



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

February 17, 2010  
Honolulu, Hawaii

Violation and Application for  
After-the-Fact Stream Diversion Works Permit (SDWP.2529.8)  
Unnamed Tributary to Kaieie Stream  
Papaikou, Hawaii, TMK: (3) 2-7-006:028

APPLICANT:

Matt and Alicia Wills  
P.O. Box 67474  
Topeka, KS 66667

LANDOWNER:

Same as applicant

SUMMARY OF REQUEST:

Application for an After-the-Fact Stream Diversion Works Permit (SDWP.2529.8) for a concrete collection box on an unnamed tributary to Kaieie Stream, Papaikou, Hawaii, TMK: (3) 2-7-006:028.

LOCATION: Exhibits 1 and 2.

BACKGROUND:

On May 25, 1989, the previous owner, Mr. Liloa Willard, submitted a Registration of Stream Diversion Works and Declaration of Water Use to the Commission on Water Resource Management (Commission) to divert 2.0 cfs (1.3 million gallons per day (mgd)) from the unnamed tributary to Kaieie Stream for aquaculture for a future diversion structure on Parcel 014 with the outfall located on Parcel 24.

On December 29, 1989, the Commission notified Mr. Willard that his declaration was placed in Category 3, which meant that the declaration did not reflect an existing use of water but a future use of water.

On December 20, 1990, the State of Hawaii granted a "Perpetual Non-Exclusive Water Transmission Line Easement" to Hoowaiwai Farms (Mr. Liloa Willard) for Parcel 26.

Mr. Liloa Willard subdivided Parcel 014 into Parcels 014 and 028. In 2001, Mr. Willard sold Parcel 014 to Jesse and Jennifer Fourmy and sold Parcels 017, 024 and 028 to Matt and Alicia Wills in 2005.

On December 27, 2008, the Department of Conservation and Resources Enforcement (DOCARE) followed up on a complaint and conducted a site investigation regarding a concrete collection box with a large plastic pipe on Parcel 028 that was diverting water to a pond.

On January 21, 2009, Mr. Fourmy filed a Complaint/Dispute Resolution (CDR) Filing Form (CDR.2113.8) with the Commission stating that the applicants had diverted all the water from the unnamed tributary to the applicants' benefit and Mr. Fourmy no longer benefitted from a free-flowing stream.

On February 17, 2009, the applicants were asked to complete a CDR Response Form and application for a Stream Diversion Works Permit (SDWP).

On March 11, 2009, the applicants submitted a CDR Response Form to the Commission stating the following:

- The applicants purchased their property in 2005, and there was already a stream diversion located on Parcel 028 which was built by the previous owner, Mr. Liloa Willard, around 1995.
- The concrete collection box is covered by a grate on the unnamed tributary to Kaieie Stream, and a six-inch pipe runs from the concrete box into the first of a series of five ponds which were built by the previous owner. The six-inch pipe has a flow control valve that can be shut off.
- The ponds are used for aquaculture, and the ponds are stocked with tilapia for personal use.
- The applicants were unaware that there was no water flowing downstream from the concrete collection box until a complaint was filed and had thought that they were using the diversion system as it had been done since it was originally installed in 1995.
- The applicants shut down the pipe flow from the concrete collection box when they received the complaint but had to reopen the valve to allow the water level in the ponds to replenish.

On July 17, 2009, Commission staff conducted a site visit and inspected the concrete collection box diversion on the unnamed tributary to Kaieie Stream.

On October 8, 2009, the U.S. Geological Survey (USGS) staff conducted a site visit at the request of Commission staff to measure the stream flow at the concrete collection box on the unnamed tributary. The USGS measured 1.03 cubic feet per second (cfs) (0.67 mgd) at a stream section about ten feet above the intake (diversion). One full turn of the diversion control valve reduced the downstream flow measurement to 0.43 cfs (0.28 mgd). Therefore, with one full turn of the control valve, the intake diverted  $1.03 \text{ cfs} - 0.43 \text{ cfs} = 0.60 \text{ cfs}$  (0.39 mgd) as measured by the USGS. The USGS noted that a nearby stream gage on Honolii Stream was above low-flow stage, which may indicate that this stream was also above low-flow stage.

On November 8, 2009, the applicants attempted to measure the water flow from the 18-inch underground pipe that empties water from the last pond into Kaieie Stream by using the five-gallon bucket method to determine the amount of time it took to fill a five-gallon bucket to arrive at a volume in gallons per minute (gpm). However, accurate measurement was difficult because the pipe is flush with the ground, and there was significant spillage while measuring the outflow from the underground pipe. The applicants measured 30 gpm (0.04 mgd or 0.07 cfs) and stated that this was an underestimate because of the significant amount of spillage during the measurement. The water usage was attributed to evaporation and seepage. Therefore, at least 10 percent of the diverted flow is returned to the stream.

On November 23, 2009, the applicants submitted an application for an after-the-fact SDWP.

DESCRIPTION:

The previous landowner, Mr. Liloa Willard, constructed a concrete intake box on the unnamed tributary to Kaieie Stream around 1995. The intake box is 45 inches long by 22.5 inches wide and five inches deep, with an eight-inch drain outlet at the bottom of the intake box that reduces down to a six-inch pipe with a gate valve located downstream before the first of a series of five ponds. The diverted water flows by gravity into each successive pond, and then flows in an underground pipe that empties into Kaieie Stream on Parcel 24. See Exhibit 3.

To the applicants' knowledge, the unnamed tributary has flowed continuously since they purchased the property in 2005 except for a brief period in 2007 when there was a significant drought. The applicants have been maintaining the water levels in the five ponds with the flow control valve (Gate type) open one full turn since March 2009 after receiving Mr. Fourmy's complaint. The applicants have tried to divert less water with the control valve opened only one-half turn, but observed that the water levels in the ponds dropped within 24 hours.

ANALYSIS:Agency Review Comments

Hawaii County Planning Department did not have any objections.

The U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, State Department of Health, Department of Hawaiian Home Lands, Office of Hawaiian Affairs and University of Hawaii Environmental Center did not submit comments as of the date of preparation of this submittal.

DLNR Review Comments:

- Engineering Division: the project is located in Flood Zone X (outside the 100- and 500-year floodplains) according to the Flood Insurance Rate Map (FIRM) prepared by the Federal Emergency Management Agency (FEMA), and that the National Flood Insurance Program (NFIP) does not have any regulations for developments within Flood Zone X.
- The Land Division had no occupancy or permitting issues.
- State Parks: the project was not subject to its regulatory authority and permit.
- The Division of Aquatic Resources (DAR), Forestry and Wildlife and Historic Preservation did not submit comments as of the date of preparation of this submittal.

Commission Review

The Commission's database of Registration of Stream Diversion Works and Declaration of Water Use indicated that Mr. Liloa Willard submitted a Registration of Stream Diversion Works and Declaration of Water Use to the Commission to divert 2.0 cfs (1.3 mgd) from the unnamed tributary to Kaieie Stream for aquaculture for a future diversion structure on Parcel 014 with the outfall located on Parcel 24 on May 25, 1989. Mr. Willard constructed the concrete collection box and the five ponds on his property in about 1995 and was diverting water from the unnamed tributary to Kaieie Stream for his five ponds.

The unnamed tributary to Kaieie Stream does not appear on the U.S. Geological Survey's (USGS) topographic map but does appear on the TMK map. Kaieie Stream is a perennial stream that is 16.4 miles long with numerous tributaries, one of which is this unnamed tributary. DAR's Atlas of Hawaiian Watersheds & Their Aquatic Resources, Island of Hawaii, Volume 2, April 2008, shows a number of tributaries to Kaieie Stream but does not show the unnamed tributary which is the subject of this report.

DAR's Atlas indicates the presence of native crustacean (opae), snails (hihiwai) and fish (oopu) in the estuary, lower, middle and upper reaches of Kaieie Stream.

The USGS maintains a stream gage station on Honolii Stream which is located 2.5 miles south of Kaieie Stream, and USGS statistics for Honolii Stream, based on 41 years of record, showed that the minimum daily discharge statistic of 1.7 cfs occurred in 1980 and the median daily discharge is 28 cfs. When the USGS measured the stream flow on the unnamed tributary to Kaieie Stream, USGS noted that the stream gage on Honolii Stream was above low-flow stage which may indicate that this stream was also above low-flow stage.

The applicants' parcel is located along both sides of the unnamed tributary to Kaieie Stream and has riparian rights to the stream. Riparian rights are rights of land adjoining natural watercourses to use the water on the riparian land. The use must be reasonable, and the reasonable use cannot harm the reasonable use of those waters by other riparian landowners. The unnamed tributary to Kaieie Stream is not located in a Commission-designated surface water management area.

Although the USGS conducted a one-time measurement of the stream flow in the unnamed tributary to Kaieie Stream, there is insufficient stream flow information to quantify a flow amendment to the Interim Instream Flow Standard (IIFS) for the unnamed tributary which does not appear on both the USGS topographic and the DAR watershed atlas maps. The previous owner was diverting less water than he had originally contemplated in 1989, and the current owners' are diverting approximately 58 percent of the stream flow and returning what is not lost to evaporation and seepage back into the stream. Furthermore, it appears that the diversion on the unnamed tributary has not hindered the migration of native species in the main tributaries of Kaieie Stream.

#### 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.*

HRS §174C-93 states: *"No person shall construct or alter a stream diversion works, other than in the course of normal maintenance, without first obtaining a permit from the commission."*

HRS §174C-3 states: *"'Stream diversion works' means any artificial or natural structure emplaced within the stream for the purpose of diverting stream water."*

Hawaii Administrative Rules (HAR) §13-168-5 states: *"Any person making a use of water from a well or stream diversion works in existence on the effective date of these rules in any area of the state shall file a declaration of the person's use with the commission within one year from the effective date of these rules."*

HAR §13-168-7 states: “The owner or operator of any well or stream diversion works from which water is being used shall provide and maintain an approved meter or other appropriate device or means of measuring and reporting total water uses on a monthly (calendar or work schedule) basis.”

HRS §174C-71(2)(A) states: “Establish interim instream flow standards: Any person with proper standing may petition the commission to adopt an interim instream flow standard for streams in order to protect the public interest pending the establishment of a permanent instream flow standard.”

The previous owner, Mr. Liloa Willard, submitted a Registration of Stream Diversion Works and Declaration of Water Use to the Commission in 1989 but did not build the concrete collection box until about 1995 and did not submit an application for a SDWP for this work. The applicants purchased the property from Mr. Willard in 2005 and continued using the concrete collection box.

### 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. See Exhibit 5. The Guideline includes Initial Minimum, Gravity, Mitigative, and Duration Components. Gravity and Duration Components can increase the initial minimum penalty while Mitigative Components can decrease the initial minimum penalty.

### Fine Calculation

*Initial Minimum 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 Initial Minimum 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:

*Component A:* The previous owner was in violation of HRS §174C-71(3)(A) for constructing a concrete collection box in the unnamed tributary to Kaieie Stream without a SDWP.

*Component B:* The unnamed tributary to Kaieie Stream is not in a Surface Water Management Area.

*Component C:* The applicants have 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-F:* Not applicable.

*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:* It does not appear that any risk has been created to the unnamed tributary to Kaieie Stream. The concrete collection box has been in existence since about 1995.

Mr. Fourmy purchased his property from Mr. Willard in 2001 and did not have any problems with the stream diversion until late 2008.

*Component B:* Not applicable.

*Component C:* The applicant showed good faith effort by decreasing the amount of water that was diverted from the stream and by applying for a SDWP when informed that a permit was required.

*Components D-F:* Not applicable.

Staff recommends a \$100 reduction for Mitigative Components A and C, for a total reduction of \$200 in fines.

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

*Applicability to Violation:* Although the application for a SDWP came in nine months after the request to do so, staff was investigating the complaint through the Commission’s CDR process and conducting field investigations during that time. Staff believes that the circumstances of this case do not warrant more than a single day of fine.

Summary of Recommended Fines:

Minimum Component:	\$250/day
Gravity Component:	N/A
Mitigative Component:	(\$200)
<u>Duration</u>	<u>1 day</u>
Total Fine:	\$50

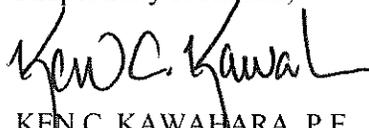
RECOMMENDATION:

That the Commission:

1. Find that the previous owner, Mr. Liloa Willard, was in violation of Hawaii Revised Statutes §174C-71(3)(A) for constructing a concrete collection box in the unnamed tributary to Kaieie Stream without a Stream Diversion Works Permit (SDWP) from the Commission.
2. Find that the applicants are now responsible for the violation in Recommendation #1 and fine the applicants \$50 for the violation.

3. Issue a written warning to the applicants 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 and petition to amend the interim instream flow standard may be considered repeat violations with fines up to \$5,000 for each day of violation.
4. Approve an After-the Fact Stream Diversion Works Permit for the concrete collection box on the unnamed tributary to Kaieie Stream, Papaikou, Hawaii, TMK: (3) 2-7-006:028. The permit shall be subject to the Commission's Standard Conditions in Exhibit 6. Standard Conditions 4 to 8 do not apply to this permit.
5. Require that the applicants install a flow meter with a totalizer to measure the amount of water that is diverted by the concrete collection box on a monthly basis and submit a water use report on an annual basis to the Commission.
6. Amend the Interim Instream Flow Standard for the unnamed tributary to allow the diversion as described in this submittal to continue.

Respectfully submitted,



KEN C. KAWAHARA, P.E.  
Deputy Director

- Exhibits:
1. Location Map
  2. TMK Map
  3. Diagram of Concrete Collection Box
  4. Photos of Concrete Collection Box and Site
  5. Penalty Policy G01-01
  6. Standard Stream Diversion Works Permit Conditions

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN  
Chairperson



Department of Land and Natural Resources  
 Commission on Water Resource Management  
 Stream Protection and Management Branch

## ISLAND OF HAWAII

### Streams

- \*\*\*\*\* Ephemeral
- Intermittent
- Perennial

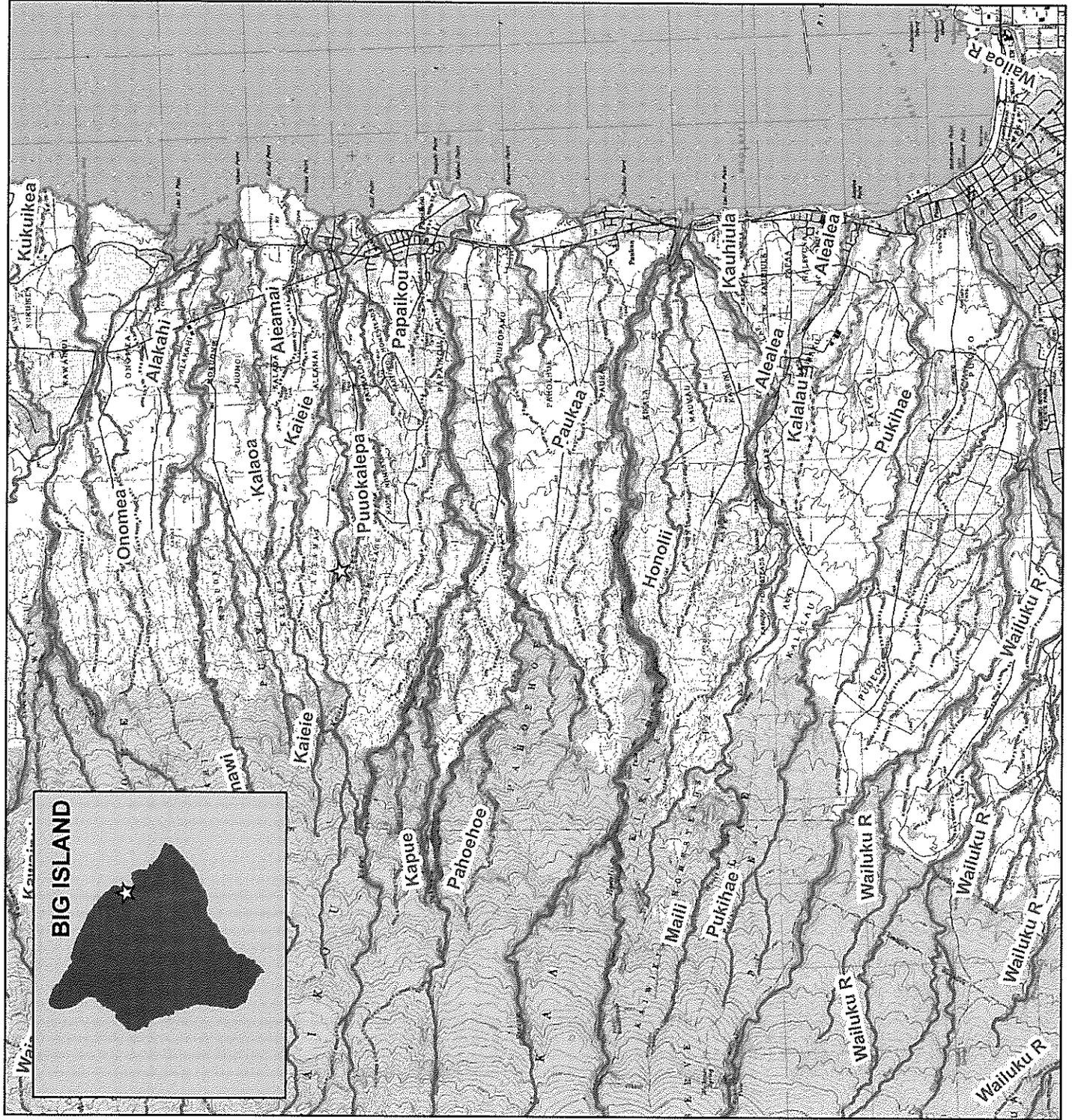
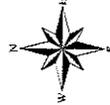


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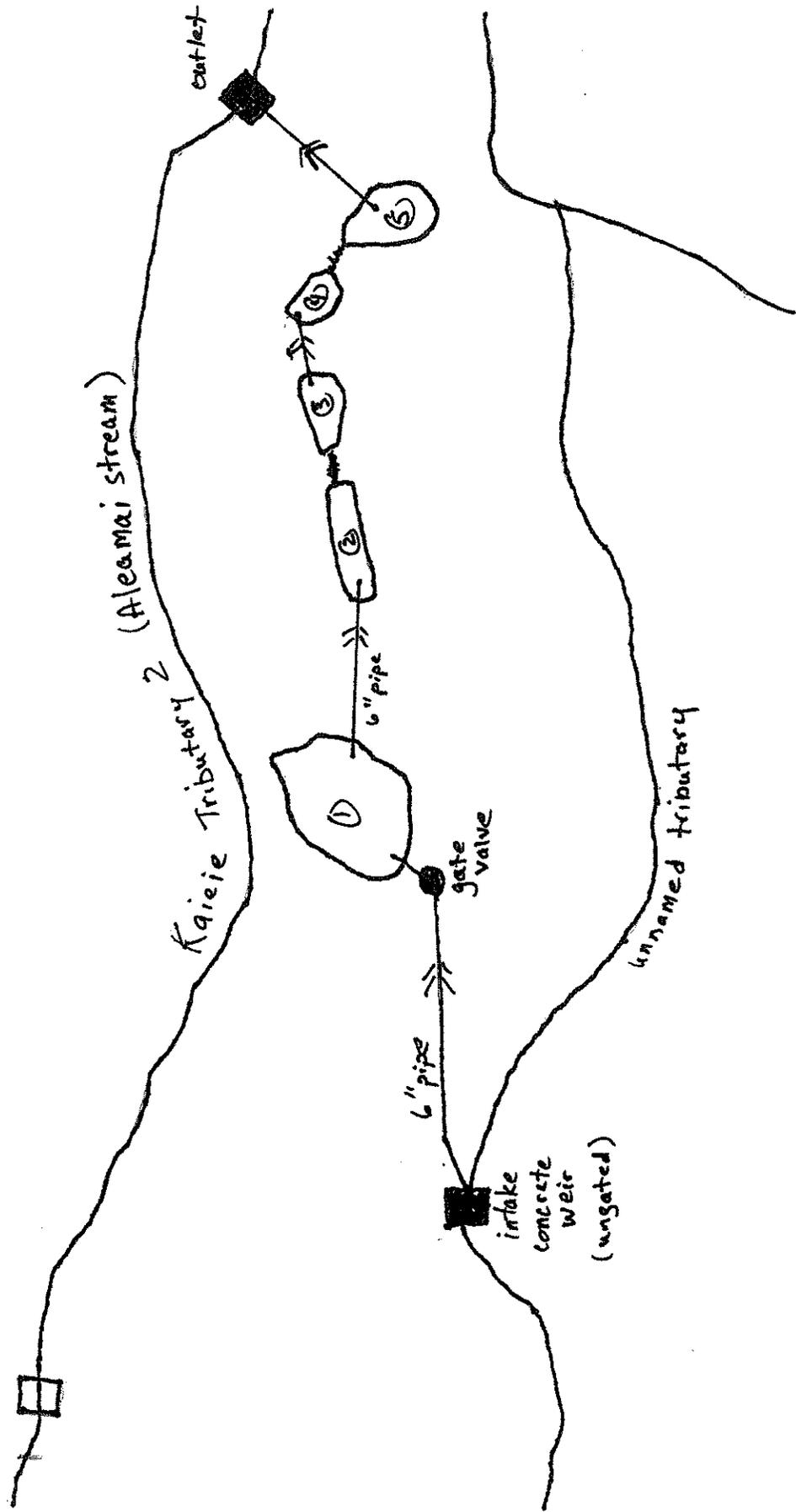
This map was produced by the Department of Land and Natural Resources (DLNR), Commission on Water Resource Management for planning purposes. It should not be used for boundary interpretations or other spatial analysis beyond the limitations of the data. Information regarding compilation dates and accuracy of the data presented can be obtained from DLNR.

Datum: North American Datum 1983

Tax Map Key (TMK) layer is comprised of tax assessor parcels derived from paper plat maps with attributes from public tax assessor records and is updated by each respective county.

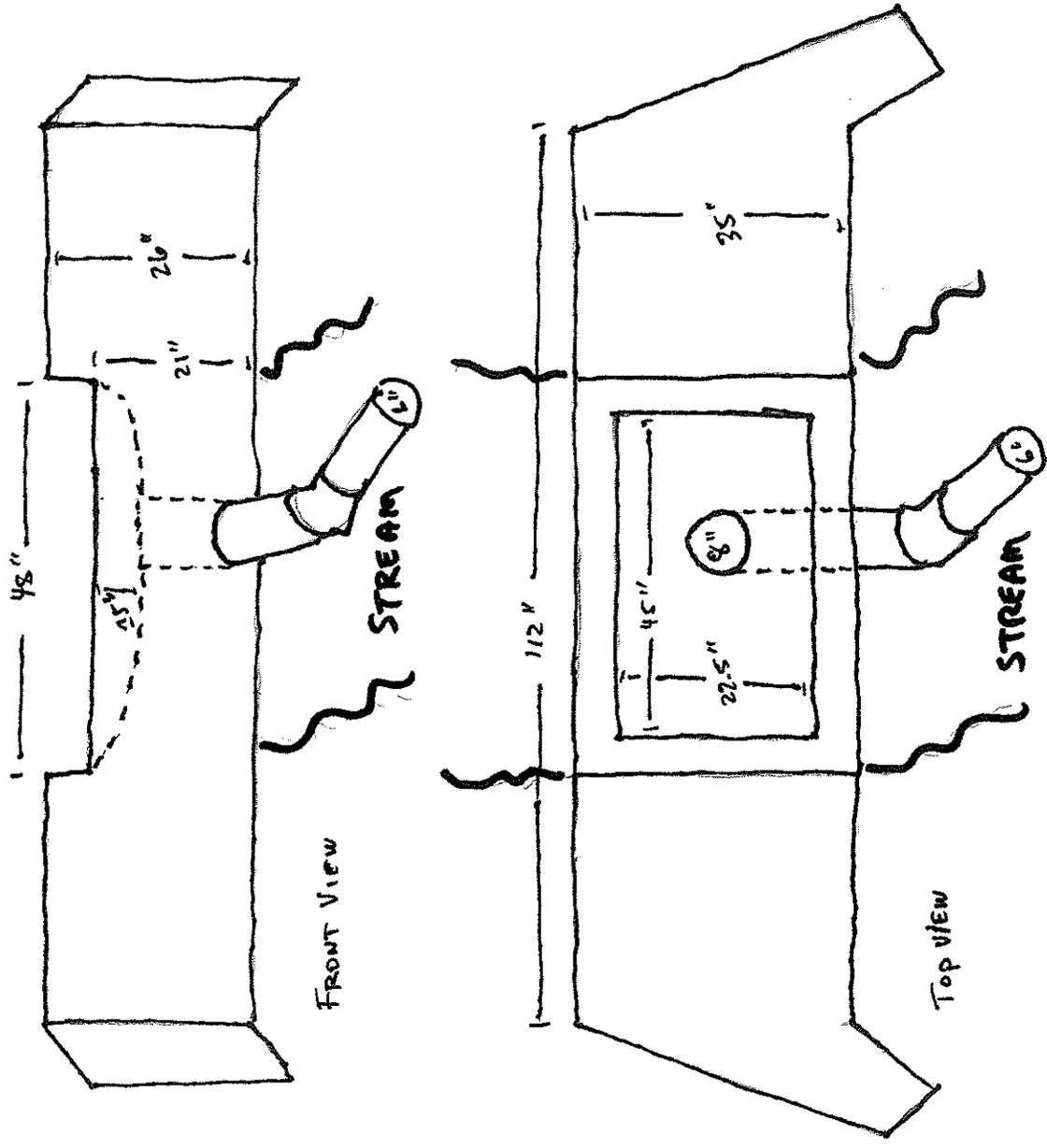






FLOW DIAGRAM

20 in



45" x 22.5" collection box  
with concave bottom 1.5"  
deep at the drain pipe

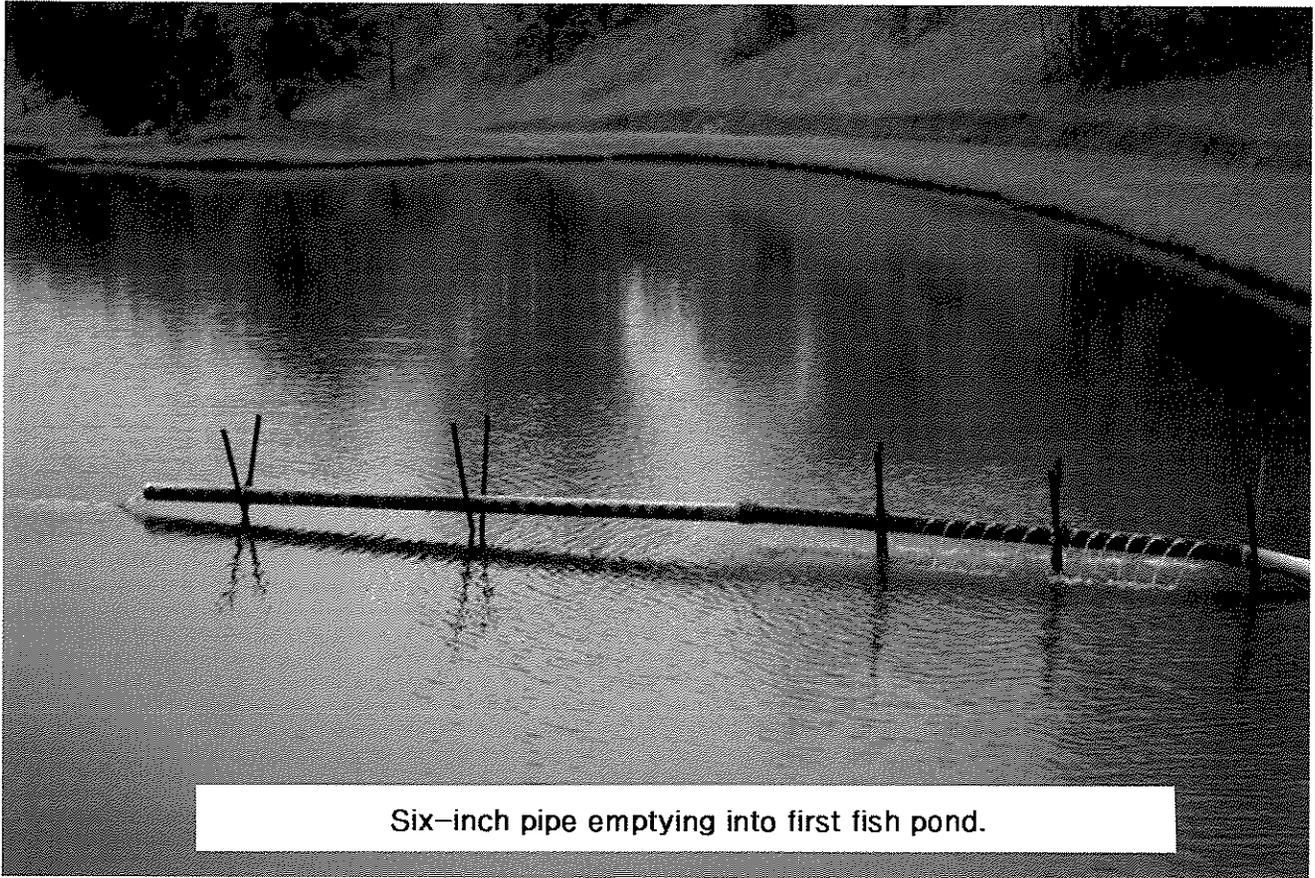
8" drain inlet reduces  
to 6"

there is a gate valve  
located downstream

# Concrete Collection Box



EXHIBIT 4



Six-inch pipe emptying into first fish pond.



View of unnamed tributary downstream from concrete collection box.



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**COMMISSION ON WATER RESOURCE MANAGEMENT**  
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ADMINISTRATIVE AND CIVIL PENALTY GUIDELINE (G01-01)  
COMMISSION ON WATER RESOURCE MANAGEMENT  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
STATE OF HAWAII

I. GOALS

This penalty guideline seeks to provide a logical and consistent means to assess penalties and guide the settlement of Commission on Water Resource Management (Commission) enforcement cases. The Commission and staff should use this system to:

- A. Deter violations;
- B. Remove the economic benefit of violations;
- C. Provide fair treatment of the regulated community; and
- D. Offer the violator a chance to undertake a beneficial alternative, under proper conditions, in a partial or total replacement of a cash penalty.

II. LEGAL AUTHORITY

Hawaii Revised Statutes (HRS) § 174C-15 provides for fines of up to \$1,000 for any violation of any provision of HRS § 174C. For a continuing offense, each day during which the offense is committed is a separate violation.

Administrative Rule § 13-167-10 provides for fines of up to \$1,000 for any violation of any provision of Title 13, any permit condition or limitation established pursuant to Title 13, or for negligent or willful failure to comply with any final order of the Commission. For a continuing offense, each day during which the offense is committed is a separate violation.

III. APPLICABILITY

- A. This guideline applies to the Commission programs, which include but are not limited to:
  - 1. Measuring and reporting of water data;
  - 2. Well Construction and Pump Installation Permits;
  - 3. Stream Diversion Works Permits;
  - 4. Stream Channel Alteration Permits;

5. Instream Use Protection Program;
6. Instream Flow Standards;
7. Water Use Permits;
8. Violations of any permit issued by the Commission;
9. Violations for failure to comply with final orders issued by the Commission; and
10. Violations of Hawaii Administrative Rules Title 13.

B. This guideline is only for use by Commission personnel. The guideline is not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in litigation with the Commission on Water Resource Management, Department of Land and Natural Resources or the State of Hawaii. The Commission's staff reserves the right to act at variance with this guideline and to change it at any time without notice. The Commission's staff expects to change this guideline as it gains experience with the guideline's implementation.

#### IV. PENALTY CALCULATION METHOD

A. The Commission's staff shall calculate an initial minimum penalty figure for daily fines for settlement purposes based on the following:

1. Finding of violation = \$250 per day/incident
2. Occurring in Water Management Area = \$250 per day/incident
3. Repeat Violation = \$250 per day/incident

(A repeat violation is deemed to occur when the party has previously been found to be a violator by the Commission. A repeat violation is tied to the party involved and is irrespective of the nature of the violation.)

B. Adjustments to Initial Minimum Penalty Figure in Section A: Mitigative and Gravity Factors.

Reduction or enhancement of any recommended fine will be made based on: (1) the degree of risk or actual harm to water resources or the environment and (2) specific factors listed below. Where the risk or actual harm is slight, reduction of the recommended fine should be considered and where the risk or actual harm is great, enhancement of the recommended fine should be imposed.

##### 1. Mitigation Component

Mitigative factors can be considered in the recommendation of any fine or alternative penalty. Presence of one or more mitigative factors can reduce or eliminate the fine or alternative penalty recommendation. Mitigative factors include but are not limited to: insignificant impact on the resource, attempt to remedy the violation without notice, good faith effort to remedy violation once noticed, self reporting in a timely manner, and diligent and speedy effort to remedy the violation once noticed.

2. Gravity Component

Gravity factors can be considered in the recommendation of any fine or alternative penalty. Presence of one or more gravity factors can enhance the fine or alternative penalty recommendation. Gravity factors include but are not limited to: significant risk of or actual damage or harm to the water resources or the environment, multiple or repeat violations of the code or regulations, evidence that the violator should have known about the violation, refusal to correct the violation once noticed, failure to meet deadlines as set by the Commission or its staff.

C. Calculation of the Number of Days for the Recommended Fine.

1. If one or more of the gravity components are met, a daily fine may be imposed. Those fines shall accrue on the following basis:

1. Violation where no permit is issued and no prior permits have been issued or no permit is required.

The date the violation has occurred.

2. Violation where no permit is issued but prior permits have been issued

The date the violation has occurred.

3. Violation where permit has been issued

Either:

- a. The date the violation has occurred
- b. The date of permit approval
- c. The date permit issued
- d. The date of Commission meeting for conditions or deadlines imposed by the Commission not contained in a permit

4. Tolling. In calculating a recommendation for the imposition of a daily fine, the time may be tolled for upon the filing of a permit application, satisfactory progress in addressing the violation, or for good cause.

5. End. In calculating a recommendation for the imposition of a daily fine, the period of the violation ends upon: (1) satisfactory resolution of the violation, or (2) removal or remedy of the violation.

D. No staff recommendation shall exceed the maximum amount allowable in Section 174C-15, HRS.

## V. ALTERNATIVE SETTLEMENT

The following considerations will guide the Commission's staff recommendation in deciding whether to allow a project to substitute for or be credited against a cash penalty. However, any finding of a violation by the Commission shall result in a minimum one-time \$500 cash fine in addition to an alternative settlement. Failure to successfully meet the alternative will result in re-institution of the fines as calculated in IV.

1. The project must be something that the violator was not required to do anyway, either because of legal or other obligation. Projects committed to, or started before a settlement is finally agreed upon may be eligible for credit, but such projects must be carefully examined to determine the extent to which they resulted from the enforcement case or were due to other factors, or prior plans or commitments. In some cases, partial credit may be appropriate.
2. The project must result in new water resources (including aquatic biota) information, provide water resources education, or benefit the water resources of the state.
3. The project may consist of corrective action to be completed within a timeframe established by the Commission. Failure to abide by the timeframe will result in re-institution of the fines as calculated in IV.

## VI. FUTURE APPLICATIONS

Future applications from an applicant who has not paid fines or met alternative settlements or for a project with outstanding violations may be considered incomplete until sanctions are fulfilled and/or violations are corrected.

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LINNEL T. NISHIOKA  
Deputy Director

STANDARD STREAM DIVERSION WORKS PERMIT CONDITIONS  
(Revised 9/19/07)

1. The permit application and staff submittal approved by the Commission at its meeting on February 17, 2010, shall be incorporated herein by reference.
2. The applicant shall comply with all other applicable statutes, ordinances, and regulations of the Federal, State and county governments.
3. The applicant, his successors, assigns, officers, employees, contractors, agents, and representatives, shall indemnify, defend, and hold the State of Hawaii harmless from and against any claim or demand for loss, liability, or damage including claims for property damage, personal injury, or death arising out of any act or omission of the applicant or his successors, assigns, officers, employees, contractors, and agents under this permit or related to the granting of this permit.
4. The applicant shall notify the Commission, by letter, of the actual dates of project initiation and completion. The applicant shall submit a set of as-built plans and photos of the completed work to the Commission upon completion of this project. This permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The proposed work under this stream channel alteration permit shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Commission upon showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Commission no later than three (3) months prior to the date the permit expires. If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.
5. Before proceeding with any work authorized by the Commission, the applicant shall submit one set of construction plans and specifications to determine consistency with the conditions of the permit and the declarations set forth in the permit application.
6. The applicant shall develop site-specific, construction best management practices (BMPs) that are designed, implemented, operated, and maintained by the applicant and its contractor to properly isolate and confine construction activities and to contain and prevent any potential pollutant(s) discharges from adversely impacting state waters. BMPs shall control erosion and dust during construction and schedule construction activities during periods of low stream flow.
7. The applicant shall protect and preserve the natural character of the stream bank and stream bed to the greatest extent possible. The applicant shall plant or cover lands denuded of vegetation as quickly as possible to prevent erosion and use native plant species common to riparian environments to improve the habitat quality of the stream environment.
8. In the event that subsurface cultural remains such as artifacts, burials or deposits of shells or charcoal are encountered during excavation work, the applicant shall stop work in the area of the find and contact the Department's Historic Preservation Division immediately. Work may commence only after written concurrence by the State Historic Preservation Division.