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for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

August 28, 2008
Honolulu, Oahu

Approval to Conduct a Limited Meeting of Several East Maui Streams
In Connection with the Petitions to Amend East Maui Interim Instream Flow Standards

SUMMARY OF REQUEST:

Staff is requesting approval from the Commission on Water Resource Management (Commission) to conduct a limited meeting of the Commission on September 2 and 3, 2008 in compliance with Section 92-3.1 of the Hawaii Revised Statutes, as amended.

BACKGROUND:

On May 24, 2001, the Native Hawaiian Legal Corporation (NHLC) filed 27 Petitions to Amend the Interim Instream Flow Standards (IIFS) for 27 East Maui streams on behalf of resident taro farmers. The petitions were accepted on July 13, 2001.

By a letter dated July 26, 2001, NHLC memorialized its conversation with Commission staff and reiterated its request for the Commission to focus its efforts to restore streamflow to Honopou, Hanehoi, Waiokamilo, Kualani, Piinau, Palauhulu, and Wailuanui streams. The parties agreed to obtain information and identify existing uses within and among these streams. Eventually the streams focused on would be reduced to include only Honopou, Hanehoi, Piinaau, Waiokamilo, and Wailuanui.

A public review draft of each of the Instream Flow Standard Assessment Reports for Honopou, Hanehoi, Piinaau, Waiokamilo, and Wailuanui, was made available online on the Commission on Water Resource Management website and at the Commission on Water Resource Management office. The public was invited to comment on the draft reports. Staff has also conducted a public fact gathering meeting at the Haiku Community Center. The deadline for the public to submit comments to the draft reports was June 10, 2008.

Staff is preparing to present their findings and recommendations on the petitions for amendment of the IIFS for Honopou, Hanehoi, Piinaau, Waiokamilo, and Wailuanui streams at the Commission's meeting scheduled for September 24, 2008. Staff believes it would be very beneficial for the Commissioners to be able to view the areas and streams that are the subject of the petitions for amendment of IIFS and to fact find, appreciate, understand, and gather general knowledge that otherwise might not be available through reports or other means. Staff is recommending that the Commissioners conduct a site visit of several key areas relating to the pending petitions on September 2 and 3, 2008. A proposed schedule and agenda is attached as Exhibit 1.

Portions of the proposed site visit will require the Commissioners to enter onto private property or property controlled and managed by a private entity. Some of these areas also have limitations as to the number of vehicles that can be accommodated (Honopou stream diversions, Kekahuna/Wallett properties at Honopou stream, Wailoa siphon and Kamole weir, and Waiakamilo stream) or the roads are so narrow as to make it advisable to limit the vehicles to only EMI vehicles with experienced EMI drivers (Wailuanui stream diversions). All of these areas also require 4-wheel drive.

Pursuant to HRS 92-3.1, a Commission vote is required to determine that it is necessary to hold a "Limited Meeting" at a dangerous location and to specify, after sufficient public deliberation, that the location is dangerous to health or safety or that on-site inspection is necessary and public attendance is impracticable. A copy of the relevant provisions of the State statutes, as amended, on limited meetings is set forth below.

Limited meetings are not open to the public because of the determination that the location is dangerous to the health and safety of the public or that public attendance is impracticable. To offset the absence of the public, there is a requirement to video tape the limited meetings. Staff can have video equipment available for this purpose.

RELEVANT LAW:

Section 92-3.1, H.R.S., Limited meetings, provides that:

- (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location, that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:
 - (1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that on-site inspection is necessary and public attendance is impracticable;
 - (2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and
 - (3) Notice of the limited meeting is provided in accordance with section 92-7.

(b) At all limited meetings, the board shall:

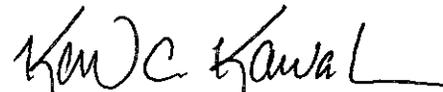
- (1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;
- (2) Make the videotape available at the next regular meeting; and
- (3) Make no decisions at the meeting.

RECOMMENDATION:

The staff recommends that the Commission find that it is necessary for the Commission to conduct a site visit of various locations in east Maui that are the subject of pending petitions to amend IIFS in order to better understand the needs and infrastructure of the water users in the area and the condition of the streams that are the subject of the petitions. Further, in doing so, the Commission:

- 1. Determines that within the proposed areas of the site visit are locations at which public attendance would not be practicable. Those portions of the meeting indicated in Exhibit 1 as "Limited" will be limited to public attendance. All other portions of the meeting will be open for public participation;
- 2. Declares that it will not make decisions at the meetings during the site visit in accordance with HRS 92-3.1(b)(3); and
- 3. Directs the Commission on Water Resource Management Deputy Director to:
 - a. Seek the concurrence of the Director of the Office of Information Practices in accordance with HRS 92-3.1(a);
 - b. Notice said meeting in accordance with HRS 92-7;
 - c. Provide minutes of said meetings in accordance with HRS 92-9; and
 - d. Make arrangements to have the meeting videotaped.

Respectfully submitted,



KEN C. KAWAHARA, P.E.
Deputy Director

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN
Chairperson



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The Commission on Water Resource Management (Commission) will be conducting a site visit of East Maui for the areas of Honopou, Haliimaile, Wailuanui, and Waiokamilo over the course of two days during September 2-3, 2008. Due to the access and safety concerns, portions of the site visit will be limited (LIMITED) and not open to the general public. Other portions of the site visit will remain open to the general public (OPEN). Portions of the site visit are delineated in the schedule below. All times are tentative. The public will be responsible for their own transportation.

DATE: Tuesday, September 2, 2008

TIME: 8:30 a.m. – Haiku Community Center, Hana Highway, Haiku, Maui
Presentation by the Division of Aquatic Resources on East Maui Stream Surveys (OPEN)

The Commission will drive from Haiku Community Center to the various locations of the site visit.

10:00 a.m. – East Maui Irrigation System, Honopou Stream Diversions to Wailoa Ditch, New Hamakua Ditch, Lowrie Ditch, and Haiku Ditch (LIMITED)

2:00 p.m. – Kekahuna/Wallett Properties at Honopou Stream, below Hana Highway (LIMITED)

5:00 p.m. – Wailoa Siphon and Kamole Weir (LIMITED)

DATE: Wednesday, September 3, 2008

TIME: 7:30 a.m. – Meet at East Maui Irrigation Paia Office (OPEN)

9:00 a.m. – Wailuanui Stream Diversions to Koolau Ditch (LIMITED)

2:00 p.m. – Wailuanui Lookout and Wailua Road (OPEN)

4:00 p.m. – Waiokamilo Stream (LIMITED)