



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

September 15, 2020  
Honolulu, Hawai'i

Approval of Stream Diversion Works Permit Application (SDWP.5359.6) to  
Abandon Diversion No. 769 on Honolua Stream by Maui Land & Pineapple Co., Inc., and  
Find that SDWP.5359.6 is Exempt from Hawaii Revised Statutes, Chapter 343  
Honolua Stream, Lahaina, Maui TMK: (2) 4-2-001:001

APPLICANT / LANDOWNER

Paul Subrata, Vice President  
Maui Land & Pineapple, Inc.  
200 Village Road  
Lahaina, HI 96761

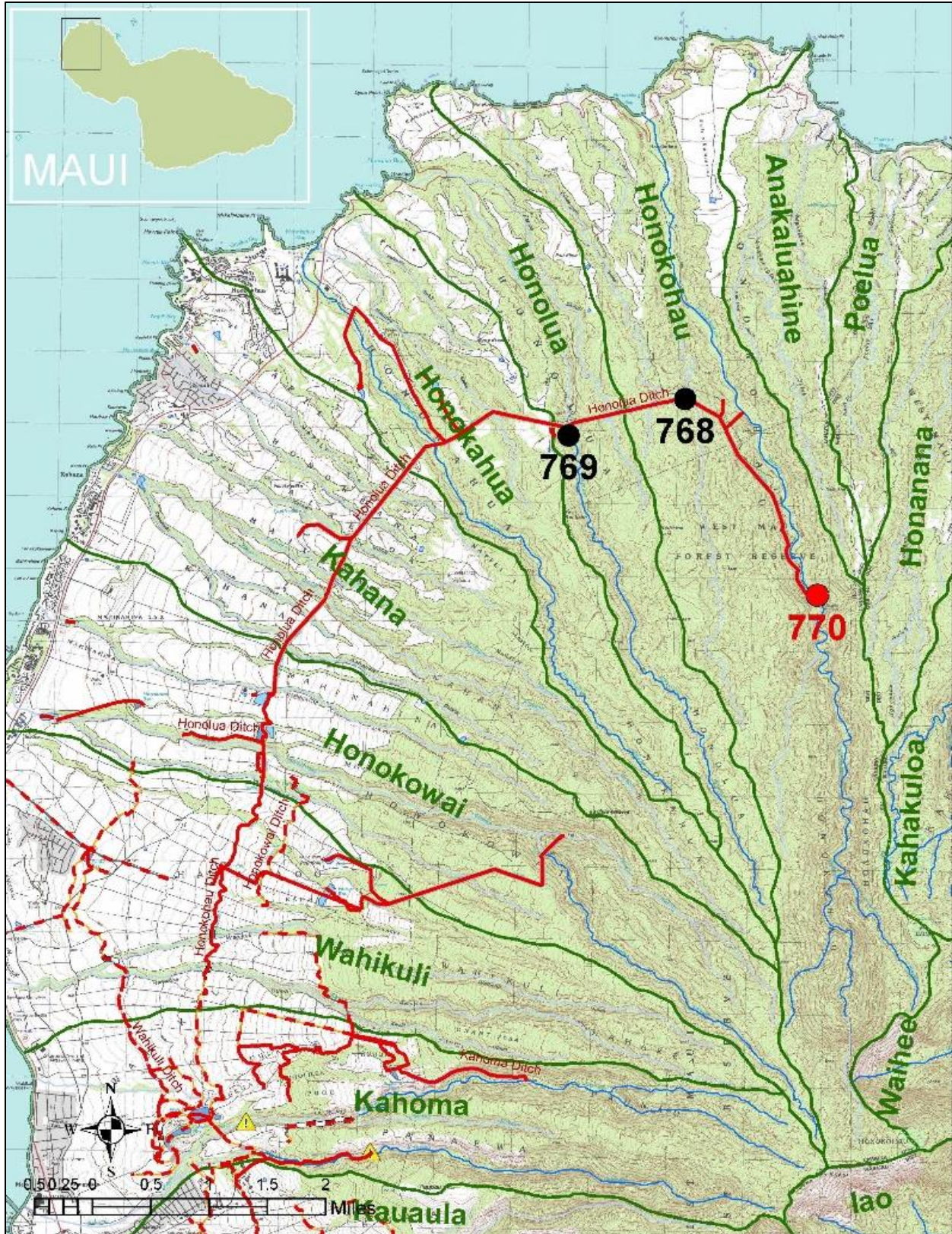
SUMMARY OF REQUEST

Approve Stream Diversion Works Permit (SDWP.5359.6) Application that proposes to abandon Diversion 769 on the subject stream. This diversion was voluntarily closed in 2004. No water is diverted. The permit application was required by the letter dated December 4, 2019, Notice of Commission Action, sent by the Commission on Water Resource Management (Commission) to Maui Land & Pine (MLP).

Find that SDWP.5359.6 is exempt from Hawaii Revised Statutes, Chapter 343. The trigger is that the location is in the Conservation District. The subject project is exempt from the preparation of an environmental assessment in accordance with Hawaii Administrative Rule §11-200.1-15(a)(1), operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing.

LOCATION: Honolua hydrologic units. See **Figure 1**.

Figure 1: Location, Honolua hydrologic unit, Maui.





## BACKGROUND

In 1903, Diversion 769 was constructed for use in plantation agriculture.

In 1987, Maui Pineapple Company (MPC) registered Diversion 769 along with other diversions, wells and ditches (Note: Landowner is Maui Land & Pineapple Company, Inc, MLP). Following the cessation of pineapple cultivation in Kapalua, the operation and maintenance of the intake and ditch system were contracted out to a private company for MLP.

On August 25, 2006, the Commission received a “Petition for Establishment of Instream Flow Standard or, in the Alternative, For Confirmation of Interim Instream Flow Standard for Honolua Stream, West Maui, Hawai‘i,” (Petition) filed by MPC. In its Petition, MPC indicated that “beginning in late 2004 and continuing to this day, ML&P (Maui Land and Pineapple, Co.) voluntarily closed the ditch intake on Honolua Stream, allowing natural stream flows to bypass the intake and flow downstream.”

On November 5, 2008, responding to an inquiry from MLP on the status of the Petition, the Commission informed MLP that it would consider the Petition “after the Nā Wai ‘Ehā and East Maui streams are adequately addressed.”

In late 2018, following Hurricanes Lane and Olivia, Commission staff learned that Stream Diversion Works 769 had been destroyed, with only its’ control gate remaining and partially buried on the left bank of the stream.

On April 23, 2019, Ka Malu o Kahalawai and West Maui Preservation Association filed a formal Complaint / Dispute Resolution form alleging waste against MLP, Kapalua Water Company, and Ka‘anapali Land Management Corporation.

On November 20, 2019, the Commission was presented with a staff submittal to “Request to Address the Waste Complaint Filed by Ka Malu O Kahalawai and West Maui Preservation Association Against Maui Land and Pineapple Company Alleging Water Diverted from Honokōhau Stream Overflows the Honokōhau Ditch, Pursuant to Hawai‘i Revised Statutes §174C-13, and to Amend the Interim Instream Flow Standards for the Surface Water Hydrologic Units of Honolua (6013) and Honokōhau (6014), West Maui.” The Commission amended staff’s recommendations and unanimously approved the submittal, including the implementation action that, “within 120 days of Commission action, MLP will submit a stream diversion works permit to formally abandon diversion 769 at Honolua Stream.”

On March 26, 2020, MLP filed a complete stream diversion works permit application. The stream diversion works permit application SDWP.5359.6 can be viewed on the Commission website at: [https://files.hawaii.gov/dlnr/cwrm/swreview/SDWP\\_5359\\_6.pdf](https://files.hawaii.gov/dlnr/cwrm/swreview/SDWP_5359_6.pdf)

### STREAM DESCRIPTION

There are two streams in the Honolua hydrologic unit: Honolua and Pāpua. The Honolua branch is composed of a number of short ephemeral tributaries in the upper reaches. The estimated low-flow duration values for Honolua Stream at Diversion 769 are a median ( $Q_{50}$ ) flow of 2.46 mgd and a  $Q_{90}$  flow of 0.0 mgd. Honolua is expected to flow mauka to makai naturally 80% of the time. At  $Q_{90}$  (10% of the time), the stream was naturally dry above the 690 foot elevation. Honolua stream is gaining in the uppermost reaches in the watershed, but has discontinuous flow below the Honokōhau Ditch to the ocean, with most reaches losing surface water to aquifer recharge. Honolua supports a high density of native aquatic species upstream and immediately downstream of Diversion 769.

### PROJECT DESCRIPTION

The project scope is to formally abandon Diversion 769 which was deactivated in late 2004 and subsequently destroyed by high flows resulting from consecutive hurricanes in late 2018. No work is proposed on the diversion structure itself, but the Commission staff recommends that any remnant debris remaining in the stream (e.g., concrete, rebar, steel grating, corrugated metal, etc.) be removed by MLP and photographic evidence be submitted to the Commission.



Upstream view of Honolua Stream flowing over diversion intake 769 (CWRM, 2017).



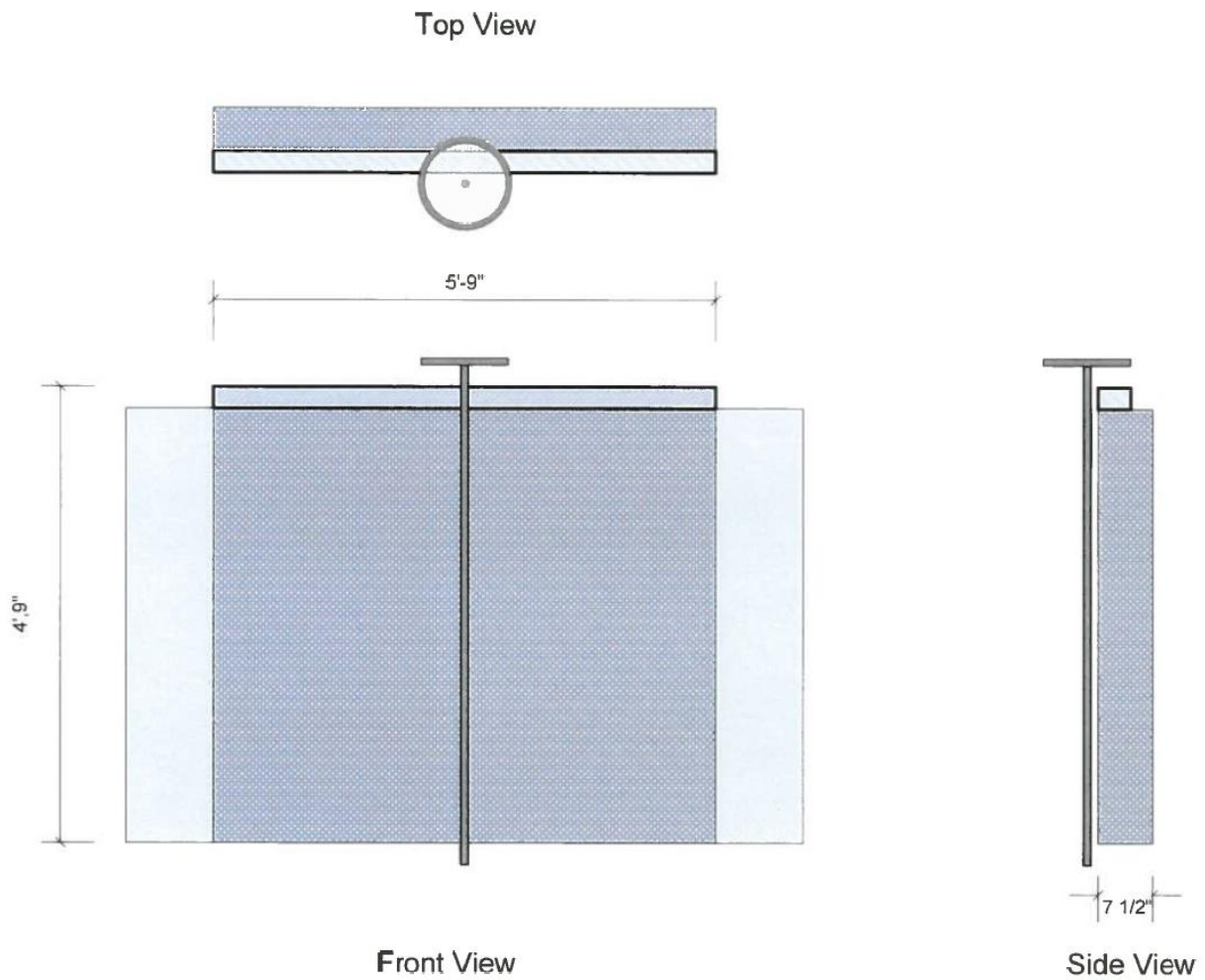
Honolua Stream diversion intake 769 from left bank (CWRM, 2011).



Honolua Stream from right bank, following hurricane damage in late 2018, with buried remnant diversion control gate on left bank (CWRM, 2019)



Close-up of intake control gate (CWRM, 2019)



Schematic diagram of remnant control gate structure of Diversion 769 (MLP, 2020)



AGENCY REVIEW COMMENTS

Maui County, Planning Department: No objections.

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

Department of Land and Natural Resources (DLNR), Aha Moku: No comments received.

DLNR, Aquatic Resources: No comments received.

DLNR, Engineering: No comments.

DLNR, Forestry and Wildlife (DOFAW): No objections.

DLNR, State Historic Preservation Division (SHPD): No comments received.

DLNR, Land Division: No comments received.

DLNR, State Parks: No objections.

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

*CWRM Staff Response: The lead agency for the protection of water quality is the Department of Health, Clean Water Branch, which administers the Federal Clean Water Act (33 U.S.C. §1251 et seq.) and the State Water Pollution Act (HRS Ch. 342D; HAR Ch. 11-54 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control). HAR §11-54-1 through §11-54-8 defines Best Management Practices and water quality criteria applicable to inland and nearshore waters and are based on the Federal Clean Water Act. HAR Ch. 11-55 Appendix C defines discharges of storm water associated with construction activity. HRS 174C-66 states that the DOH oversees the State's water quality control program.*

Office of Hawaiian Affairs: No comments received.

US Army Corps of Engineers: No permit needed.

US Fish and Wildlife Service (FWS): No objections.

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 "For background on lo'i kalo cultivation in the Honokohau area as well as historical uses please refer to Handy and Handy in Native Planters of Old Hawaii

(1972). See also Kumu Pono Associates, 2007a; 2007b. Please also refer to public testimony and comments received by the Commission on Water Resource Management ("Commission") at the September 9, 2019 Public Fact Gathering Meeting held at Lahaina Civic Center Main Hall, Lahaina, Maui. According to a 1990 Hawaii Coastal Zone Management Program Hawaiian Fishpond Study for the Islands of Hawaii, Maui, Lanai, and Kauai, there are no fishponds present in the Honokohau hydrologic unit (DHM, Inc., 1990).”

*CWRM Staff Response: Cultural, historical, or natural resources in which traditional and customary native Hawaiian rights are generally protected on undeveloped land. PASH, 1993. The Office of Hawaiian Affairs’ Kipuka database, shows no historic sites, land awards, or crown lands involved. No comments were received by DLNR Aha Moku. No comments from the public.*

- 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, “Diversion 769 was closed in 2004 voluntarily by Maui Land & Pineapple Company, Inc (“MLP”). This allowed natural streamflow to pass downstream, which has had a positive impact on stream resources. See Supporting Biological Documentation for Petition to Establish Instream Flow Standards in Honolua Stream, West Maui, Hawai’i, prepared by SWCA Environmental Consultants Inc., in June 2006. This document is attached to the back of the Instream Flow Standard Assessment Report for the Island of Maui Hydrologic Unit 6013, Honolua, issued in November 2019 by the Commission.”

*CWRM Staff Response: Currently, no water is diverted from this diversion so traditional and customary rights or uses should not be affected by this action.*

- 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, “none known, as the diversion has already been completely inactivated and natural streamflow has already been restored.”

*CWRM Staff Response: No further action as identified.*

## HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT (EA) COMPLIANCE

Under Hawaii Revised Statutes (HRS) §343-5(a), 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.

The proposed action triggers an EA because the diversion is located in the Conservation District. However, per Hawaii Administrative Rule (HAR) §11-200.1-15(a) some actions, because they will individually and cumulatively probably have minimal or no significant effects, can be declared exempt from the preparation of an EA.

The project is exempt from the preparation of an environmental assessment per HAR §11-200.1-15(c)(1), operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing.

### STAFF REVIEW

HAR §13-168-32(d) sets out the general criteria for ruling on SDWP applications.

- (1) The quantity and quality of the stream water or the stream ecology shall not be adversely affected.

*CWRM Staff Response: No water is diverted from this site. The Hawaii Department of Health is the lead agency regarding water quality (HRS §174C-66).*

- (2) Where instream flow standards or interim instream flow standards have been established pursuant to HAR Chapter 13-169, no permit should be granted for any diversion works which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.

*CWRM Staff Response: 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 current interim instream flow standard for West Maui is an unmeasured amount and the status quo of streamflow conditions on the effective date of this standard (1988), and as that flow may naturally vary throughout the year (HAR §13-169-48). 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 diversion works shall not interfere substantially and materially with existing instream or non-instream uses or with diversion works previously permitted.

*CWRM Staff Response: Abandonment of the existing structure is not anticipated to interfere with existing diversions.*

### RECOMMENDATION

That the Commission:

1. Approve Stream Diversion Works Permit (SDWP.5359.6) Application to abandon Diversion 769 on Honolua Stream subject to the standard conditions in **Exhibit 1** and special conditions below.
2. Direct MLP to remove any remnant debris remaining in Honolua stream (e.g., concrete, rebar, steel grating, corrugated metal, etc.) and submit photographic evidence to the Commission.
3. Find that SDWP.5359.6 is exempt from HRS, Chapter 343 (See **Exhibit 2**).

Ola i ka wai,

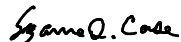


M. KALEO MANUEL  
Deputy Director

### Exhibits:

1. Standard Stream Channel Alteration Permit and Stream Diversion Works Permit Conditions.
2. HRS Chapter 343 Exemption Notification.
3. Legal Authorities.

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE  
Chairperson

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.

**CHAPTER 343 HRS EXEMPTION NOTIFICATION**

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR.

Project Title: Stream Diversion Works Permit Application (SDWP.5359.6) by Maui Land & Pine, Inc., to Abandon Diversion No. 769 on Honolua Stream, Maui

Project / Reference No.: SDWP.5359.6

Project Location: TMK: (2) 4-2-001:001. Honolua Stream, Maui

Project Description: Abandon Diversion No. 769. The diversion is closed and does not divert water. No work is proposed.

Chap. 343 Trigger(s): (2) Use within a conservation district

Exemption Class No(s): Hawaii Administrative Rule § 11-200.1-15(c)(1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing.

Cumulative Impact of Actions in Same Place Significant?: No cumulative impact of actions in the same place.

Action May Have Significant Impact on Particularly Sensitive Environment?: No particularly sensitive environments present, or anticipated impacts if they are present.

Analysis: Based on project description above, instream flow values remain unchanged or have improved as no water is diverted from the site.

Consulted Parties: DLNR Engineering Division  
DLNR Division of Forestry and Wildlife  
DLNR Office of Conservation and Coastal Lands  
DLNR State Parks

Declaration: The Commission finds that this project will probably have minimal or no significant effect on the environment and declares that this project is exempt from the preparation of an environmental assessment under the exemption classes identified above.

\_\_\_\_\_  
Suzanne D. Case, Chairperson

\_\_\_\_\_  
Date



## 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).

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:

- (2) Establish interim instream flow standards;
  - (D) In considering a petition to adopt an interim instream flow standard, the commission shall weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses;
- (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;

HRS §174C-92 Registration of existing stream diversion works. Any person owning or operating a stream diversion works within or outside of a water management area shall register such work with the commission. Registration shall be on the forms provided by the commission. Reporting requirements on the registration forms shall be reasonable.

HRS §174C-95 Abandonment. Any owner of any stream diversion work wishing to abandon or remove such work shall first obtain a permit to do so from the commission.

HAR §13-168-2 Definitions.

“Instream flow standard” means a quantity or flow of water or depth of water which is required to be present at a specific location in a stream system at certain specified times of the year to protect aquatic life, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses.

“Instream use” means beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to:

- (1) Maintenance of aquatic life and wildlife habitats;
- (2) Outdoor recreational activities;
- (3) Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation;
- (4) Aesthetic values such as waterfalls and scenic waterways;
- (5) Navigation;
- (6) Instream hydropower generation;
- (7) Maintenance of water quality;
- (8) The conveyance of irrigation and domestic water supplies to downstream points of diversion; and
- (9) The protection of traditional and customary Hawaiian rights.

“Stream diversion” means the act of diverting, pumping or otherwise removing water from a stream into a channel, ditch, pipeline, or other conduit.

“Stream diversion works” means any artificial structure, excavation, pipeline, or other conduit constructed singly or in combination, for the purpose of diverting or otherwise removing water from a stream into a channel, ditch, tunnel, pipeline, etc.

HAR §13-168-31 Registration of existing stream diversion works. Within one year from the effective date of these rules, the owner or operator of any stream diversion works in any area of the state shall register such facility with the commission. Registration shall be on the forms provided by the commission and shall include information such as location, dimensions, elevations, divertible capacity, construction plans, method of measuring flows, and all other facts or information reasonably required.

HAR §13-168-35 Abandoned stream diversion works. (a) The owner of any stream diversion works wishing to abandon or remove such works shall first obtain a stream diversion permit issued or caused to be issued by the commission. No abandonment work shall be undertaken by the applicant until such a permit is issued by the commission.

(b) Each application for a stream diversion permit to perform abandonment work shall be made on forms furnished by the commission, shall not require a fee, and shall include:

- (1) The name and address of the applicant;
- (2) The location and description of the proposed stream diversion work abandonment;
- (3) An assessment of the impact the abandonment will have on the stream environment;
- (4) Relevant maps, plans, and drawings; and
- (5) Other information as may be necessary for the commission to determine the merits of the proposed stream channel alteration, including any hazards to public health, safety, or welfare, and the desirability of issuing a permit.

HAR §13-169-48 Interim instream flow standard for West Maui. The Interim Instream Flow Standard for all streams on West Maui, 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.