the deck above the stream level was about 8 feet.

The bridge was constructed of plywood and dimensional lumber in 16-foot segments. The in-water supports consisted of common 2-inch diameter pipe scaffolding (see Exhibit 3). A total of five pairs of supports (10 individual footings) together with cross bracing comprised the in-stream components. The pipe scaffolding was erected by hand and placed directly on the stream bed rocks. The individual segments of the walkway were placed onto the assembled pipe scaffolding by hand and bolted together. Removal was accomplished by a similar method and the site was restored to its pre-existing condition (see Exhibits 4 and 5).

Site preparation was limited to trimming stream bank vegetation under the footbridge. The flat, stony stream channel floor was not modified to support the structure.

ANALYSIS:

Agency Reviews

The U.S. Army Corps of Engineers determined that a Department of the Army (DA) permit is not required for the temporary footbridge project.

The State Department of Health, Clean Water Branch waived its requirements for a Section 401 WQC application because a DA permit was not required.

The Office of Conservation and Coastal Lands, State Historic Preservation Division, Engineering Division, and the Division of Forestry and Wildlife had no objections to the project.

The Kauai Department of Public Works (DPW) commented that these temporary structures are uninsurable and there are no flood requirements. Although there may be localized increases in the base flood elevations during the base flood discharge, these sites are remote enough so that such increases in elevation will level out and not affect downstream structures.

The Division of Aquatic Resources, Land Division, State Parks, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, University of Hawaii Environmental Center and U.S. Fish and Wildlife Service did not submit comments as of the date of preparation of this submittal.

Permit Violation Review

Hawaii Revised Statutes (HRS) §174C-71(3)(A) states: *"The Commission shall require persons to obtain a permit from the commission prior to undertaking a stream channel alteration; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit."*

HRS §174C-3 states: *"Channel alteration" means: (1) to obstruct, diminish, destroy, modify, or relocate a stream channel; (2) to change the direction of flow of water in a stream channel; (3) to place any material or structures in a stream channel; and (4) to remove any material or structures from a stream channel.*

HRS §174C-3 states: *"Stream" means any river, creek, slough, or natural watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some parts of the bed or channel have been dredged or improved does not prevent the watercourse from being a stream.*

The applicant constructed and removed a temporary pedestrian footbridge across Kapaa Stream without a Stream Channel Alteration Permit from the Commission.

Penalty Policy

Hawaii Revised Statutes (HRS) Section 174C-15, as amended, provides for fines up to \$5,000 per day for any violation of any provision of HRS §174C. The Commission adopted an Administrative and Civil Penalty Guideline (G01-01) in 2001 to provide a logical and consistent means to assess penalties and guide the settlement of Commission enforcement cases. The Guideline includes Basic, Gravity, Mitigative, and Duration Components. Gravity and Duration Components can increase the initial minimum penalty while Mitigative Components can decrease the initial minimum penalty.

Basic Components: The minimum fine established by the Commission’s penalty policy is \$250 minimum per violation that was set when the maximum fine was \$1,000. The Commission has not adjusted the guideline since the fine was increased to up to \$5,000 per day for any violation. The Basic Components include the following:

<i>Component A:</i> Finding of violation:	\$250 per day/incident
<i>Component B:</i> Occurring in a Water Management Area (WMA)	\$250 per day/incident
<i>Component C:</i> Repeat Violation	\$250 per day/incident

Applicability to Violation:

The applicant was in violation of HRS §174C-71(3)(A) for constructing a temporary footbridge across Kapaa Stream without a SCAP. Kapaa Stream is not in a Surface Water Management Area, and the applicant has no repeat violations.

Staff recommends the minimum basic fine component of \$250 for one day violation of one incident.

Gravity Components: Six elements are outlined in the Commission’s Penalty Policy: A) significant risk to resource; B) actual harm or damage to resource; C) multiple or repeat violations of code or regulations;

D) evidence that violator should have known; E) refusal to correct violation; F) failure to meet deadlines set by the Commission. The gravity component can add an additional up to a cap of \$1,000 per violation and initiate daily fines.

Applicability to Violation:

Components A and B: The Commission has no direct evidence in this case of risk or damage to Kapaa Stream.

Component C: The applicant has no multiple or repeat violations.

Component D: The applicant should have known about the permit requirement because they were previously issued a SCAP.

Component E: Not applicable.

Component F: Not applicable.

Staff recommends a \$25 fine for Gravity Component D.

Mitigative Components: Six mitigative elements are outlined in the Commission’s Penalty Policy: A) insignificant risk to resource; B) attempt to remedy without notice; C) good faith effort to remedy violation once noticed; D) diligent and speedy effort to remedy the violation once noticed; E) self-reporting in a timely manner; F) emergency considerations.

Applicability to Violation:

Component A: The construction of the temporary footbridge does not appear to have created any risk to Kapaa Stream. There were no complaints reported during construction of the footbridge.

Component B: Not applicable.

Component C: The applicant showed good faith effort and immediately requested of the Commission staff whether a SCAP was required.

Component D: The applicant complied with the Commission’s request and submitted a SCAP application.

Component E: Not applicable.

Component F: Not applicable.

Staff recommends a \$25 reduction in fine for each Mitigative Component, A,C and D, for a total reduction in fines of \$75.

Duration Component: The duration calculation is determined according to the circumstances surrounding each type of violation. When compliance is speedy and the applicant is not a repeat violator, the policy is to limit the duration exposure to fine to a single day minimum.

Staff recommends that the duration of exposure be limited to a single day minimum.

Summary of Recommended Fines:

Basic Component:	\$250
Gravity Component:	\$25
<u>Mitigative Component:</u>	<u>(\$75)</u>
Total Fine:	\$200

Exhibit 6 is a summary of the penalty calculations for this case.

RECOMMENDATION:

That the Commission:

1. Find the applicant in violation of Hawaii Revised Statutes §174C-71(3)(A) for constructing a temporary footbridge across Kapaa 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, with gravity and 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 and remove a temporary footbridge across Kapaa Stream, Kapaa, Kauai, (TMK: (4) 4-7-002:001 and (4) 4-6-009:044). The permit shall be subject to the Commission’s standard conditions in Exhibit 7 (standard conditions 4 to 8 do not apply to this permit).

Respectfully submitted,



KEN C. KAWAHARA, P.E.
Deputy Director

- Exhibits:
1. Location Map
 2. Photos of the location before construction
 3. Details of footbridge construction
 4. View north with footbridge and after removal
 5. View south with footbridge and after removal
 6. Summary of Penalty Calculations
 7. Standard Stream Channel Alteration Permit Conditions

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN
Chairperson