



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

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

March 17, 2020
Honolulu, Hawai'i

Request Imposing a Fine Against the Applicant – Structural Hawaii, Inc.,
Landowner - John and Linda Hayama, and Contractor – HH Constructions, Inc.,
For Altering a Stream Channel Without a Permit as
Required in HRS §174C-71(3)(A) and HAR §13-169-50; and Approve the
After-the-Fact Stream Channel Alteration Permit (SCAP.5136.3) Application
For the Installation of a Gabion Retaining Wall, Hayama Residence,
Mānoa Stream, Mānoa, O'ahu, TMK: (1) 2-9-037:085

SUMMARY OF REQUEST:

Authorize imposing daily fines of up to \$39,500 to the Applicant, Structural Hawaii, Inc., starting from May 25, 2019, the day the violation was first reported to the Commission, to June 20, 2019, the day the after-the-fact stream channel alteration permit application was filed. Structural Hawaii, Inc., is the company hired to apply for multiple permits including an after-the-fact stream channel alteration permit application on behalf of the property owner.

Authorize imposing daily fines of up to \$13,500 to the Landowner, John and Linda Hayama, starting from May 25, 2019, the day the violation was reported to the Commission, to June 20, 2019, the day the after-the-fact stream channel alteration permit application was filed. The Landowner was issued a Notice of Alleged Violation for the construction of a 115-foot long, 7.5-foot wide, and 10-foot high gabion retaining wall without a stream channel alteration permit.

Authorize imposing daily fines of up to \$13,500 to the Contractor, HH Constructions, Inc., starting from May 25, 2019, the day the violation was reported to the Commission, to June 20, 2019, the day the after-the-fact stream channel alteration permit application was filed. HH Constructions, Inc., is the construction operator onsite responsible for the construction activities being conducted on the property.

Approve the after-the-fact stream channel alteration permit application for the installation of a retaining wall.

FINDINGS OF FACT

APPLICANT:	LANDOWNER:	CONTRACTOR
Structural Hawaii, Inc.	John and Linda Hayama	HH Constructions, Inc.
1255 Kuala Street	3148 C East Mānoa Rd	2175 Makanani Dr.
Pearl City, HI 96782	Honolulu, HI 96822	Honolulu, HI 96817

LOCATION: Mānoa Stream (Exhibit 1).

BACKGROUND

On January 24, 2012, a representative for the Landowner, Linda Chang-Shimauro, requested information regarding streambank erosion and permit requirements for a new retaining wall on Mānoa Stream at the subject property. Commission staff contacted Ms. Chang-Shimauro and stated that a Stream Channel Alteration Permit was needed and a SCAP application was emailed to her (Exhibit 2).

On March 7, 2012, an email was sent from the Department of Land and Natural Resources' Engineering Division Chief Engineer, Carty Chang, to then-Representative Isaac Choy's office identifying various permits, including the Commission's SCAP, that would be required to address the erosion of the streambank at the Hayama property (Exhibit 3).

On March 30, 2012, Commission staff met with the Ms. Chang-Shimauro and landowner John Hayama, regarding SCAP requirements for a new retaining wall. Staff explained that County Planning and Permitting, U.S. Army Corps of Engineers, and Department of Health, Clean Water Branch reviews would also be required. Staff discussed if the new retaining wall would be tied into the neighbor's existing wall, how the new wall would tie-in to the upstream neighbor without a retaining wall, how the upstream end would be protected from erosion, and other details regarding handling streamflow during construction activities.

On December 20, 2016, the Commission found that the Applicant, Structural Hawaii, Inc., violated Section 174C-71, Hawaii Revised Statutes (HRS), by constructing a gabion retaining wall on another property (AOAO Kaloaluiki Streamside, TMK: (1) 2-9-026:044) in the Mānoa Stream without a stream channel alteration permit and imposed penalties of \$750 per HRS §174C-15.

On June 20, 2017, the Applicant filed a request for determination to inquire if a permit was needed to construct a retaining wall on the subject property (See Exhibit 4). Commission staff responded via email that a SCAP was needed and to complete a SCAP application once the plans are finalized (See Exhibit 5).

From August 17 to 27, 2018, the Applicant again asked Commission staff if a permit was needed for a new retaining wall. Staff responded that a permit was needed, and the Applicant responded by email that he would fill out the forms.

On May 25, 2019, Deputy Attorneys General Linda Chow informed the Commission staff of a construction project occurring on Mānoa Stream upstream of the Kahaloa Street bridge (Exhibit 6).

On May 28, 2019, Commission staff conducted a site visit and met with the Contractor who identified themselves as HH Constructions, Inc.

On June 18, 2019, staff from Representative Dale Kobayashi's office contacted the Commission inquiring about the construction project on Mānoa Stream at the subject property (Exhibit 7).

On June 20, 2019, the City and County of Honolulu, Dept. of Planning and Permitting (DPP) issued its Notice of Violation - 2019/NOV-06-096 retaining wall without a permit (Exhibit 8). The violation description stated "*Stop Work Order, a double fee penalty shall be assessed for starting work without the required approved building permit. A building permit is required for the retaining wall being constructed at the rear of the property. The structures constructed within the stream bed require approval from US Army Corp of Engineers. Failure to heed the Stop Work Order will result in the immediate referral for civil fines. Remove all material/structures from the stream bed immediately.*" According to the DPP website, the estimated value of work for the retaining wall was \$500,000.

On June 20, 2019, a complete SCAP application was filed with the Commission by the Applicant. However, construction drawings were later found to be inconsistent with the drawings sent to the County for their permit requirements. The Applicant was asked to amend the drawings to address how the Landowner's wall would tie into the adjacent property owners' property.

On June 28, 2019, the Commission sent the Landowner, John and Linda Hayama, a Notice of Alleged Violation regarding a stream channel alteration without a permit (Exhibit 9).

On July 26, 2019, the Commission sent the Applicant, Structural Hawai'i, Inc., a Notice of Alleged Violation regarding a stream channel alteration without a permit (Exhibit 10).

On September 3, 2019, Commission staff met with the County regarding permitting requirements for the subject project. It was found that construction drawings were different for each agency.

On November 22, 2019, the Applicant sent updated construction drawings (Exhibit 11).

On December 23, 2019, the Department of Health issued its Notice of Violation and Order, Docket No. 2019-CW-EO-38 to the Landowner, Applicant, and Contractor for discharging construction material into the stream from the construction of a retaining wall without a permit (Exhibit 12).

On January 14, 2020, the Commission sent the Contractor, HH Constructions, Inc., a Notice of Violation regarding a stream channel alteration without a permit (Exhibit 13).

STREAM DESCRIPTION:

Mānoa Stream is a perennial stream about 10 miles long and is one of 15 streams that occur within the Ala Wai watershed. The median daily flow is 2.4 million gallons per day. There is a mix of native and non-native fish, crustaceans, snails, and amphibians in the watershed. The watershed was rated moderate for aquatic species according to the Hawaii Stream Assessment (1990). The rating is based on the presence and abundance of four key native species as indicators of the health of the ecosystem. No site-specific flora and fauna survey is available for the project location.

PROJECT DESCRIPTION

Construction of a 115-foot long, 7.5-feet wide, and 10-foot high gabion retaining wall along the left embankment from the stream bed to the existing finish grade elevation (Exhibit 14).

AGENCY REVIEW COMMENTS:

City and County of Honolulu, Dept. of Planning and Permitting: No comments received.

Department of Hawaiian Home Lands (DHHL): No comments received.

Department of Land and Natural Resources (DLNR), Aquatic Resources: The Division of Aquatic Resources (DAR) does not condone the submission of after-the-fact applications for Stream Channel Alteration Permits. Mānoa Stream provides habitat for more than 8 species of native macrofauna. These include native fish species such as *Sicyopterus stimpsoni*, *Awaous guamensis*, *Stenogobius hawaiiensis*, *Eleotris sandwicensis*, *Mugil cephalus*, and *Kuhlia xenura*. It also provides habitat for other native freshwater species, the crustacean *Macrobrachium grandimanus*, and the mollusk *Neritina vespertina*. The native damselfly, *Ischnura ramburii*, has also been observed along the stream (ref. DAR Aquatic Resources Database, Oct. 6, 2006). Since after-the-fact implies that the project has already been started or completed, it does not appear to pose any further impact to the aquatic resource values in this area.

DLNR, Engineering: No comments received.

DLNR, Forestry and Wildlife: Not subject to our regulatory authority.

DLNR, Historic Preservation: No comments received.

DLNR, Land Division: No comments received.

DLNR, State Parks: No objections, not subject to our regulatory authority.

Dept. of Health (DOH), Clean Water Branch: No comments received.

Office of Hawaiian Affairs: No comments received.

US Army Corps of Engineers: No comments received.

US Fish and Wildlife Service: No comments received.

PUBLIC COMMENTS

The Commission received one letter from the Owen Miyamoto, P.E., dated July 13, 2019, stating that permits required by the City should be provided and that work should be supported with hydraulic studies showing the predicted impact during forecast flood stage (Exhibit 15).

Staff: Building permit and no-rise certificates are under the jurisdiction of the City and County of Honolulu. The Applicant stated that no-rise calculations were completed by their firm, reviewed by the County, and deemed acceptable. However, the County sent the Applicant a Stop Work Order (2019/NOV-06-096) in June 2019 because there is no building permit on file.

TRADITIONAL AND CUSTOMARY PRACTICES

- 1) The identity and scope of cultural, historical, or natural resources in which traditional and customary native Hawaiian rights are exercised in the area.

The Applicant stated that “Previous reports and studies for adjacent areas along the stream noted that there are no historical or cultural sites on record.”

Staff: Cultural, historical, or natural resources in which traditional and customary native Hawaiian rights are generally protected on undeveloped land. PASH, 1993. However, this area is urban zoned and developed decades ago. The Office of Hawaiian Affairs’ Kipuka database, shows no historic sites or crown lands located within or adjacent to the project area.

- 2) The extent to which those resources, including traditional and customary native Hawaiian rights will be affected or impaired by the proposed action.

The Applicant stated, “Traditional and customary rights of the Native Hawaiians will not be affected or impaired by the scope of the project.”

Staff: Affected or impaired resources are minimal since the area is fully developed.

- 3) What feasible action, if any, could be taken by the Commission in regards to this application to reasonably protect native Hawaiian rights.

The Applicant stated, “In the event construction activities uncover evidence of cultural, historical, or traditional rights of Native Hawaiians, work will be halted and the DLNR-

SHPD will be notified. Construction will remain paused until formal clearance is given by all required state departments.”

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT (EA) COMPLIANCE

In accordance with §HRS 343-5(a), the Landowner’s construction does not trigger the need for an EA. An EA shall be required for actions, as summarized in part below, that propose:

- (1) use of state land or county lands, or the use of state or county funds;
- (2) use within any land classified as a conservation district;
- (3) use within a shoreline area;
- (4) use within any historic site as designated in the National Register or Hawaii Register;
- (5) use within the Waikiki area of O‘ahu;
- (6) any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation;
- (7) any reclassification of any land classified as a conservation district;
- (8) construction of new or the expansion or modification of existing helicopter facilities within the State, that may affect: (A) any land classified as a conservation district; (B) a shoreline area; or (C) any historic site as designated in the National Register or Hawaii Register;
- (9) any (A) wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent; (B) Waste-to-energy facility; (C) Landfill; (D) Oil refinery; or (E) Power-generating facility.

PENALTY POLICY:

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, and subsequently amended the Guideline in October 2014 (G14-01), to provide a logical and consistent means to assess penalties and guide the settlement of Commission enforcement cases. 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:

Violations:

There is one (1) violation of HAR §13-169-50, as follows:

Violation 1: Alteration of a stream channel without a permit issued by the Commission.

Staff is recommending that Violation 1 is assessed on the Applicant, Structural Hawai‘i, Inc; Landowner, John and Linda Hayama; and Contractor, HH Constructions, Inc. All parties were aware or should have been aware that a Stream Channel Alteration Permit issued by the Commission was required prior to starting construction.

Administrative Fee:

An administrative fee of \$500 shall be assessed with the issuance of a written notice of violation.

Applicability to violation:

The Commission staff finds that upon issuance of a notice of violation, an administrative fee of \$500 shall be assessed.

Administrative Fee: \$500

Staff is recommending that the Administrative Fee is assessed on the Applicant, Structural Hawai'i, Inc.; Landowner, John and Linda Hayama; and Contractor, HH Constructions, Inc.

Minimum Components:

The minimum fine component established by the Commission's penalty policy is \$250 minimum per violation. The initial minimum components include the following:

Component 1: Finding of violation = \$250 per day/incident

Component 2: Occurring in Water Management Area = \$250 per day/incident

Component 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.)

Applicability to violation:

Component 1: \$250 per day/incident

Component 2: Not applicable

Component 3: \$250 per day/incident

Staff is recommending that Component 1 be assessed on Landowner, John and Linda Hayama, and Contractor, HH Constructions, Inc., for a total of \$250 per day/incident each.

Staff is recommending that Component 1 and 3 be assessed on Applicant, Structural Hawai'i, Inc., for a total of \$500 per day/incident. Structural Hawai'i, Inc. was previously cited by the Commission for alteration of a stream channel without a permit on December 20, 2016.

Gravity Component:

Gravity factors can be considered in the recommendation of any fine or alternative penalty. The gravity component can increase the minimum component up to a cap of \$5,000 per violation and initiate daily fines for a continuing offense.

Gravity factors include but are not limited to:

G1 – Significant risk to the resource

G2 – Actual damage or harm to resource

- G3* – Multiple or repeat violations of the code or regulations
- G4* – Evidence that the violator should have known about the violation
- G5* – Refusal to correct the violation once noticed
- G6* – Failure to meet deadlines as set by the Commission or its staff

Applicability to violation:

- Component G1:* Not applicable
- Component G2:* Applies to Applicant, Landowner and Contractor
- Component G3:* Applies to Applicant
- Component G4:* Applies to Applicant, Landowner and Contractor
- Component G5:* Not applicable
- Component G6:* Not applicable

Staff is recommending that Gravity Components G2, G3, and G4 be assessed on the Applicant, Structural Hawai‘i, Inc., thus multiplying each of the Minimum Components 1 and 3 (\$250 per day/incident) by three (3) for each Gravity Component for a total of \$1,500 per day/incident.

Staff is recommending that Gravity Components G2 and G4 be assessed on the Landowner, John and Linda Hayama, thus multiplying Minimum Component 1 (\$250 per day/incident) by two (2) for a total of \$500 per day/incident.

Staff is recommending that Gravity Components G2 and G4 be assessed on the Contractor, HH Constructions, Inc., thus multiplying Minimum Component 1 (\$250 per day/incident) by two (2) for a total of \$500 per day/incident.

Mitigation Component:

Mitigative factors can be considered in the recommendation of any fine or alternative penalty. The presence of one or more mitigative factors can reduce or eliminate the minimum penalty component fine or alternative penalty recommendation.

Mitigative factors include but are not limited to:

- M1* – Insignificant impact on the resource
- M2* – Attempt to remedy the violation without notice
- M3* – Good faith effort to remedy violation once noticed
- M4* – Self reporting in a timely manner
- M5* – Diligent and speedy effort to remedy the violation once noticed
- [M6]* – Emergency situations (not mentioned in the current penalty policy)

Applicability to violation:

Staff does not recommend any mitigative components

Duration Component:

If one or more of the gravity components are met, a daily fine may be imposed. The duration component has been difficult in its application by staff as specified in the penalty guideline because:

1. It does not consider emergency situations
2. It does not specify certain circumstances such as non-permit related violations of the Code (i.e., water use reporting, submission of completion reports for maintenance activities, etc.)
3. It does not consider permit holder acknowledgement of conditions through formal signing of administrative permits (i.e., well construction & pump installation)
4. It does not consider noticing aspects of violations, which allow opportunity for violator to remedy or show good faith effort in compliance
5. Strict adherence to the duration has in the past resulted in overly large sanctions. For example, repeat violation sanctions are both within the minimum penalty and gravity component calculations and start daily fines.

The circumstances surrounding each type of violation vary but the penalty guideline has proved flexible enough to consider the shortfalls mentioned above. Basically, when reasonable notice is given and the compliance is speedy and shows good faith, the policy has been to limit the duration exposure to fine to a single day minimum for many of the typical after-the-fact violations brought before the Commission.

Applicability to violation:

Staff recommends a one-day duration for each violation incident.

Summary of Total Recommended Fines:

1. Alteration of a stream channel without a permit by the Applicant, Structural Hawai‘i, Inc.

Administrative Fee:	\$	500
Minimum Component:	\$	500 per day/incident
Gravity Component:		x 3 (\$1,500 per day/incident)
Mitigative Component:	\$	0
Duration Component:		26 days
Total Fine:	\$	39,500

2. Alteration of a stream channel without a permit by the Landowner, John and Linda Hayama.

Administrative Fee:	\$	500
Minimum Component:	\$	250 per day/incident
Gravity Component:		x 2 (\$500 per day/incident)
Mitigative Component:	\$	0
Duration Component:		26 days
Total Fine:	\$	13,500

3. Alteration of a stream channel without a permit by the Contractor, HH Constructions, Inc.

Administrative Fee:	\$	500
Minimum Component:	\$	250 per day/incident
Gravity Component:	\$	2,000 per day/incident
Mitigative Component:	\$	0
<u>Duration Component:</u>		<u>26 days</u>
Total Fine:	\$	13,500

Alternative Penalty Settlement:

The penalty guideline allows that in lieu of the total monetary fines, the violator may be offered an alternative sanction. Considerations that guide staff in offering such an alternative are:

1. A minimum \$500 fine in addition to the alternative offered.
2. The alternative must not be something the violator was required to do anyway because of legal or other obligations.
3. The alternative must result in new information, education, or other benefit to the water resources of the state.
4. The alternative must be completed within a specified timeframe and failure to do so will result in reinstatement of total recommended fines.

Staff is not recommending an alternative settlement.

STAFF REVIEW

HAR §13-169-52 sets out the general criteria for ruling on SCAP applications.

(b) Based upon the findings of fact concerning an application for a stream channel alteration permit, the commission shall either approve in whole, approve in part, approve with modifications, or reject the application for a permit.

(c) In reviewing an application for a permit, the commission shall cooperate with persons having direct interest in the channel alteration and be guided by the following general considerations:

- (1) Channel alterations that would adversely affect the quantity and quality of the stream water or the stream ecology should be minimized or not be allowed.

Staff: Upon approval of the construction plans as proposed, the quantity of stream water is unchanged. The Hawaii Department of Health is the lead agency regarding water quality (HRS §174C-66). Stream ecology appears unchanged.

- (2) Where instream flow standards or interim instream flow standards have been established pursuant to subchapters 3 and 4, no permit shall be granted for any channel alteration which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.

Staff: HRS §174C-71, requires the Commission to protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. The interim instream flow standard for Leeward O‘ahu is an unmeasured amount and the status quo of streamflow conditions on the effective date of this standard (December 10, 1988), and as that flow may naturally vary throughout the year (HAR §13-169-49). The identified instream uses include fish habitat and streamflow contribution to the nearshore waters, among others. The water quantity and quality appear unchanged.

- (3) The proposed channel alteration should not interfere substantially and materially with existing instream or non-instream uses or with channel alterations previously permitted.

Staff: The construction plans do not appear to interfere substantially and materially with existing uses. There are no previously permitted channel alterations in the adjacent areas of Mānoa Stream.

RECOMMENDATION:

That the Commission:

1. Find that the Applicant, Structural Hawaii, Inc., the Landowner, John and Linda Hayama, and the Contractor, HH Constructions, Inc., collectively or individually as appropriate, authorized, oversaw, and/or conducted construction activities within the stream beginning on or about May 25, 2109 and violated HRS §174C-71 and HAR §13-169-50 by installing a retaining wall and altering a stream channel without a permit.
2. Issue a written notice of violation to the Applicant, Structural Hawaii, Inc., pursuant to HRS §174C-15 and HAR §13-169-3; authorize imposing a fine of \$39,500, due within 30 days of Commission action; issue a written warning that any future violations involving a stream channel alteration without the necessary permits shall be considered a repeat violation; and suspend any current, pending or future applications including the subject application until the fine is paid.
3. Issue a written notice of violation to the Landowner, John and Linda Hayama, pursuant to HRS §174C-15 and HAR §13-169-3, authorize imposing a minimum fine of \$13,500, due within 30 days of Commission action; issue a written warning that any future violations involving a stream channel alteration without the necessary permits shall be considered a repeat violation; and suspend any current, pending or future applications including the subject application until the fine is paid.
4. Issue a written notice of violation to the Contractor, HH Constructions, Inc., pursuant to HRS §174C-15 and HAR §13-169-3, and authorize imposing a minimum fine of \$13,500, due within 30 days of Commission action; issue a written warning that any future violations

involving a stream channel alteration without the necessary permits shall be considered a repeat violation; and suspend any current, pending or future applications including the subject application until the fine is paid.

5. Approve the after-the-fact Stream Channel Alteration Permit (SCAP.5136.3) application for the installation of a retaining wall subject to the standard conditions (Exhibit 16);

Ola i ka wai,



M. KALEO MANUEL
Deputy Director

Exhibits:

1. Location: TMK: (1) 2-9-037:085 and Mānoa Stream.
2. Email from Landowner representative, Linda Chang-Shimamura, dated January 24, 2012.
3. Email from DLNR Engineering Division to Representative Isaace Choy, dated March 7, 2012.
4. Request for Determination filed by Structural Hawai'i, Inc., dated June 20, 2017.
5. Email response from Commission staff to Structural Hawai'i, Inc., re Request for Determination, dated June 27, 2017.
6. Email from Deputy Attorneys General Linda Chow, dated May 25, 2019
7. Email from Representative Dale Kobayashi, dated June 18, 2019
8. City and County of Honolulu, Department of Planning and Permitting, Notice of Violation (2019/NOV-06-096), issued on June 20, 2019
9. Notice of Alleged Violation to Landowner, John and Linda Hayama, dated June 28, 2019.
10. Notice of Alleged Violation to Applicant, Structural Hawai'i, Inc., dated July 26, 2019.
11. Updated construction drawings from Structural Hawai'i, Inc., received November 22, 2019, dated September 17, 2018.
12. Notice of Violation and Order, from Hawai'i Department of Health to Landowner, John M. and Linda P. Hayama Trust, dated December 23, 2019.
13. Notice of Alleged Violation to Contractor, HH Constructions, Inc., dated January 14, 2020.
14. Site photos 1 and 2: Looking upstream taken from Kahaloa Bridge, dated May 2019 and January 2020.
15. SCAP application comments received from Owen Miyamoto, P.E., dated July 13, 2019.
16. Standard Stream Channel Alteration Permit and Stream Diversion Works Permit Conditions.
17. Legal Authorities.

Staff Submittal
Mānoa Stream (SCAP.5136.3)

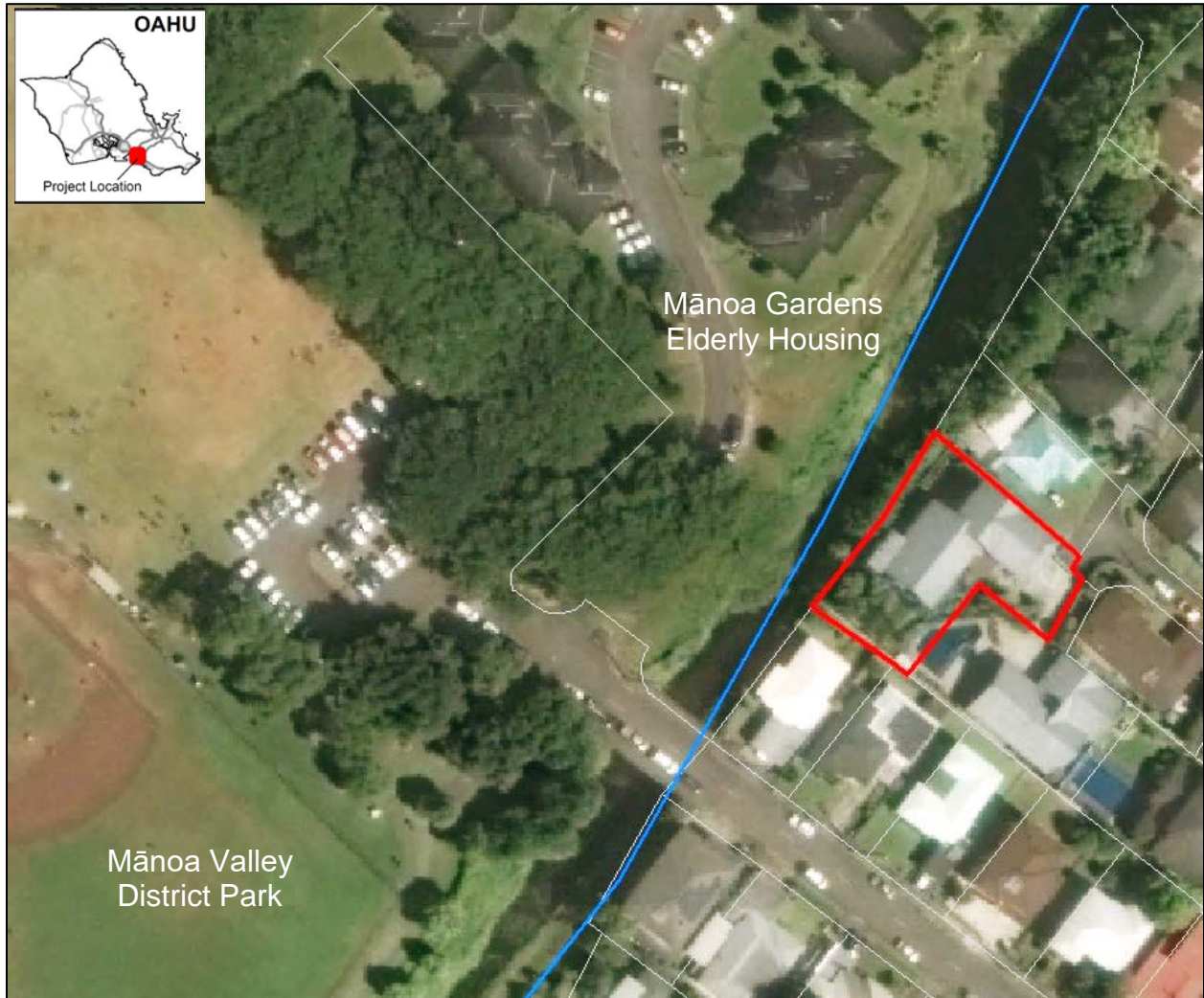
March 17, 2020

APPROVED FOR SUBMITTAL:

Suzanne D. Case

SUZANNE D. CASE
Chairperson

Location: TMK: (1) 2-9-037:085 and Mānoa Stream.



Staff Submittal
Mānoa Stream

March 17, 2020



Robert K
Chong/DLNR/StateHiUS
01/24/2012 09:36 AM

To 808blchang@gmail.com
cc
bcc
Subject Stream Channel Alteration Permit (SCAP)

Hi Linda,
Attached is an application for a SCAP from the Water Commission.
I will need one original and 15 signed copies and a check for \$25 made out to the Dept. of Land and Natural Resources.
It usually take up to 90 days to process a SCAP application once I receive a completed application with all the required information.
Please call me if you have any questions.
Robert



SCAP.pdf

Robert K. Chong, Planner

Commission on Water Resource Management
1151 Punchbowl Street, Room 227
Honolulu, HI 96813
Phone: (808) 587-0266

EXHIBIT 2

**Carty S
Chang/DLNR/StateHiUS**
03/07/2012 06:17 PM

To c.hagihara@capitol.hawaii.gov
cc Michael S Yoshinaga/DLNR/StateHiUS@StateHiUS, Guy H
Kaulukukui/DLNR/StateHiUS@StateHiUS, Roger H
Masuoka/DLNR/StateHiUS@StateHiUS, Alyson K
bcc
Subject Inquiry from Rep Choy - Manoa Home Stream Bank Erosion

Hi Carole,

As discussed, I received Representative Choy's letter and photos of the erosion of the streambank adjacent to Mr Hayama's property (3841 - C East Manoa Road; TMK: 1-29-037-085) and his request on how to get a permit approved. Based on the photos and Mr. Hayama's proposal to build a wall along the streambank, here are the appropriate agencies that may require a permit and should be consulted.

DLNR - Commission on Water Resource Management, Stream Channel Alteration Permit (SCAP). Link below contains SCAP application and other pertinent information. Contact: Robert Chong (587-0266).
http://hawaii.gov/dlnr/cwrms/sw_permits.htm

City and County of Honolulu Department of Permitting and Planning (DPP)
I'll check who at DPP may be the best Division or person to be contacted and get back with you.

State Department of Health, Clean Water Branch - Various permits may be needed depending on the scope or construction methodology. Best to have your constituent's architect or engineer call the Clean Water Branch to discuss the scope and DOH's requirements. Contact information in website below.
<http://hawaii.gov/health/environmental/water/cleanwater/contact/index.html>

These are typically the main agencies that would regulate construction activity in or near a stream, however, Mr. Hayama's architect or engineer should probably verify if any additional permits are necessary.

Mahalo!

Carty Chang, P.E.
Chief Engineer
Department of Land and Natural Resources
Engineering Division
Phone: (808) 587-0230, Fax: (808) 587-0283
Email: carty.s.chang@hawaii.gov



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

REQUEST FOR DETERMINATION

For Official Use Only:

Instructions: Please print in ink or type and send completed form with any attachments to the Commission on Water Resource Management via mail to P.O. Box 621, Honolulu, Hawaii 96809; or via e-mail to dlnr.cwrmm@hawaii.gov. For assistance, call the Stream Protection and Management Branch at 587-0234. For further information and updates to this application form, visit <http://hawaii.gov/dlnr/cwrmm>.

The purpose of this form is to request that a determination be made for a proposed stream-related project. Based upon the information provided, the Commission staff shall review the request and make a determination whether a Stream Channel Alteration Permit or Stream Diversion Work Permit will be required prior to the project being initiated. Information should be as complete and accurate as possible so that a determination can be made in a timely and efficient manner. For more information, refer to the State Water Code, Chapter 174C, Hawaii Revised Statutes, and Chapter 13-169, Hawaii Administrative Rules (Protection of Instream Uses of Water).

CONTACT INFORMATION			
Name / Company: Kip Asato/Structural Hawaii		Mailing Address: 1255 Kuala St #2 Pearl City, HI 96782	
Phone Number: (808) 488-5000	Fax Number: (808) 454-8899	E-mail Address: kasato@structuralhawaii.com	<input checked="" type="checkbox"/> Check here to allow Commission staff to communicate primarily via e-mail. Legally required and other key correspondence will still be transmitted via postal mail.
PROJECT INFORMATION			
Island: (Check only one) <input type="checkbox"/> Kauai <input checked="" type="checkbox"/> Oahu <input type="checkbox"/> Molokai <input type="checkbox"/> Lanai <input type="checkbox"/> Maui <input type="checkbox"/> Hawaii			
Tax Map Key(s): 2-9-037:085			
Stream / Gulch Name(s): Manoa Stream			
Describe the Project Location: Please provide a map, property address, GPS coordinates, and photo(s) of the proposed location identified if possible. Attach additional pages if needed. Address: 3148c E Manoa rd Honolulu, HI 96822 GPS Coordinates: 21.314077, -157.805975			
Describe the Proposed Project: Provide a detailed description of the project. If possible, attach a simple design plan of the project in relation to the stream. Attach additional pages if needed. For the project we propose the addition of a gabion wall system to be on the east bank of the Manoa stream located near the Manoa Valley District Park. The system will consist of a gabion wall armoring the bank against erosion along ~120' of the Hayama residence's rear property. A secondary wall will be constructed to add stability to the house and alleviate loads from the house onto the gabion wall (extending the life of the gabion wall).			
FOR OFFICIAL USE ONLY:		SWHU ID: _____	FILE ID: _____
LAT: _____	GWHU ID: _____	DOC ID: _____	
LON: _____	REACH ID: _____		



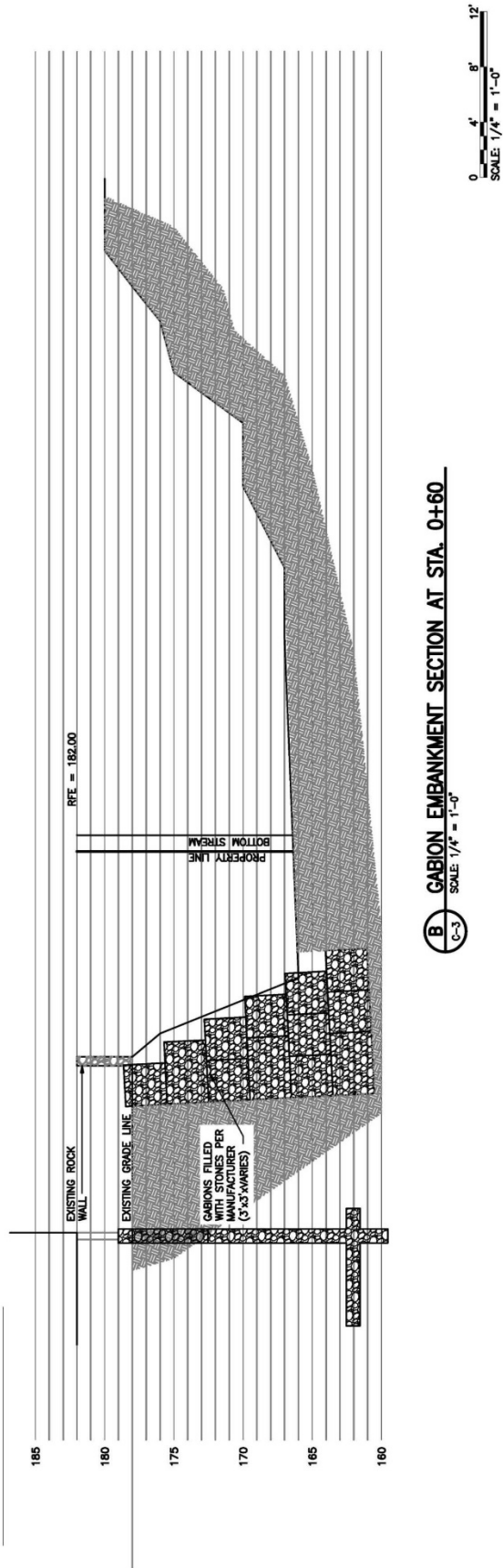








STA. 0+60



From: [Alakai, Rebecca R](#)
To: [Kip Asato](#)
Subject: RE: Hayama Residence Question
Date: Wednesday, June 21, 2017 7:02:00 AM

Hi Kip,

Pretty sure you'll need a stream channel alteration permit application which you can find on our website. Fill it out when you get the final design. You should also contact the Army Corp and DOH Clean Water Branch.

From: Kip Asato [mailto:kasato@structuralhawaii.com]
Sent: Tuesday, June 20, 2017 2:08 PM
To: Alakai, Rebecca R <Rebecca.R.Alakai@hawaii.gov>
Subject: RE: Hayama Residence Question

Hey Rebecca,

I have attached the requested document. Let me know if you want any other specific photos or drawings. This is just what we propose for now. Not sure if we will change the wall type pending cost and what will be allowed.

Mahalo,
Kip Asato
Project Engineer

Structural Hawaii, Inc.
"Innovative Ideas. Engineering Excellence."
1255 Kuala Street, #2
Pearl City, HI 96782
(808) 488-5000, Ext 204

From: Alakai, Rebecca R [mailto:Rebecca.R.Alakai@hawaii.gov]
Sent: Tuesday, June 20, 2017 9:18 AM
To: kasato@structuralhawaii.com
Subject: RE: Hayama Residence Question

Hi Kip,

You may need a stream channel alteration permit from the Commission on Water Resource Management. Attached is our request for determination form. Please fill it out and return to me. If you have photo's, please attach a few. Thanks.

Rebecca Alakai, Planner
Stream Protection and Management Branch
Commission on Water Resource Management
1151 Punchbowl Street, Rm 227
Honolulu, HI 96813
Ph: 587-0266

<http://dlnr.hawaii.gov/cwrm/>

From: Chen, Edward
Sent: Monday, June 19, 2017 9:05 AM
To: Kip Asato <kasato@structuralhawaii.com>
Cc: Lum, Darryl C <darryl.lum@doh.hawaii.gov>; Chen, Edward <edward.chen@doh.hawaii.gov>; McElwain, Tunis W CIV USARMY CEPOH (US) <Tunis.W.Mcelwain@usace.army.mil>; Alakai, Rebecca R <Rebecca.R.Alakai@hawaii.gov>; CleanWaterBranch <cleanwaterbranch@doh.hawaii.gov>
Subject: RE: Hayama Residence Question

Good Morning, Mr. Asato:

1. Please contact Regulatory Office of the Honolulu Engineer District, U.S. Army Corps of Engineers SCOE at (808) 835-4303 for Department of the Army (DA) Permit requirement. A Federal Clean Water Act (CWA), Section 401 Water Quality Certification (WQC) issued by the Clean Water Branch (CWB) will be required if a DA permit is required.
2. Contact Commission on Water Resource Management (CWRM), Depart of Land and Natural Resources Management (DLNR) for potential Stream Channel Alteration Permit (SCAP) requirements.
3. Depends on the potential discharge, a National Pollutant Discharge elimination System (NPDES) permit issued under the authorization of Federal Clean Water Act (CWA), Section 402; Hawaii Revised Statutes (HRS), Chapter 342D (titled "Water Pollution") and Hawaii Administrative Rules (HAR), Chapter 11-55 (titled "Water Pollution Control" may be required.
4. Mandatory compliance with HRS, Chapter 342D and HAR, Chapter 11-54 (titled "Water Quality Standards") is required regardless whether your project has obtained any permit or certification.

Please call me at (808) 586-4309 if you have any 000questions in this regard.

Sincerely,

Edward Chen
Environmental Engineer
Clean Water Branch
State of Hawaii Department of Health
Phone: (808) 586-4309
Fax: (808) 586-4352

Notice: This information and attachments are intended only for the use of the individual(s) or entity to which it is addressed, and may contain information that is privileged and/or confidential. If the reader of this message is not the intended recipient, any dissemination, distribution, or copying of this communication is strictly prohibited and may be punishable under state and federal law. If you have received this communication and/or attachments in error, please notify the sender via e-mail immediately and destroy all electronic and paper copies.

From: Kip Asato [<mailto:kasato@structuralhawaii.com>]

Sent: Thursday, June 15, 2017 11:25 AM
To: 'edward.chen@doh.hawaii.gov'
Subject: Hayama Residence Question

Hello Mr. Chen,

I am contacting you in regards to a new project that we are doing located on the Manoa Stream. The project is located at 3148C East Manoa Rd. The owners, John and Linda Hayama, are having erosion issues at the rear of their property. I was wondering what the rules are regarding the use of shotcrete and/or concrete near/in the Manoa stream?

Mahalo,
Kip Asato



KIP ASATO | PROJECT ENGINEER | Structural Hawaii, Inc.

Phone: (808) 488-5000 Ext. 204 **Fax:** (808) 454-8899

Address: 1255 Kuala Street, 2nd Floor, Pearl City, Hawaii 96782

Website: www.structuralhawaii.com **Email:** kasato@structuralhawaii.com

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee responsible for delivering the message to the intended recipient, you are hereby notified that dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please notify us immediately. Mahalo.

Staff Submittal
Mānoa Stream

March 17, 2020

From: [Chow, Linda L](#)
To: [Manuel, Kaleo L](#); [Uyeno, Dean D](#); [Alakai, Rebecca R](#)
Subject: Manoa Stream SCAP?
Date: Saturday, May 25, 2019 5:35:26 PM
Attachments: [Image-2.png](#)
[Image-3.png](#)

Took these pics from the Kahaloa Street bridge crossing Manoa Stream looking upstream. Does this need a permit?

EXHIBIT 6





From: [Jolyn Rosa](#) on behalf of [Rep. Dale T. Kobayashi](#)
To: [Uyeno, Dean D](#)
Cc: [Rep. Dale T. Kobayashi](#); [Sen. Brian Taniguchi](#)
Subject: FW: Manoa stream project near Manoa park
Date: Tuesday, June 18, 2019 12:33:46 PM

Aloha Dean,

My name is Jolyn Rosa and I am the office manger for Rep. Dale Kobayashi. This situation at Manoa Stream shown below was brought to our attention by one of our constituents, Gregg Kakesako. I hope your staff can look into whether these activities are legal and/or permitted. Please let me know if you have any questions. I can be reached at this email: j.rosa@capitol.hawaii.gov or 586-8545. I would appreciate a reply from your office so we can keep our constituent informed. Thank you very much.

Best,
Jolyn Rosa
586-8545

From: Sen. Brian Taniguchi
Sent: Tuesday, June 18, 2019 12:19 PM
To: Rep. Dale T. Kobayashi <repdkobayashi@capitol.hawaii.gov>
Subject: FW: Manoa stream project near Manoa park

Jolyn

From: Gregg Kakesako [REDACTED]
Sent: Monday, June 17, 2019 8:54 AM
To: Rep. Bertrand Kobayashi <repkobayashi@capitol.hawaii.gov>; Sen. Brian Taniguchi <sentaniguchi@capitol.hawaii.gov>; akobayashi@honolulu.gov
Cc: kokualine@staradvertiser.com
Subject: Manoa stream project near Manoa park

Aloha,
This picture was taken June 17, 2019 from the Kahaloa Drive bridge over Manoa Stream near Manoa Park. The view is looking towards the mountain range. The stream has been partially dammed up while a homeowner looks like he is building a wall. Is all this work legal? What is being done?
Gregg Kakesako, Manoa resident



Sent from my iPad



CITY AND COUNTY OF HONOLULU
Department of Planning and Permitting (DPP)

Aloha. We provide services and information on building permits, development projects, and planning activities for the City and County of Honolulu.

[Permitting](#) [Searching](#) [DPP Home](#) [Sign In](#)

Notice of Violation - 2019/NOV-06-096

Main	Details	Code/Vio.	TMK	Customer	Warnings	
Inspection Branch:		<input checked="" type="radio"/> BV <input type="radio"/> PV	<input type="radio"/> OE <input type="radio"/> OSV	<input type="radio"/> OEX <input type="radio"/> OSD	<input type="radio"/> OHC <input type="radio"/> OZV	3148-C EAST MANOA RD Honolulu / Makiki 96822
Violation Address (Multiple Addresses):		3148-C East Manoa Rd				
Violation Type:		Building Code Violation				
Date NOV Issued:		Jun 20, 2019				
Inspector's Report:						
DPP Inspectors:		James Lloyd				
Referral Permit No.:						
Immediate Referral:		Recurring Violation				
		Stop Work Immediately <input checked="" type="checkbox"/>				
Obtain Permit and/or Correct By:		Jul 20, 2019				
Number Days To Complete:						
		Notified when corrected <input checked="" type="checkbox"/>				
City Charges For Worked Performed:		<input type="checkbox"/>				
		Enforcement Action <input checked="" type="checkbox"/>				
Special Instructions:		Failure to heed the Stop Work Order will result in the immediate referral for civil fines. Remove all material/structures from the stream bed immediately.				
Date Violation Corrected:		mmm dd, yyyy				
Violation Description:		STOP WORK ORDER. A double fee penalty shall be assessed for starting work without the required approved building permit. A building permit is required for the retaining wall being constructed at the rear of the property. In addition, the structures constructed within the stream bed require approval from US Army Corp of Engineers.				
Submit		Cancel				

City and County of Honolulu, Department of Planning & Permitting
650 So. King St., Honolulu, HI 96813 • Fax: (808) 768-6743
email: info@honolulu.dpp.org
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Screen ID: 714391

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON

BRUCE S. ANDERSON, PH.D.
KAMANA BEAMER, PH.D.
NEIL HANNAHS
WAYNE K. KATAYAMA
PAUL J. MEYER

M. KALEO MANUEL
DEPUTY DIRECTOR

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

June 28, 2019

Ref.: CDR.5136.3

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John and Linda Hayama
3148 C East Mānoa Rd
Honolulu, HI 96822

Aloha Mr. and Ms. Hayama:

Notice of Alleged Violation
Construction of a Stream Channel Alteration Without a Permit
Hayama Residence, 3148 C East Mānoa Rd,
Mānoa Stream, Mānoa, Hawai'i, TMK (1) 2-9-037:085

On May 25, 2019, the Commission on Water Resource Management (Commission) was notified of an alleged violation on Mānoa Stream at the subject residence. Notice is hereby given that you may be in violation of Section 174C-71, Hawaii Revised Statutes (HRS) and Section 13-169-50, Hawaii Administrative Rules (HAR), which states: "Stream channels shall be protected from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. No stream channel shall be altered until an application for a permit to undertake the work has been filed and a permit is issued by the commission; provided that routine streambed and drainage maintenance activities and maintenance of existing facilities are exempt from obtaining a permit."

It is alleged that a stream channel alteration consisting of a gabion wall at the subject location was constructed without a permit on file with the Commission. A photo of the stream channel alteration is attached for your information (**Exhibit 1**).

According to HRS §174C-15, HAR §13-169-3 and Administrative and Civil Penalty Guideline (G14-01), any person who violates any provision of this chapter, or any rule adopted pursuant to this chapter, may be subject to a fine imposed by the Commission. Such fine shall not exceed \$5,000 per violation. In the alternative, removal of the stream channel alteration may be considered in remediation of the alleged violation.

The project may require other agency approvals regarding wetlands, water quality, grading, stockpiling, and floodways. This letter should not be used for other regulatory jurisdictions or

FILE ID:	CDR.5136.3
DOC ID:	21636

EXHIBIT 9

John and Linda Hayama
June 28, 2019
Page 2

used to imply compliance with other federal, state, or county rules. Work performed without appropriate permits or authorizations may be subject to fines and/or remedial actions.

Please inform the Commission on how you intend to resolve this matter. **If you fail to contact the Commission within thirty (30) days of the date of this letter we intend to schedule this case before the Commission for final disposition.** You will be notified at that time concerning the meeting time and place.

Note that any information provided to the Commission in regards to this alleged violation may be used in civil proceedings. If you have any questions, contact Rebecca Alakai of the Stream Protection and Management Branch at 587-0266 or rebecca.r.alakai@hawaii.gov.

Ola i ka wai,

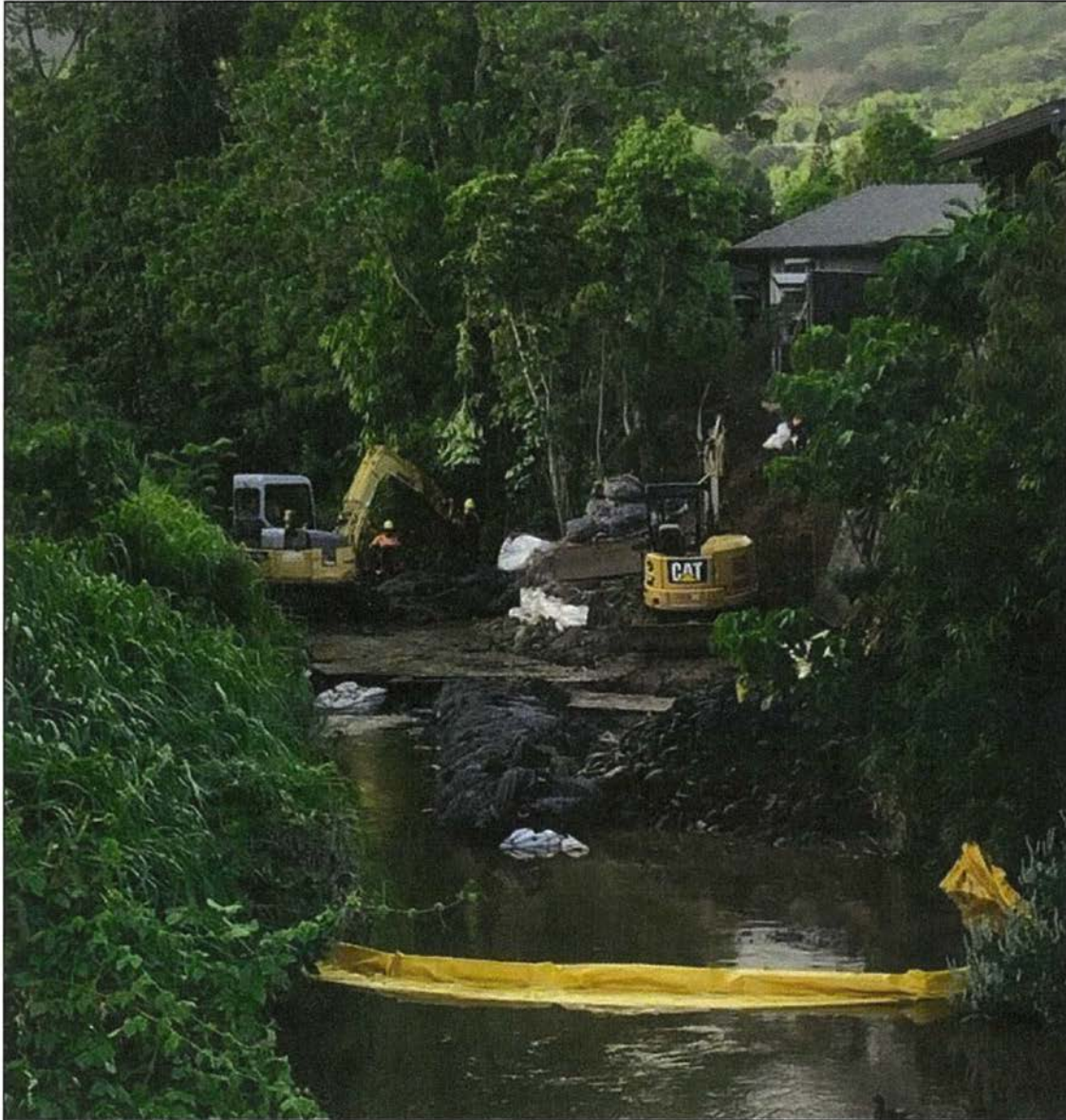


M. KALEO MANUEL
Deputy Director

cc: City and County of Honolulu, Dept. of Facilities Maintenance
Dept. of Health, Clean Water Branch
Army Corps of Engineers

John and Linda Hayama
June 28, 2019
Page 3

Exhibit 1: Site Photo of 3148 C East Manoa Rd, Manoa Stream, Manoa, Hawaii.



DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON

BRUCE S. ANDERSON, PH.D.
KAMANA BEAMER, PH.D.
NEIL HANNAHS
WAYNE K. KATAYAMA
PAUL J. MEYER

M. KALEO MANUEL
DEPUTY DIRECTOR

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

July 26, 2019

Ref.: SCAP.5136.3

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeoffrey S. Cudiamat, P.E.
Chief Executive Officer
Structural Hawaii
1255 Kuala Street
Pearl City, HU 96782

Attn: Justin Josue

Aloha Mr. Cudiamat:

Notice of Alleged Violation
Construction of a Stream Channel Alteration Without a Permit
Hayama Residence, 3148C East Mānoa Rd,
Mānoa Stream, Mānoa, Hawai'i, TMK (1) 2-9-037:085

On May 25, 2019, the Commission on Water Resource Management (Commission) was notified of an alleged violation at the subject location consisting of a gabion wall without a stream channel permit on file with the Commission. A photo of the stream channel alteration is attached for your information. (**Exhibit 1**).

The subject Notice of Alleged Violation may be your second violation. On December 27, 2016, the Commission found that Structural Hawaii, Inc., violated HRS Sec. 174C-71 and HAR Sec. 13-169-50 by altering a stream channel without a permit. The location was just downstream at the Association of Apartment Owners (AOAO) Kaloaluiki Streamside.

On June 20, 2019, the Commission received an after-the-fact stream channel alteration permit application filed by your firm. It is tentatively scheduled to be heard September 17, 2019 in Honolulu at the Kalanimoku Building, 1151 Punchbowl Street, Board Room 132.

Notice is hereby given that you may be in violation of Section 174C-71, Hawaii Revised Statutes (HRS) and Section 13-169-50, Hawaii Administrative Rules (HAR), which states: "Stream channels shall be protected from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. No stream channel shall be altered until an application for a permit to undertake the work has been filed and a permit is

FILE ID: SCAP.5136.3
DOC ID: 21715

EXHIBIT 10

Jeffrey S. Cudiamat, P.E.
July 26, 2019
Page 2

issued by the commission; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit.”

According to HRS §174C-15, HAR §13-169-3 and Administrative and Civil Penalty Guideline (G14-01), any person who violates any provision of this chapter, or any rule adopted pursuant to this chapter, may be subject to a fine imposed by the Commission. Such fine shall not exceed \$5,000 per day. In the alternative, removal of the stream channel alteration may be considered in remediation of the alleged violation.

The project may require other agency approvals regarding wetlands, water quality, grading, stockpiling, and floodways. This letter should not be used for other regulatory jurisdictions or used to imply compliance with other federal, state, or county rules. Work performed without appropriate permits or authorizations may be subject to fines and/or remedial actions.

Note that any information provided to the Commission in regards to this alleged violation may be used in civil proceedings. If you have any questions, contact Rebecca Alakai of the Stream Protection and Management Branch at 587-0266 or rebecca.r.alakai@hawaii.gov.

Ola i ka wai,



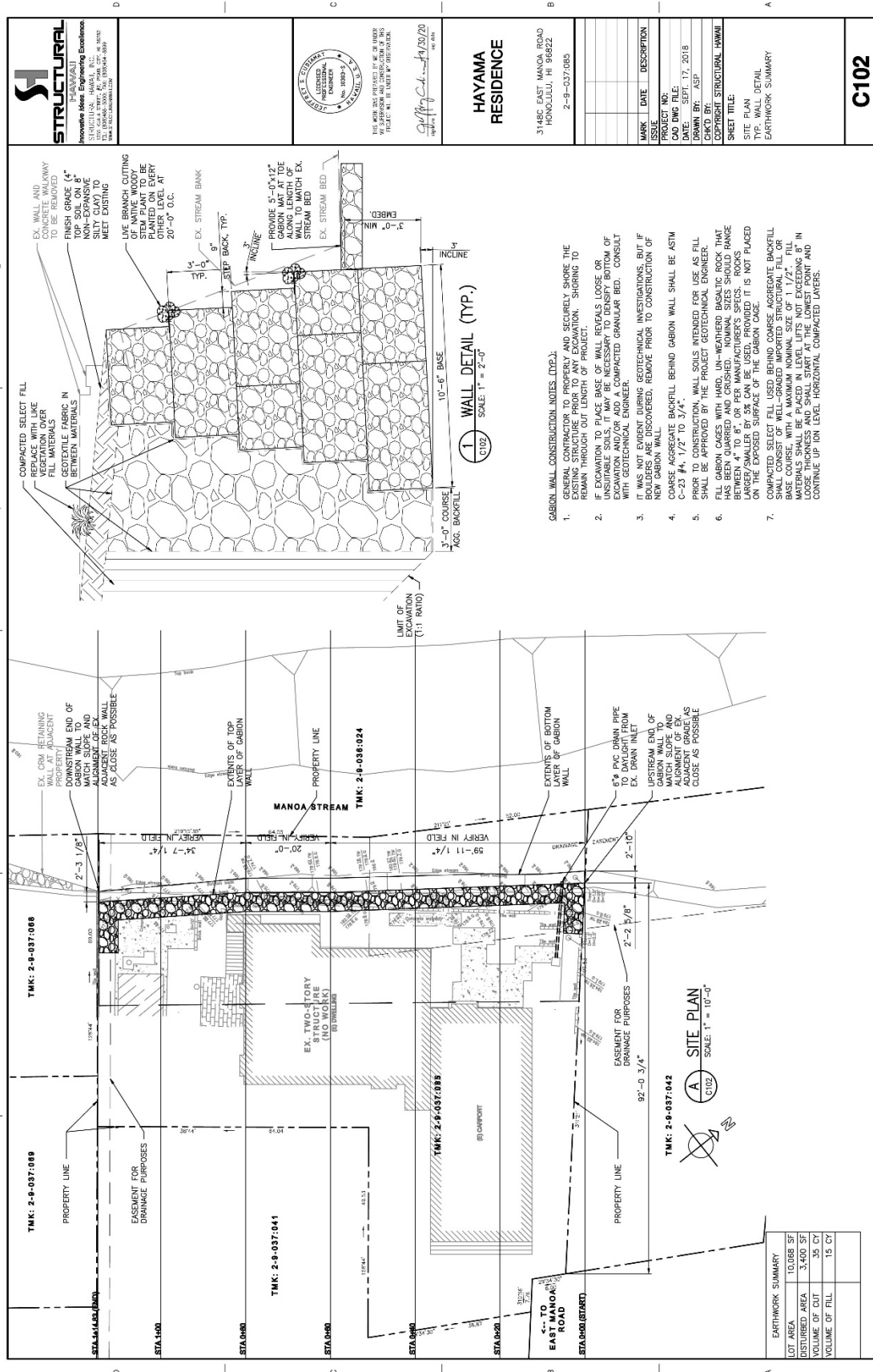
M. KALEO MANUEL
Deputy Director

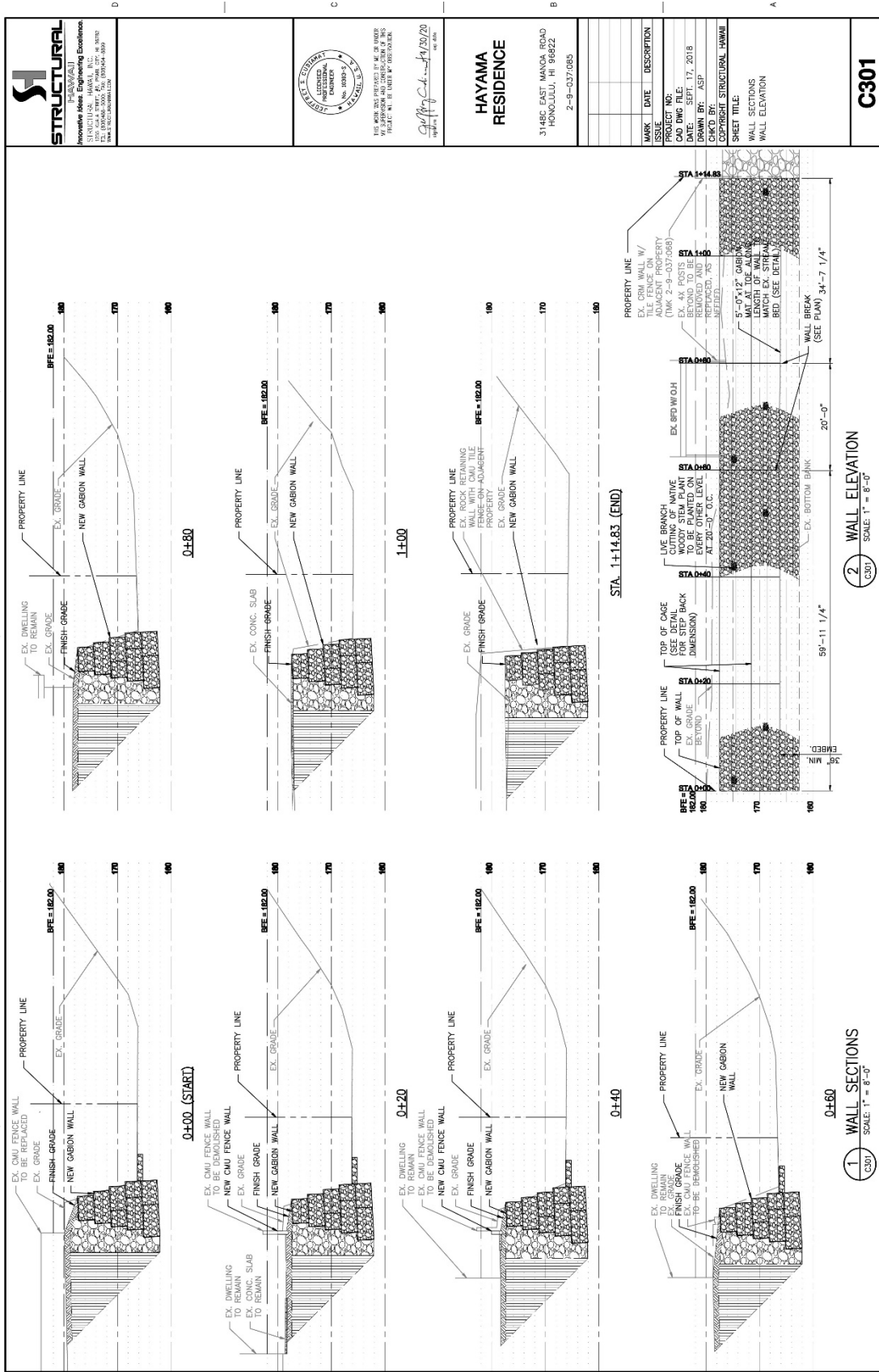
cc: John and Linda Hayama

Jeffrey S. Cudiamat, P.E.
July 26, 2019
Page 3

Exhibit 1: Site Photo of 3148C East Manoa Road, Manoa Stream, Manoa, Hawaii.







DAVID Y. IGE
GOVERNOR OF HAWAII



BRUCE S. ANDERSON, Ph.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
EMD/CWB

12021EBT.19

December 23, 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7017 0660 0001 1844 5491

John M. Hayama Trust
Linda P. Hayama Trust
3148 C East Manoa Road
Honolulu, Hawaii 96822

Dear John M. and Linda P. Hayama Trust:

Subject: Notice of Violation and Order
Docket No. 2019-CW-EO-38
Hawaii Water Pollution Rules and Regulations
3148 C East Manoa Road
Honolulu, Island of Oahu, Hawaii

The Department of Health (DOH), Clean Water Branch (CWB), is serving the enclosed Notice of Violation and Order (NOVO) to you, HH Constructions, Inc. and Structural Hawaii, Inc. for a violation of Hawaii Water Pollution Rules and Regulations. The violation is for illegally discharging construction material into Manoa Stream from the construction of a retaining wall at 3148 C East Manoa Road, without a permit.

Under Hawaii Revised Statutes (HRS), Chapter 342D-9, the DOH is ordering corrective actions and assessing a monetary penalty of \$40,000.00. The enclosed Order shall become final twenty calendar days after this NOVO is served, unless you request a hearing in writing no later than twenty calendar days after service. The request for hearing must be made in accordance with the requirements listed in the NOVO. Furthermore, if the penalty is not paid to the DOH within 30 calendar days after it becomes due and payable, the Director may initiate a civil lawsuit to recover the penalty.

Please be aware, that the NOVO only addresses the specific violations cited. The DOH-CWB reserves its right to seek full penalties for any other violations of the HRS, Chapter 342D, found pursuant to this notice or failures to meet the included Order.

John M. & Linda P. Hayama Trust
December 23, 2019
Page 2

12021EBT.19

Should you have any questions, please contact Mr. Matthew Kurano of the Enforcement Section, CWB, at (808) 586-4309.

Sincerely,



KEITH E. KAWAOKA, D.Env.
Deputy Director for Environmental Health

BT:na

- Enclosures:
1. Notice of Violation, Docket No. 2019-CW-EO-38
 2. Exhibit A
 3. Certificate of Service
 4. Certification

- c: Mr. Edward G. Bohlen, Deputy Attorney General, Department of the Attorney General (w/encl.
Water Division (WTR-7), CWA Compliance Office, EPA, Region 9 (w/o encl.)
Honolulu District, U.S. Army Corps of Engineers (w/o encl.)
DLNR, Commission on Water Resources Management (w/o encl.)
Mr. Wen Liang He, HH Constructions Inc. (w/encl.)
Ms. Cheryl Ramos Cudiamat, P.E., Structural Hawaii, Inc. (w/encl.)

DAVID Y. IGE
GOVERNOR OF HAWAII



BRUCE S. ANDERSON, Ph.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
EMD/CWB

12022EBT.19

December 23, 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7017 0660 0001 1844 5507

Mr. Wen Liang He
Owner
HH Constructions Inc.
2175 Makanani Drive
Honolulu, Hawaii 96817

Dear Mr. He:

Subject: Notice of Violation and Order
Docket No. 2019-CW-EO-38
Hawaii Water Pollution Rules and Regulations
3148 C East Manoa Road
Honolulu, Island of Oahu, Hawaii

The Department of Health (DOH), Clean Water Branch (CWB), is serving the enclosed Notice of Violation and Order (NOVO) to you, John M. and Linda P. Hayama Trust and Structural Hawaii, Inc. for a violation of Hawaii Water Pollution Rules and Regulations. The violation is for illegally discharging construction material into Manoa Stream from the construction of a retaining wall at 3148 C East Manoa Road, without a permit.

Under Hawaii Revised Statutes (HRS), Chapter 342D-9, the DOH is ordering corrective actions and assessing a monetary penalty of \$40,000.00. The enclosed Order shall become final twenty calendar days after this NOVO is served, unless you request a hearing in writing no later than twenty calendar days after service. The request for hearing must be made in accordance with the requirements listed in the NOVO. Furthermore, if the penalty is not paid to the DOH within 30 calendar days after it becomes due and payable, the Director may initiate a civil lawsuit to recover the penalty.

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Mr. Wen Liang He
December 23, 2019
Page 2

12022EBT.19

Should you have any questions, please contact Mr. Matthew Kurano of the Enforcement Section, CWB, at (808) 586-4309.

Sincerely,



KEITH E. KAWAOKA, D.Env.
Deputy Director for Environmental Health

BT:na

Enclosures: 1. Notice of Violation, Docket No. 2019-CW-EO-38
2. Exhibit A
3. Certificate of Service
4. Certification

c: Mr. Edward G. Bohlen, Deputy Attorney General, Department of the Attorney General (w/encl.)
Water Division (WTR-7), CWA Compliance Office, EPA, Region 9 (w/o encl.)
Honolulu District, U.S. Army Corps of Engineers (w/o encl.)
DLNR, Commission of Water Resources Management (w/o encl.)
John M. and Linda P. Hayama Trust (w/encl.)
Ms. Cheryl Ramos Cudiamat, P.E., Structural Hawaii, Inc. (w/encl.)

DAVID Y. IGE
GOVERNOR OF HAWAII



BRUCE S. ANDERSON, Ph.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
EMD/CWB

12023EBT.19

December 23, 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7017 0660 0001 1844 5514

Ms. Cheryl Ramos Cudiamat, P.E.
President
Structural Hawaii, Inc.
1255 Kuala Street, 2nd Floor
Pearl City, Hawaii 96782

Dear Ms. Cudiamat:

Subject: Notice of Violation and Order
Docket No. 2019-CW-EO-38
Hawaii Water Pollution Rules and Regulations
3148 C East Manoa Road
Honolulu, Island of Oahu, Hawaii

The Department of Health (DOH), Clean Water Branch (CWB), is serving the enclosed Notice of Violation and Order (NOVO) to you, John M. and Linda P. Hayama Trust and HH Constructions Inc. for a violation of Hawaii Water Pollution Rules and Regulations. The violation is for illegally discharging construction material into Manoa Stream from the construction of a retaining wall at 3148 C East Manoa Road, without a permit.

Under Hawaii Revised Statutes (HRS), Chapter 342D-9, the DOH is ordering corrective actions and assessing a monetary penalty of \$40,000.00. The enclosed Order shall become final twenty calendar days after this NOVO is served, unless you request a hearing in writing no later than twenty calendar days after service. The request for hearing must be made in accordance with the requirements listed in the NOVO. Furthermore, if the penalty is not paid to the DOH within 30 calendar days after it becomes due and payable, the Director may initiate a civil lawsuit to recover the penalty.

Please be aware, that the NOVO only addresses the specific violations cited. The DOH-CWB reserves its right to seek full penalties for any other violations of the HRS, Chapter 342D, found pursuant to this notice or failures to meet the included Order.

Ms. Cheryl Ramos Cudiamat, P.E.
December 23, 2019
Page 2

12023EBT.19

Should you have any questions, please contact Mr. Matthew Kurano of the Enforcement Section, CWB, at (808) 586-4309.

Sincerely,



KEITH E. KAWAOKA, D.Env.
Deputy Director for Environmental Health

BT:na

- Enclosures: 1. Notice of Violation, Docket No. 2019-CW-EO-38
2. Exhibit A
3. Certificate of Service
4. Certification

- c: Mr. Edward G. Bohlen, Deputy Attorney General, Department of the Attorney General (w/encl.
Water Division (WTR-7), CWA Compliance Office, EPA, Region 9 (w/o encl.)
Honolulu District, U.S. Army Corps of Engineers (w/o encl.)
DLNR, Commission of Water Resource Management (w/o encl.)
John M. and Linda P. Hayama Trust (w/encl.)
Mr. Wen Liang He, HH Constructions Inc. (w/encl.)

STATE OF HAWAII
DEPARTMENT OF HEALTH
NOTICE OF VIOLATION AND ORDER

<p>TO: John M. Hayama Trust & Linda P. Hayama Trust 3148 C East Manoa Road, Honolulu, Hawaii 96822</p> <p>and</p> <p>HH Constructions Inc. 2175 Makanani Dr. Honolulu, Hawaii 96817</p> <p>Attn: Wen Liang He</p> <p>and</p> <p>Structural Hawaii, Inc. 1255 Kuala Street, 2nd Floor Pearl City, Hawaii 96782</p> <p>Attn: Cheryl Ramos Cudiamat, P.E.</p> <p>Respondents.</p>	<p>NOVO No. 2019-CW-EO-38 <i>Please write this NOVO number on all correspondence</i></p> <p>Re: Unauthorized Discharge of Pollutants to State Waters</p> <p>Property/Facility: 3148 C East Manoa Road, Honolulu, Hawaii 96822</p>
--	--

To Respondents, collectively and individually, the Department of Health (DOH) issues this Notice of Violation and Order (NOVO) under Hawaii Revised Statutes (HRS), Chapters 91 and 342D, and Hawaii Administrative Rules (HAR), Chapter 11-54, based on findings from the Clean Water Branch (CWB) October 23, 2019, inspection of the residential property located at 3148 C East Manoa Road.

Attached as an exhibit is: Exhibit A, DOH-CWB, October 23, 2019 Inspection Report.

This case deals only with violations alleged below. The DOH may bring additional orders for other violations. This case does not limit cases by any other public agency or private party.

Statutes/Rules	Nature of the Violation
<p>HRS, 342D-9, HRS, 342D-31, HRS, 342D-50(a) HAR, 11-54-4</p>	<p><u>Background</u> John M. Hayama Trust & Linda P. Hayama Trust owns the residential property located at 3148 C East Manoa Road, Honolulu, Hawaii, 96822. John M. Hayama is the Permittee identified on the U.S. Army Corps of Engineers, Nationwide Permit for Bank Stabilization, File No. POH-2016-00224.</p> <p>Structural Hawaii, Inc. is the business entity which applied for a building permit on behalf of the property owner for the construction of a new gabion wall at the rear of the property. Structural Hawaii, Inc. is also the after-the-fact stream channel alteration permit applicant on file with the State of Hawaii, Department of Land and Natural Resources, Commission on Water Resource Management.</p> <p>HH Constructions Inc. is the construction operator onsite responsible for the construction activities being conducted at the property.</p> <p>Respondents, collectively or individually as appropriate, authorized, oversaw, and/or conducted construction activities within Manoa Stream beginning on or about May 25, 2019. Construction activities included the discharge of gravel, dirt and other construction materials into Manoa Stream in support of the construction of a retaining wall both in and on the streambank of Manoa Stream. No individual Respondent has a valid permit to discharge the pollutants into Manoa Stream. Further, Respondents, collectively and individually, were not and currently are not authorized by the State of Hawaii to conduct streambank alteration.</p> <p>HRS, § 342D-50(a), states that “no person, including any public body, shall discharge any water pollutant into state waters, or cause or allow any water pollutant to enter state waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director.” Each individual Respondent is a person under HRS § 342D-50(a).</p> <p><u>1. Unpermitted Discharge to State Waters</u></p> <p>On May 25, 2019, and on October 23, 2019, gravel, dirt and construction materials resulting from a discharge by Respondents were observed within Manoa Stream. Respondents, collectively or individually as appropriate, authorized, oversaw and/or allowed the discharge of stated materials as part of its construction activities at 3148 C East Manoa Road, Honolulu, Hawaii. Manoa Stream is a Class 2, Inland State water. The total quantity of materials discharged is estimated as 193 cubic yards.</p>

	Based on the details above, the DOH finds that Respondents, jointly and severally, violated HRS § 342D-50(a) on two (2) counts by authorizing, overseeing, and/or allowing the discharge of gravel, dirt and construction materials from its construction activities at 3148 C East Manoa Road, to State waters.
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The facts of this case and the law justify the following order.

ORDER

Respondents, jointly and severally, are liable for each and every violation cited in this NOVO and are ordered to:

1. Immediately cease discharging pollutants, including additional construction materials, to State waters until all Federal, State and Local permits required have been obtained.
2. Within 20 calendar days of service, remove all construction materials from State waters and stabilize all surface at risk for erosion due to the construction activities conducted within Manoa Stream.
3. Pay an administrative penalty of \$40,000 within 20 calendar days of the service of this NOVO. Send a certified check for \$40,000 to: Clean Water Branch, Department of Health, 2827 Waimano Home Road Room 225 , Pearl City, Hawaii, 96782. The check should be made payable to "State of Hawaii" and include the NOVO reference number, 2019-CW-EO-38.
4. All reports, payments, or other submittals made pursuant to this Order shall be submitted to the DOH, Clean Water Branch, at:

Department of Health, Clean Water Branch
2827 Waimano Home Road, Room 225
Pearl City, Hawaii 96782

Attn: Enforcement Section Supervisor

5. All documents submitted pursuant to this Order shall include the following Certification Statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The provisions of this Notice of Violation and Order shall become final unless, within 20 calendar days after this NOVO is served, Respondent(s), collectively or individually, submit a **written** request for a hearing, along with a copy of the NOVO, without exhibit(s), to:

Hearing Officer
c/o Director of Health
1250 Punchbowl St., Third Floor
Honolulu, Hawaii 96813

You may file the hearing request in person at the Director's office listed above during regular business hours, or may mail the same to the above address within the allotted time. **Failure to timely file the hearing request and related documents may result in a denial of the hearing request with respect to such Respondent.**

If a hearing is properly requested, a pre-hearing conference will be set by the Hearings Officer and the relevant Respondent will be notified of the date, time and place of the pre-hearing conference.

The hearing will be conducted in accordance with HRS, Chapter 91 and HAR, Chapter 11-1.


At the hearing, the parties may present relevant evidence and argument on the issues raised by this matter. The parties may also examine and cross-examine witnesses and present exhibits. The parties may seek to avoid any penalty, and the DOH may seek the maximum penalty of \$25,000 per day, per violation, although the actual penalty amount may be lower, or none.

Parties may be represented by legal counsel at their own expense. An individual may appear on his/her own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation, trust, or association may represent the corporation, trust, or association.

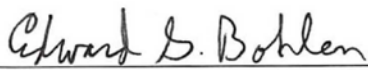
After such hearing, the Order shall be affirmed, modified or rescinded by the Director or Hearings Officer.

All inquiries regarding this matter, besides the request for hearing, shall be directed to: Mr. Matthew Kurano, Supervisor of the Enforcement Section, CWB, at (808) 586-4309.

If you have special needs due to a disability that will aid you in participating in the hearing or pre-hearing conference, please contact the Hearings Officer at (808) 586-4409 (voice) or through the Telecommunications Relay Service (711), at least 10 working days before the hearing or pre-hearing conference date.



KEITH E. KAWAOKA, D.ENV.
DEPUTY DIRECTOR FOR
ENVIRONMENTAL HEALTH

Date: DEC 23 2019 

Approved As To Form By:
Mr. Edward G. Bohlen
Deputy Attorney General

DAVID Y. IGE
GOVERNOR OF HAWAII



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

SUZANNE D. CASE
CHAIRPERSON
BRUCE S. ANDERSON, PH.D.
KAMANA BEAMER, PH.D.
MICHAEL G. BUCK
NEIL J. HANNAHS
WAYNE K. KATAYAMA
PAUL J. MEYER
M. KALEO MANUEL
DEPUTY DIRECTOR

January 14, 2020

CDR.5136.3

Wen Liang He
President
HH Constructions, Inc.
2175 Makanani Drive
Honolulu, HI 96817

Aloha Mr. He:

Notice of Alleged Violation
Construction of a Stream Channel Alteration Without a Permit
Hayama Residence, 3148C East Mānoa Road
Mānoa Stream, Mānoa, Hawaii, TMK (1) 2-9-037:085

On May 25, 2019, the Commission on Water Resource Management (Commission) was notified of an alleged violation on Mānoa Stream at the subject residence. Notice is hereby given that you may be in violation of Section 174C-71, Hawaii Revised Statutes (HRS) and Section 13-169-50, Hawaii Administrative Rules (HAR), which states: "Stream channels shall be protected from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. No stream channel shall be altered until an application for a permit to undertake the work has been filed and a permit is issued by the commission; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit."

It is alleged that a stream channel alteration consisting of a gabion wall at the subject location was constructed without a permit on file with the Commission. A photo of the stream channel alteration is attached for your information (**Exhibit 1**).

According to HRS §174C-15, HAR §13-169-3, any person who violates any provision of this chapter, or any rule adopted pursuant to this chapter, may be subject to a fine imposed by the Commission. Such fine shall not exceed \$5,000 per violation. For a continuing offense, each day's continuance is a separate violation. In the alternative, removal of the stream channel alteration may be considered in remediation of the alleged violation.

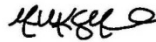
FILE ID:	SCAP.5136.3
DOC ID:	22125

Wen Liang He
January 14, 2020
Page 2

The project may require other agency approvals regarding wetlands, water quality, grading, stockpiling, and floodways. This letter should not be used for other regulatory jurisdictions or used to imply compliance with other federal, state, or county rules. Work performed without appropriate permits or authorizations may be subject to fines and/or remedial actions. Note that any information provided to the Commission in regards to this alleged violation may be used in civil proceedings.

If you have any questions, contact Rebecca Alakai of the Stream Protection and Management Branch at 587-0266 or rebecca.r.alakai@hawaii.gov.

Ola i ka wai,



M. KALEO MANUEL
Deputy Director

cc: John and Linda Hayama

Wen Liang He
January 14, 2020
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Exhibit 1: Site Photo of 3148 C East Mānoa Road, Mānoa Stream, Mānoa, Hawaii.



Site photo 1: Looking upstream taken from Kahaloa Bridge (staff, May 2019).



Site photo 2: Looking upstream taken from Kahaloa Bridge (staff, January 2020).



Owen Miyamoto

[REDACTED]

Honolulu HI 96822 [REDACTED]

July 13, 2019

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2019 JUL 16 PM 2:14

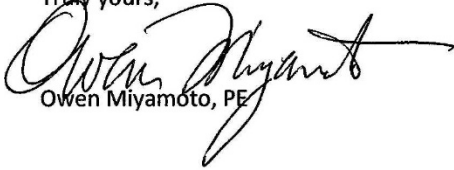
Rebecca Alakai, Planner
Commission on Water Resource Management
1151 Punchbowl Street,
Honolulu, HI 96813

Dear Ms. Alakai,

This in reference to the request for comments on the after-the-fact permit application for a Stream Alteration Permit, Manoa Stream, Manoa Hawaii.

1. Since the work has been completed, the plans should be marked As Built.
2. The plans should be sealed and signed by a qualified, licensed professional.
3. Proof of permits required by the City should be provided.
4. The North Arrow is inconsistent with conventional plans that place the drawings oriented with north in the general direction toward the upper part of the sheet.
5. The work should be supported with hydraulic studies showing the predicted impact during forecast flood stage.

Truly yours,


Owen Miyamoto, PE

FILE ID:	SCAP.5136.3
DOC ID:	21689

STANDARD STREAM CHANNEL ALTERATION PERMIT AND
STREAM DIVERSION WORKS PERMIT CONDITIONS
(Revised May 15, 2018)

1. The permit application and staff submittal approved by the Commission at its meeting on the above date shall be incorporated herein by reference.
2. The project may require other agency approvals regarding wetlands, water quality, grading, stockpiling, endangered species, and floodways. The permittee shall comply with all other applicable statutes, ordinances, and regulations of the Federal, State and county governments, including, but not limited to, instream flow standards.
3. The permittee, 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 permittee or his successors, assigns, officers, employees, contractors, and agents under this permit or related to the granting of this permit.
4. The permittee shall notify the Commission, by letter, of the actual dates of project initiation and completion. The permittee shall submit a set of as-built plans and photos in pdf format 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 permittee shall submit one set of construction plans and specifications in PDF format to determine consistency with the conditions of the permit and the declarations set forth in the permit application.
6. The permittee shall implement site-specific, construction Best Management Practices in consultation with the DOH Clean Water Branch and other agencies as applicable, that are designed, implemented, operated, and maintained by the permittee and its contractor to properly isolate and confine activities and to contain and prevent any potential pollutant(s) discharges from adversely impacting State waters per HRS Ch. 342D Water Pollution; HAR §11-54-1 through §11-54-8 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control, Appendix C.
7. The permittee shall protect and preserve the natural character of the stream bank and stream bed to the greatest extent possible. The permittee 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 permittee 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.

LEGAL AUTHORITIES

Water as a Public Trust. The four public trust purposes are:

1. Maintenance of waters in their natural state;
2. Domestic water use of the general public, particularly drinking water;
3. The exercise of Native Hawaiian and traditional and customary rights, including appurtenant rights. *Waiahole*, 94 Hawaii 97; 9 P.3d 409 (2000).
4. Reservations of water for use on Hawaiian home lands. *Waiola O Molokai, Inc.*, 103 Hawaii 401; 83 P.3d 664 (2004).

Activities on undeveloped lands. *Public Access Shoreline Hawaii v. Hawaii County Planning Commission (PASH I)*. 79 Hawaii 246 (1993).

HRS §174C-15 Penalties and common law remedies. Provides for fines of up to \$5,000 for violation of any provision of HRS §174C. For a continuing offense, each day during which the offense is committed is a separate violation.

HRS §174C-71 Protection of instream uses. The commission shall establish and administer a statewide instream use protection program. In carrying out this part, the commission shall cooperate with the United States government or any of its agencies, other state agencies, and the county governments and any of their agencies. In the performance of its duties the commission shall:

- (3) Protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses;
 - (A) 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;
 - (C) The commission shall establish guidelines for processing and considering applications for stream channel alterations consistent with section 174C-93;

HAR §13-169-2 Definitions.

“Channel alteration” means to obstruct, diminish, destroy, modify, or relocate a stream channel; to change the direction of flow of water in a stream channel; to place any material or structures in a stream channel; or to remove any material or structures from a stream channel.

“Stream channel” means a natural or artificial watercourse with a definite bed and banks which periodically or continuously contains flowing water.

HAR §13-169-3 Penalties. (a) Any person who violates any provision of this chapter or any permit condition or who fails to comply with any order of the commission may be subject to a fine imposed by the commission. Such fine shall not exceed \$5,000 per violation. For a continuing offense, each day’s continuance is a separate violation.

HAR §13-169-49 Interim instream flow standard for Leeward Oahu. The Interim Instream Flow Standard for all streams on Leeward Oahu, as adopted by the commission on water resource management on October 19, 1988, shall be that amount of water flowing in each stream on the

effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted offstream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard.

HAR §13-169-50 Permit required. (a) Stream channels shall be protected from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. No stream channel shall be altered until an application for a permit to undertake the work has been filed and a permit is issued by the commission; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit.

HAR §13-169-52 Criteria for ruling on application. (a) The commission shall act upon an application within ninety calendar days after acceptance of the application.

(b) Based upon the findings of fact concerning an application for a stream channel alteration permit, the commission shall either approve in whole, approve in part, approve with modifications, or reject the application for a permit.

(c) In reviewing an application for a permit, the commission shall cooperate with persons having direct interest in the channel alteration and be guided by the following general considerations:

- (1) Channel alterations that would adversely affect the quantity and quality of the stream water or the stream ecology should be minimized or not be allowed.
- (2) Where instream flow standards or interim instream flow standards have been established pursuant to subchapters 3 and 4, no permit shall be granted for any channel alteration which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.
- (3) The proposed channel alteration should not interfere substantially and materially with existing instream or non-instream uses or with channel alterations previously permitted.

(c) Notwithstanding subparagraph (b) above, the commission may approve a permit pursuant to subparagraph (a) above in those situations where it is clear that the best interest of the public will be served, as determined by the commission.

HAR §13-169-53 Term of permit. (a) Every permit approved and issued by the commission shall be for a specified period, not to exceed two years, unless otherwise specified in the permit.