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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
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STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

October 17, 2007
Honolulu, Hawaii

Application for a Stream Channel Alteration Permit (SCAP.1726.8)
Keanuimano Stream, Kamuela, Hawaii
TMK: (3) 6-2-009:020 and 018

APPLICANT:

Peter Z. Wasowski
62-2241 Kanehoa Place
Kamuela, HI 96743

LANDOWNER:

Lot 20: Same as applicant
Lot 18: Sara McCay
62-2219 Ouli Street
Kamuela, HI 96743

SUMMARY OF REQUEST:

Application for a Stream Channel Alteration Permit (SCAP) to remove boulders and debris from three sites on Lot 20 and to install a 12-inch diameter pipe approximately 78 feet across Lot 18 to the center of Keanuimano Stream, Kamuela, Hawaii.

LOCATION: Exhibits 1a and 1b.

BACKGROUND:

In March 1997 the applicant purchased Lot 20 from Mr. Erwin Baldwin who had filed a Declaration and Registration of Water Use with the Commission on Water Resource Management (Commission) in 1989 to divert water from Keanuimano Stream via two six-inch pipes and store in reservoirs to irrigate six acres of citrus, fruit orchard and windbreak trees. The applicant's property, Lot 20, includes a Grant of Easement from Lot 18 in favor of Lot 20 that is located on a portion of Lot 18. The deed to Lot 18 states that the easement for waterline purposes is five feet wide, begins at the east boundary line of Lot 20, traverses 94 feet across Lot 18 and continues "along said course for such further distance as may be necessary to reach

Approved by Commission on
Water Resource Management
at the meeting held on

OCT 17 2007

(amended)

ITEM E-1

Keanuiomano Stream.” Two six-inch PVC pipes are buried in the easement. See Exhibits 2a, 2b, 5 and 6.

On January 24, 2003, DLNR Division of Conservation and Resources Enforcement (DOCARE) investigated a complaint that the owner at this property, Lot 20, was diverting water from Keanuiomano Stream. DOCARE observed white PVC intake pipes about six inches in diameter leading to a pond/reservoir that had been deepened and relined with rocks on the owner’s property. A pump was used to pump water from the lower pond to the upper pond at a higher elevation at the front of the property. Water was used to irrigate plants and as a water feature. DOCARE told the caretaker to cap the intake pipes, issued a Cease and Desist Order, and told the caretaker that the owner must apply for a stream diversion permit from the Commission.

On February 13, 2007, Sara McCay, owner of Lot 18, filed a Complaint/Dispute Resolution form with the Commission that the applicant or someone else had dug out the stream bed with a backhoe approximately 20 feet beyond the easement and had piled up the dirt and rocks toward the middle of the stream.

On February 21, 2007, DLNR, DOCARE investigated Ms. McCay’s complaint that the applicant had trespassed on her property (Lot 18) and had used a backhoe to clean the river bed. DOCARE observed a cleared area approximately 20 feet in diameter in front of the intake pipes in the easement on Ms. McCay’s property and referred the trespassing and other issues to the police and an attorney.

On February 28, 2007, the Commission sent the applicant a letter requesting a response to Ms. McCay’s Complaint/Dispute Resolution form.

On March 5, 2007, the applicant responded to the Commission’s Complaint/Dispute Resolution form stating that he had operated a backhoe within the easement boundaries on Lot 18 to remove several large tree trunks and debris in front of the intake pipes to his pond and requested an on site meeting with Commission staff.

On March 9, 2007, Roger D. Fleemor, a professional land surveyor for Ms. McCay, surveyed the five-foot wide waterline easement on Lot 18 and in favor of Lot 20 and staked six corners of the easement with metal fence posts, bright paint and survey flagging. The surveyor’s field inspection noted that the earthwork activities had occurred outside of the easement area.

On March 14, 2007, Commission staff met on site with the applicant and Ms. McCay separately to discuss and inspect the stream diversion, pipeline easement and work in the stream bed. The applicant acknowledged that his understanding of the easement was different from what was staked and marked by the surveyor and stated that he had no intention of trespassing on Ms. McCay’s property.

On March 15, 2007, Ms. McCay’s attorney, Vaughn S. Winborne Jr., requested in writing that the applicant remain within his easement and not to trespass on Ms. McCay’s property.

On March 21, 2007, Commission responded to Ms. McCay's Complaint/Dispute Resolution form and informed her that (1) the applicant had misunderstood the location of the waterline easement that had been staked and marked by Ms. McCay's surveyor, (2) routine streambed and drainage way maintenance activities are within the provisions of the State Water Code and do not require a stream channel alteration permit, and (3) there is a disagreement in the interpretation of the waterline easement agreement. The waterline easement agreement's reference to Keanuiomano Stream is ambiguous and can be interpreted to mean the side channel of Keanuiomano Stream directly in front of the intake pipes or the mouth of the side channel that is approximately 176 feet further upstream.

On April 2, 2007, Mr. Erwin Baldwin, the former owner of Lot 20 who had drafted the waterline easement agreement, responded in writing to the Commission's letter to Ms. McCay's Complaint/Dispute Resolution form regarding the waterline easement agreement and stated: "It is essential to provide for the weir to collect and direct water to the pipeline entrance. It is also necessary to provide for the possible extension of the pipeline to the main flow of the Keanuiomano Stream should the side channel supplying the existing pipeline fail or become blocked."

On July 23, 2007, the Commission received a completed SCAP application from the applicant.

On October 9, 2007, Commission staff is scheduled to meet with the applicant, Sara McCay/Tom Noone, and Erwin Baldwin in Kamuela to discuss the waterline easement agreement and attempt to reach a consensus among all parties regarding the waterline easement.

DESCRIPTION:

According to the applicant, three years ago, the Waimea area had a large and damaging ten-year storm event that caused Keanuiomano Stream to overflow from its normal channel and flood a large area between the lower pond on the applicant's property and the stream. During the storm event, the high stream flow deposited a layer of rocks, soil, and sediment in two areas of Keanuiomano Stream. The first area deposited debris and raised the bottom of the stream by approximately four feet, and the second area left two large boulders behind and formed a peninsula. Both areas of sedimentation and debris have shifted the direction of the streamflow to the applicant's side of the streambank resulting in a significant amount of streambank erosion which has been further eroded by average streamflow.

The applicant is proposing to remove boulders and debris at three sites on his property (Lot 20) and to extend the water intake pipe approximately 78 feet from its present location to the center of Keanuiomano Stream (Lot 18). A TH 660 All Terrain Lift with a 45-foot reach will be parked on the stream bank and will not enter the streambed. A Bobcat 331 Mini Excavator with small rubber tracks will be used to enter the streambed and load the bucket of the TH 660 All Terrain Lift. See Exhibit 3.

Project Site One involves the removal of the debris which formed a small island after the flooding three years ago and shifted the stream towards the edge of the applicant's property. Approximately 38 cubic yards of debris will be removed.

Project Site Two involves the removal of two boulders in front of the island. One boulder is estimated at 1.5 cubic yards, and the second one is estimated at 1.3 cubic yards for a total of 2.8 cubic yards.

Project Site Three involves the removal of debris deposited by the same flood which raised the streambed and resulted in streambank erosion. The estimated volume of debris to be removed from this site is 48 cubic yards.

The Waterline Easement Project will involve the extension of the five-foot wide easement and placement of one 12-inch diameter pipe in a 15-inch trench from the end of the existing 94-foot easement on Lot 18 to the center of Keanuimano Stream approximately 78 feet away. A gate valve that opens by lifting a round or rectangular gate/wedge out of the path of the water, will be opened when there is a sufficient amount of water flowing in Keanuimano Stream to deliver water from the stream to the basin area in front of the two existing six-inch pipes located at the end of the 94-foot water line easement. See Exhibit 6.

ANALYSIS:

Hawaii State Department of Health Clean Water Branch made the following comments:

- Any project and its potential impacts to State water must meet the State's anti-degradation policy, designated uses and water quality criteria.
- The U.S. Army Corps of Engineers (COE) should be consulted regarding the Department of Army (DA) permitting requirements.
- An individual permit application or a Notice of Intent (NOI) for general permit coverage authorized under the National Pollutant Discharge Elimination System (NPDES) may be required.
- The applicant must also submit a copy of the NOI or NPDES to the DLNR State Historic Preservation Division for their review.
- Any discharge related to the project construction or operation activities must comply with State Water Quality Standards.
- The applicant must comply with the State's water quality requirements and shall not discharge any pollutants into State waters or cause or allow any water pollutant to enter State waters.

The Office of Hawaii Affairs (OHA) recommended consultation with the Hawaii State Department of Health and the U.S. Army Corps of Engineers to assess the impacts of the project on the stream. OHA was concerned that the project will cause refuse to be discharged into nearby waters which are used by Native Hawaiians in the area for their constitutionally protected

access and cultural uses. OHA requested assurances that the applicant will stop work and contact the State Historic Preservation Division immediately if iwi kupuna (ancestral Native Hawaiian remains) or other cultural deposits are uncovered.

Hawaii County Planning Department had no objections to the project which is not located in a County Special Management Area (SMA).

The Division of Aquatic Resources (DAR) commented that Keanuiomano Stream is a tributary to Waiulaula Stream and provides habitat for native goby fish and three alien fish species. Waiulaula Stream provides habitat for ten macrofauna including fish species, crustacean, dragonflies and damselflies. The removal of deposited debris and boulders and modification to the existing diversion are not expected to have any significant impact on the aquatic resources of the area. However, the applicant did not explain the disposition of the excavated debris and boulders and the method and material for grading the streambed after removal of the debris and boulders.

DAR recommended the following mitigative measures to minimize the potential for erosion, siltation and pollution of the aquatic environment:

- Working in the streambed when it is dry at Sites One and Two.
- Using silt curtains or other Best management Practices (BMPs) to prevent siltation in the stream.
- Scheduling site work (particularly the excavation) during periods of minimal rainfall.
- Preventing construction materials, petroleum products, debris, and landscaping products from falling, blowing, or leaching into the aquatic environment.

The Land Division noted that the applicant's southern boundary follows the middle of Keanuiomano Stream which is the common boundary separating the applicant's land from State-owned land which is leased to Harold F. Rice, Jr. (General Lease No. S-5373). If the applicant must cross back and forth over the middle of Keanuiomano Stream to remove debris, boulders and sediment, a right-of-entry permit authorizing the applicant to enter upon State-owned land will be necessary.

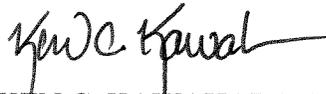
State Parks, Forestry and Wildlife Divisions, and the Department of Hawaiian Home Lands did not have any objections to the project. Engineering Division commented that the project is not subject to its regulatory authority or permit.

The U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, University of Hawaii Environmental Center, Hawaii County Department of Public Works, and State Historic Preservation did not submit comments at the time of the preparation of this report.

RECOMMENDATION:

That the Commission approve a Stream Channel Alteration Permit to remove boulders and debris from three sites on Lot 20 and to install a 12-inch diameter pipe approximately 78 feet across Lot 18 to the center of Keanuiomano Stream, Kamuela, Hawaii. The permit shall have a term of two (2) years subject to the Commission's standard permit conditions in Exhibit 8.

Respectfully submitted,



KEN C. KAWAHARA, P.E.
Deputy Director

- Exhibits:
1. Location Maps 1a and 1b
 2. Waterline Easement Agreement (2a) and survey of Lot 18 (2b)
 3. Location of Project Sites 1-3 and Waterline Easement Project
 4. Photos of Project Sites 1-3 on Lot 20
 5. Photo of the five-foot wide water line easement on Lot 18
 6. Photo of the two six-inch intake pipes at the end of the easement on Lot 18
 7. Photo of Keanuiomano Stream from the applicant's property (Lot 20) looking downstream
 8. Standard Stream Channel Alteration Permit Conditions

APPROVED FOR SUBMITTAL



LAURA H. THIELEN
Chairperson