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 a Stream Diversion Works Permit Application (SDWP.5321.2) by Kaua‘i Island Utility Cooperative for the Kōke‘e Ditch Diversion Modifications at Waiakōali (Diversion 620), Kawaikōī (Diversion 616), and Kōke‘e (Diversion 622) Streams, in Accordance with the Mediation Agreement for the Waimea Watershed Area dated April 18, 2017, and Find that SDWP.5321.2 is Exempt from Hawaii Revised Statutes, Chapter 343, Waiakōali, Kawaikōī, Kōke‘e Streams, Waimea, Kaua‘i, TMK: (4) 1-4-001:003 and 013

APPLICANT
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LANDOWNER
State of Hawai‘i
Department of Land and Natural Resources
Agribusiness Development Corp.

SUMMARY OF REQUEST

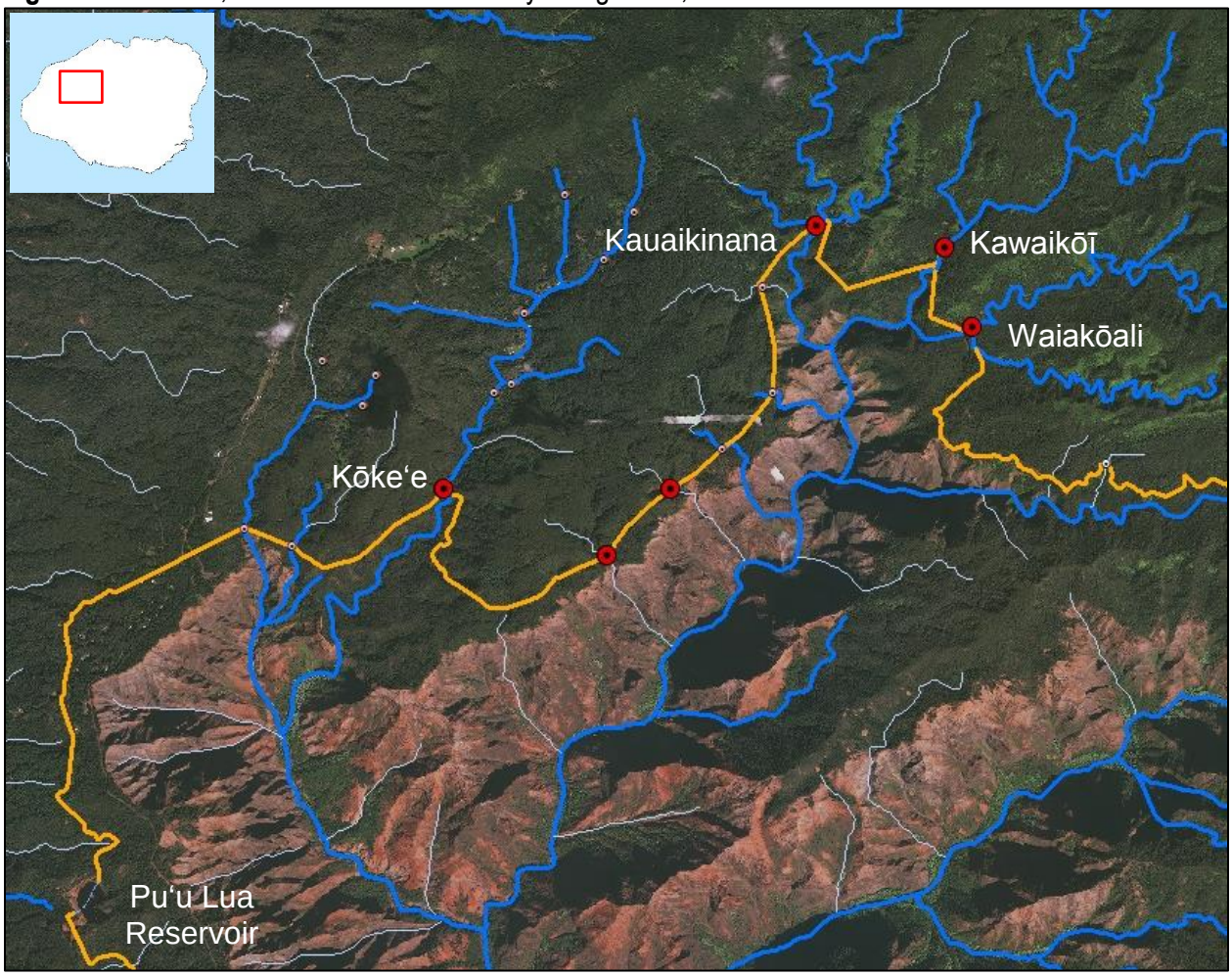
Approve the Stream Diversion Works Permit (SDWP.5321.2) Application that proposes work on three diversions: 1) Waiakōali Stream: Installation of a concrete diversion headwall with a control gate; 2) Kawaikōī Stream: Construction of a gravel cofferdam with a gated pipe and trash rack; and 3) Kōke‘e Stream: Construction of a 36-inch bulkhead with gate, installation of one 85-foot long, 24-inch HDPE pipe flume, and rehabilitation of the tunnel head gate. The proposed changes will result in less water diverted into the ditch and more water retained in the streams. It is intended to address the requirements for Phase One Interim Instream Flow Standards (IIFS) outlined in the Mediation Agreement for the Waimea Watershed Area approved on April 18, 2017 by the Commission.

Find that SDWP.5321.2 is exempt from Hawaii Revised Statutes, Chapter 343. The triggers are the use of State land and location 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; and, (5) basic data collection, research, experimental management, and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource.

LOCATION: Waimea Surface Water Hydrologic Unit, Kauai. **Figure 1**.

Figure 1. Location, Waimea Surface Water Hydrologic Unit, Kauai.



BACKGROUND

On July 24, 2013, Pōʻai Wai Ola and West Kauaʻi Watershed Alliance, through their attorneys Earthjustice, filed 1) a Complaint for Dispute Resolution; 2) a Petition to Amend Interim Instream flow Standard; and 3) a Complaint for Declaratory Order Against Waste in the Waimea River and its tributaries, Waimea, Hawaiʻi.

On April 18, 2017, the Commission approved a Mediation Agreement for the Waimea Watershed Area (Mediation Agreement). The parties consisted of the petitioners Pōʻai Wai

Ola/West Kauaʻi Watershed Alliance, represented by Earthjustice; the State of Hawaiʻi, Agribusiness Development Corporation and Department of Hawaiian Home Lands; Kauaʻi Island Utility Cooperative (KIUC); and the Kekaha Agriculture Association. The Mediation Agreement and chronology of events can be viewed on the Commission website at: https://dlnr.hawaii.gov/cwrm/surfacewater/ifs/2060-waimea/

Since 2017, the Commission staff has continued to host regular meetings of the parties involved in the Mediation Agreement to work through specific details in the implementation of the approved IIFS. Phase One of the Mediation Agreement went into effect upon its approval by the Commission, whereby the parties agreed to take immediate steps to restore flows to the maximum extent possible while working on the structural modifications. KIUC submitted its Revised Kōkeʻe Ditch Diversion Phase One Flow Release Modification Plan in September 2017. A more detailed plan was submitted in March 2018 as KIUC continued to work through the permitting process with the U.S. Army Corps of Engineers, Department of Health, U.S. Fish and Wildlife Service, State Historic Preservation Division, Office of Conservation and Coastal Lands, and the State Land Division.

On May 31, 2018, KIUC filed a Request for Determination regarding a stream channel alteration permit application for the Kōkeʻe Ditch diversion modification project. Phase One of the mediated agreement required flow restoration and IIFS.

On July 12, 2018, the Commission responded that the actions did not require a stream channel alteration permit application to be submitted for the subject streams because the proposed work was outside of the stream channel and the work involved routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit per Hawaii Administrative Rules §13-169-50. However, the Commission did require a stream channel alteration permit application to be submitted for the Kōkeʻe Stream because the proposed action involved adding a new 24-inch HDPE pipe flume from the new ditch bulkhead, across the stream upstream of the diversion and into the new bulkhead under the Kōkeʻe tunnel headgate leaf.

On February 12, 2019, the Office of Conservation and Coastal Lands (OCCL) sent a letter to KIUC indicating that, "At this time, OCCL believes that the proposed modification and monitoring improvements may be considered an exempt action pursuant to Hawaii Revised Statutes (HRS), Chapter 343 as amended, HAR, Chapter 11-200, and pursuant to the Exemption List for the Department…" See **Exhibit 4**.

On September 27, 2019, upon further review, the Commission restated its response to KIUC's request for determination. It stated that KIUC needed: 1) a stream channel alteration permit for gage installations on the Waiakōali, Kauaikinana, and Kōkeʻe Streams; and 2) a stream diversion works permit for the headwall and spillway modifications at the Waiakōali Stream diversion; earthen coffer dam installation at the Kawaikōī Stream diversion; and HDPE pipe and ditch bulkhead and tunnel headgate rehabilitation at the Kōkeʻe Stream diversion.

On January 27, 2020, KIUC filed a stream channel alteration permit application for the installation of flow monitoring equipment to measure stream and ditch flows on the subject streams. The stream channel alteration permit application, SCAP.5150.2 can be viewed on the Commission website at: https://files.hawaii.gov/dlnr/cwrm/swreview/SCAP_5150_2.pdf

On January 27, 2020, KIUC filed a stream diversion works permit application to divert less water into the ditch and, thereby, retain more water in the stream in the subject streams. The stream diversion works permit application SDWP.5321.2 can be viewed on the Commission website at: https://files.hawaii.gov/dlnr/cwrm/swreview/SDWP_5321_2.pdf

STREAM DESCRIPTION

The Waimea Surface Water Hydrologic Unit covers an area of 86 square miles from 5,240 feet in elevation to the sea. The Waiakōali, Kawaikōī, Kauaikinana, and Kōkeʻe Streams are tributaries of Waimea River and contribute flow to the Kōkeʻe Ditch. The longest flow path in Waimea is 26 miles. The streams are in the Nā Pali-Kona Forest Reserve and in the Conservation District. Based on stream surveys conducted in 2018, no native aquatic species were found in the streams downstream of each diversion. The lack of native amphidromous gobiids are most likely due to the high elevation at which no native fish are known to inhabit. Flora and fauna surveys in the area indicated the predominant vegetation coverage is alien forest with some scattered remnant native koa and ʻōhiʻa.

PROJECT DESCRIPTION

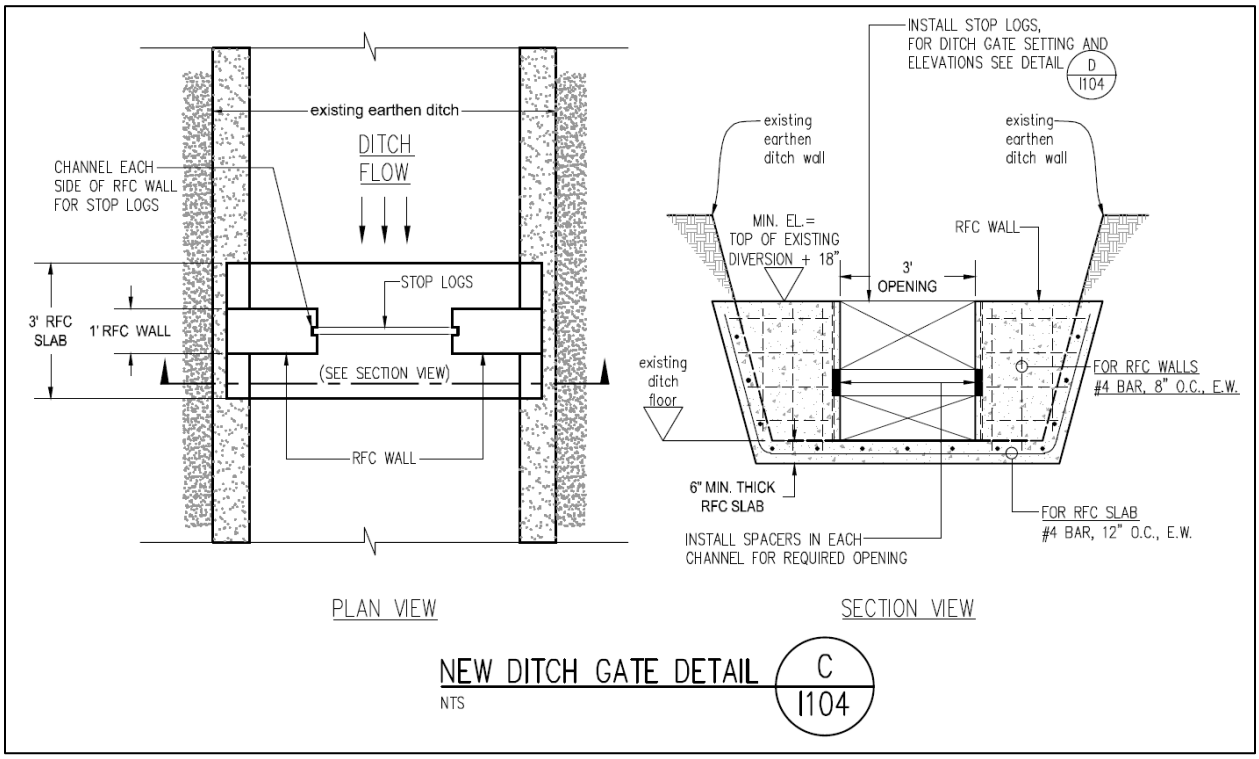
Waiakōali Stream

The Waiakōali Stream diversion is the uppermost active diversion structure (See **Figure 2**). It consists of an existing concrete diversion dam about 35-feet wide, 10-feet high, at an elevation of 3,425 feet. The structure impounds a small pool and directs water through a trash rack and into an ungated open ditch 6-feet wide. The diversion currently does not have gates or a low-level outlet and is unregulated. The diversion routes all streamflow into the ditch during low and moderate streamflow situations. Only high flows are sufficient to increase the impoundment level enough to result in discharge over the spillway. The primary design challenge to a Phase One IIFS release is the lack of a ditch inlet gate, an outlet gate or stop log (pani board) section that can be modified to provide a means of control for balancing diversion flows and stream flows. There are two viable options for addressing this: a) blocking or controlling ditch flow to force flows over the spillway crest; or b) cutting an orifice or slot in the structure at sufficient depth to ensure IIFS release during all flow conditions.

Since the Waiakōali diversion is the first supply point for the ditch and the current irrigation requirements are low, the modification for this structure only needs to provide enough ditch flow to hydrate the ditch and tunnels. The proposed modification involves restricting the ditch inlet and providing controlled flow over the spillway crest. This approach will allow regulation of diversion flows, thereby forcing streamflows up and over the spillway crest.

Figure 2. Waiakōali Stream Diversion. Existing (yellow), New (white).

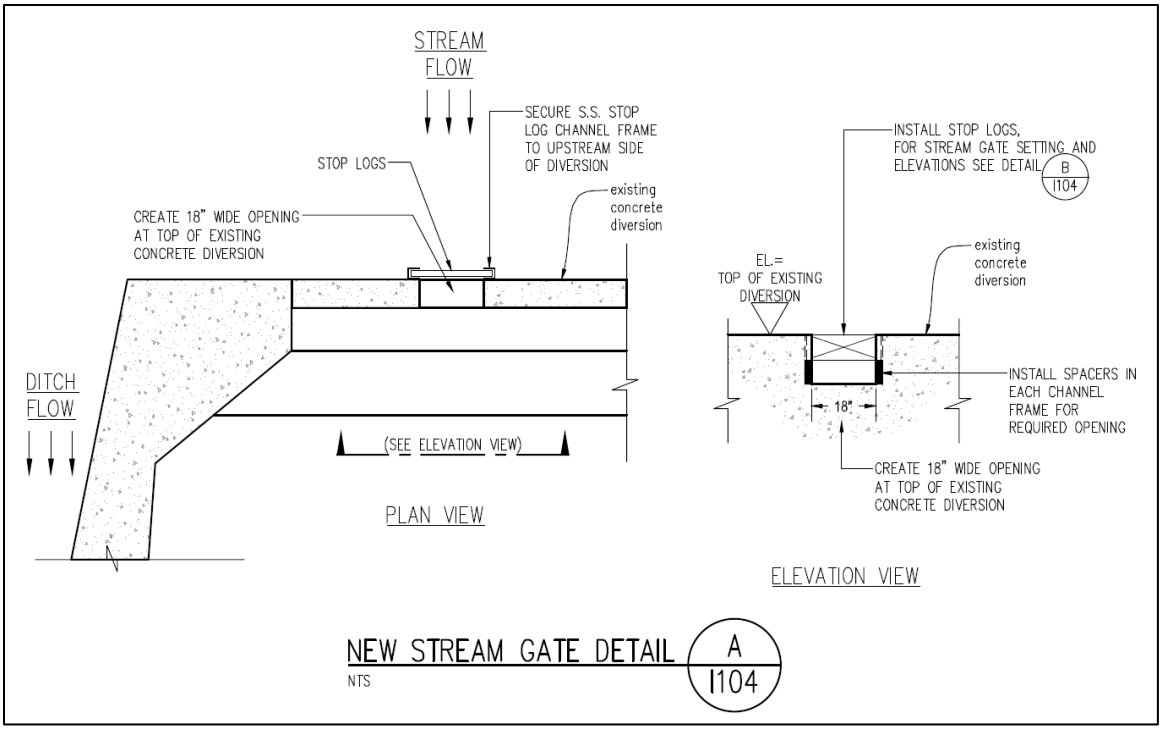
a. Ditch Intake Headwall. A concrete headwall will be constructed in the ditch just downstream of the existing trash rack. The headwall will serve to control both ditch flow and impoundment level. The headwall will be keyed into the ditch walls and will be approximately 7 feet in width, have a height of at least 18 inches above the diversion creast and be designed to take full head pressure. The center of the headwall will contain a 36-inch wide stoplog bay that will have boards set in place to provide a fixed opening. This opening will admit a small amount of water to the ditch to keep it hydrated and make a contribution to the water user’s needs. The opening size and elevation is calculated to work in unison with the IIFS release point design to ensure that IIFS flows are passively maintained.



Trash rack and support beam at Waiakoali Ditch inlet (KIUC, 2020).

Diversion dam, looking toward ditch inlet and trash rack (KIUC, 2020).

b. Spillway Release Gate. An 18-inch wide by 12-inch deep notch and weir assembly will be cut into the concrete diversion dam. The notch and weir will provide a deeper narrow section that shows stage differences at low-flow volumes. This action is related to SCAP.5150.2 which considers the installation of a flow monitoring device on the concrete diversion dam and adjacent to the spillway release gate. The upstream side of notch will have a steel frame affixed to the concrete to hold boards which can be used to adjust the opening size and invert to adjust the flow release during the calibration process. The release gate is the mechanism that controls how much water is released past the Waiakoali diversion dam to meet the downstream IIFS. The Phase One IIFS value is 1.4 mgd. After proposed work is completed, the estimated diversion flow capacity will range from 0 to 30 mgd.



Diversion dam, looking upstream (KIUC, 2020).

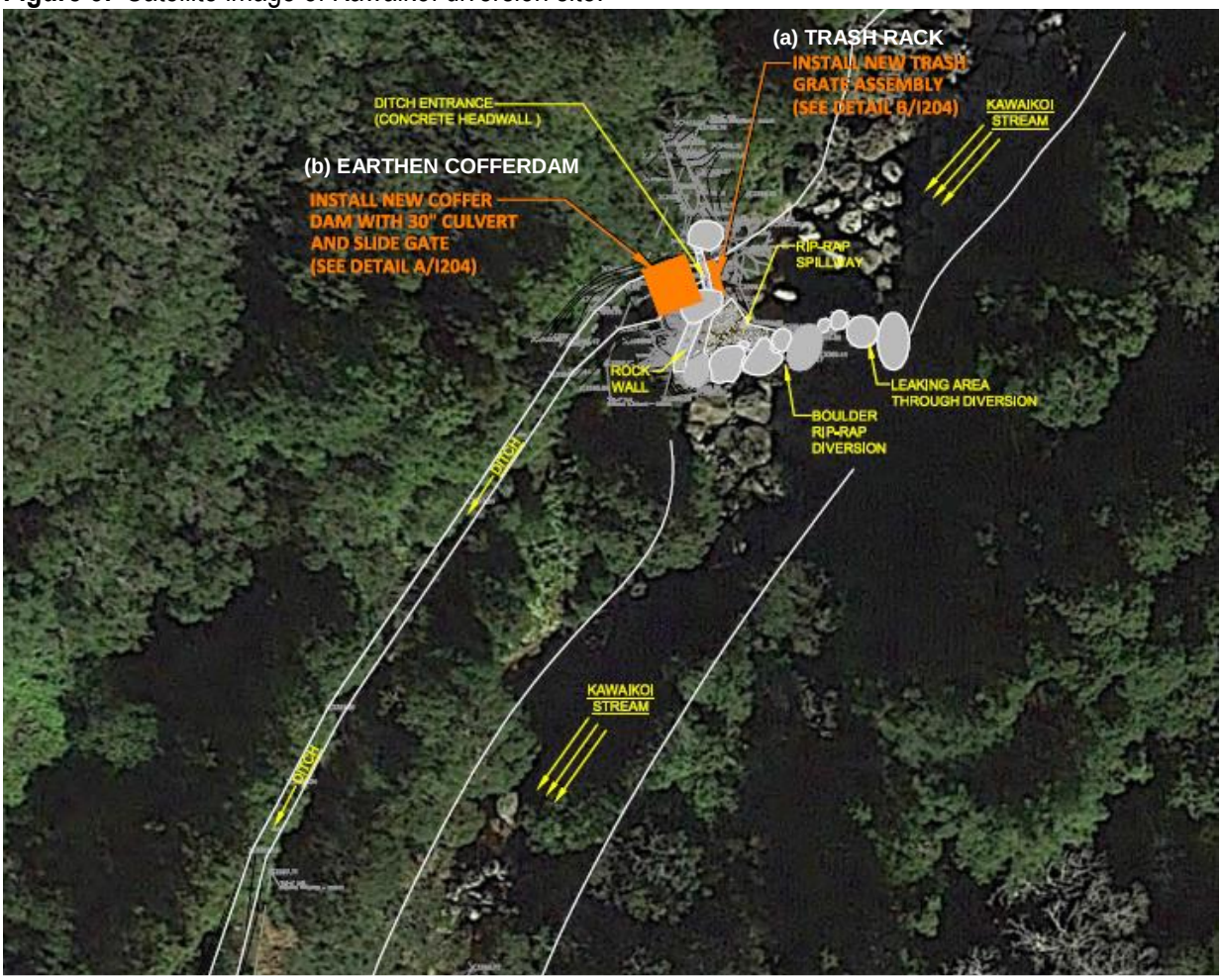
Diversion dam, looking toward ditch inlet and trash rack (KIUC, 2020).

Kawaikōī Stream

The Kawaikōī Stream diversion is the second diversion structure and contributes the majority of the water present in the ditch system (**Figure 3**). The diversion consists of concrete and rubble masonry in several small sections of gaps and holes between large boulders in the stream channel. The open ditch continues downstream paralleling the stream channel for approximately 300 feet where it terminates at a masonry spillway and gated tunnel entrance. The diversion has neither gates nor a low-level outlet and is completely unregulated. However, the tunnel entrance gate can be closed to force water over the ditch sidewall and back into the stream channel. Approximately 75 feet into the tunnel is a large adit that is closed off by stop logs. These stop logs can be removed to gain maintenance access to the tunnel or to sluice material out.

The Phase One IIFS value is 4.8 mgd. After the proposed work is completed, the estimated diversion flow capacity will range from 0 to 32 mgd.

Figure 3. Satellite image of Kawaikōī diversion site.



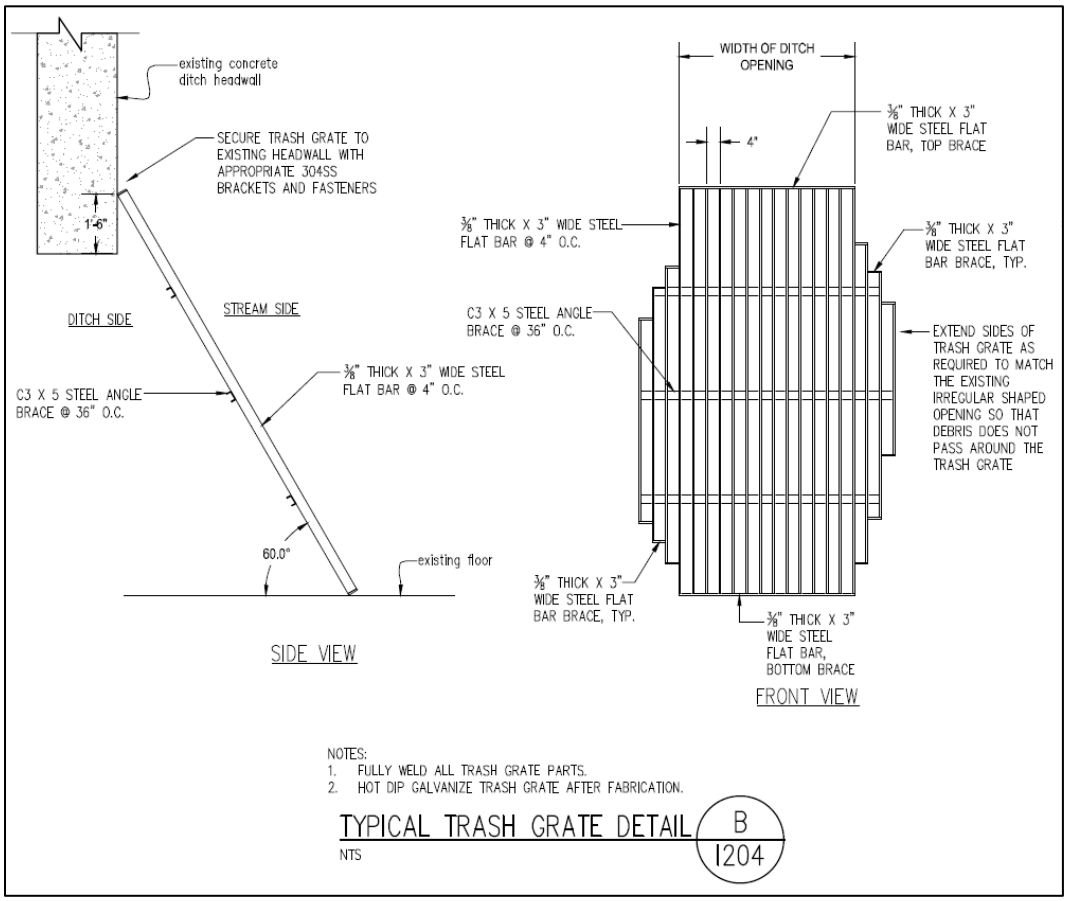
Like Waiakōali, the unregulated Kawaikōī diversion routes all streamflow into the ditch during low and moderate streamflow situations. Only high flows increase the impoundment level

enough to result in flows continuing over the diversion and remaining in the stream. The primary design challenge to the modification at Kawaikōī is the lack of an outlet gate or stop log (pani board) section that can be modified to provide a release point at the diversion. Additionally, the masonry infill design of the diversion is less suited for an effective addition of a stop log section or for the installation of a submerged orifice for release.

Because Kawaikōī is the largest contributor to ditch flows, the modification provides operational balance for meeting the Phase One IIFS and irrigation flow.

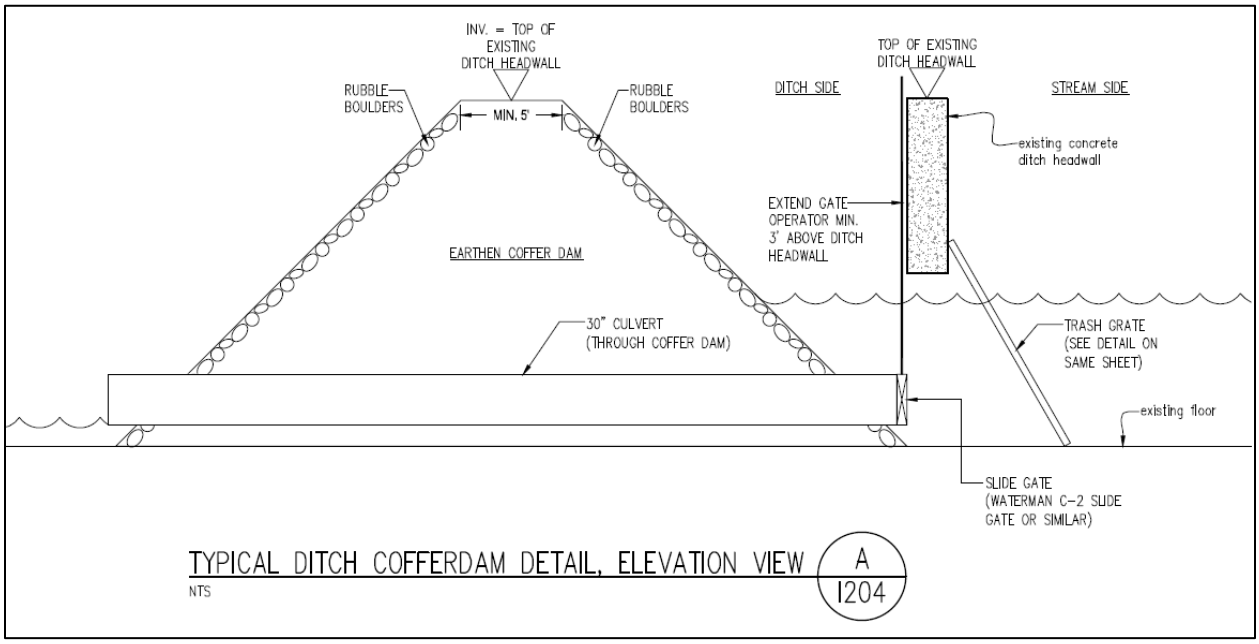
The proposed modification involves the construction of an earthen cofferdam at the head of the ditch just downstream of the existing concrete headwall. This cofferdam will block water from entering the ditch and force it to remain in the stream. In order to allow some controlled flow to enter the ditch, a culvert will be installed through the center of the earthen cofferdam. A slide gate will be installed at the inlet to the pipe to provide manual control of ditch flows.

a. Trash Rack. A new steel trash rack will be installed on the upstream face of the existing ditch intake headwall to prevent stream debris from entering the ditch or blocking the control gate.



b. Earthen Cofferdam with Culvert and Slide Gate. A compacted earthen cofferdam will be constructed in the ditch immediately downstream of the existing concrete headwall. The upstream and downstream faces of the cofferdam will be built of boulders and rubble to add stability and lessen the footprint of the cofferdam. The top of the cofferdam will be equal in height to the existing headwall to prevent flood events from overtopping the cofferdam and entering the ditch.

A 30-inch diameter culvert will be installed through the cofferdam to allow water to flow into the ditch. A slide gate will be installed on the upstream face of the culvert to allow ditch flows to be adjusted. The gate frame will be braced to the concrete headwall to prevent shifting.

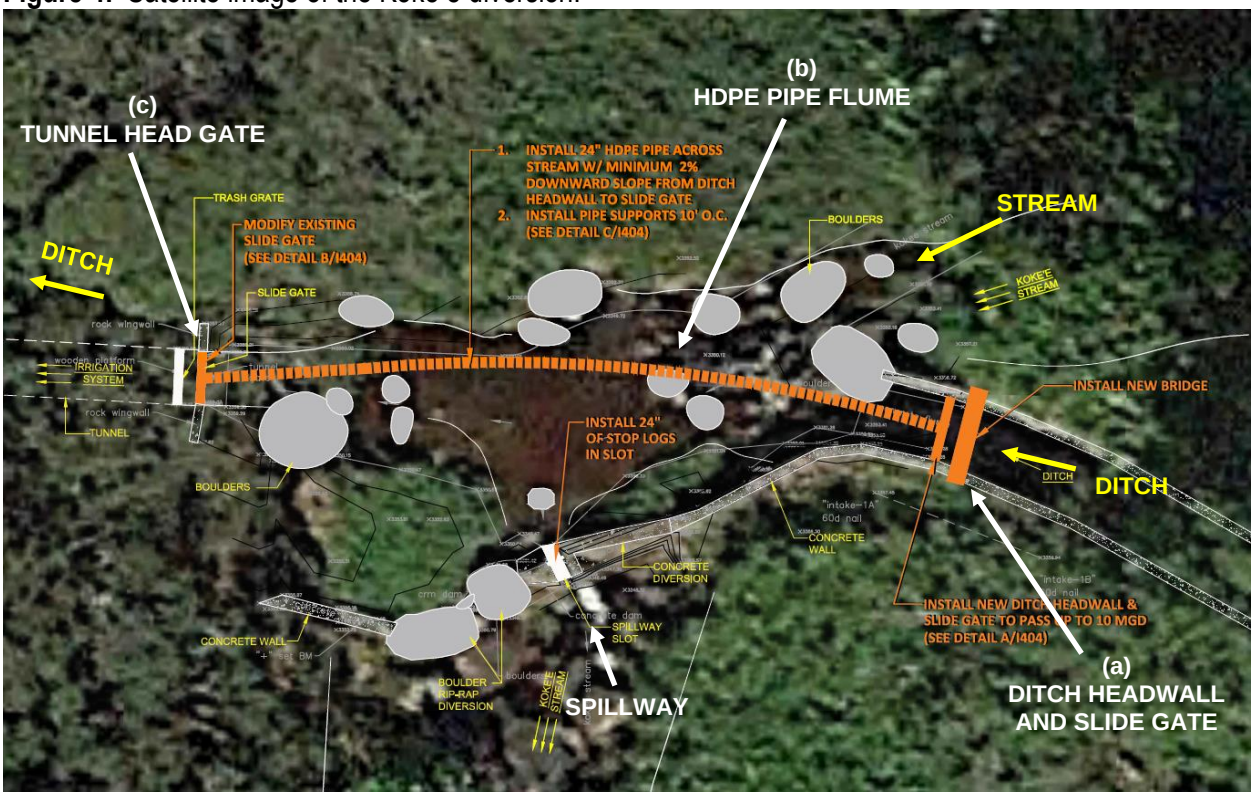


Kōkeʻe Stream

The Kōkeʻe Stream diversion is the fourth main diversion structure. (**Figure 4**). The composite concrete and masonry gravity structure has an overall length of 80 feet, a height of 6 feet with a 24-inch wide stop log bay and two sections of overflow spillway totaling approximately 25 feet. The structure serves as a control point and release point before the accumulated ditch flow leaves the watershed and enters the tunnel towards the Puʻu Lua reservoir. The tunnel entrance is served by a trash rack and vertical slide gate with a manual hoist.

The Kōkeʻe diversion captures streamflow plus recaptures ditch discharge and routes the combined flows into the main ditch tunnel adjacent to the west abutment. Like Kauaikinana, the structure is regulated by both a stop log section in the center of the spillway and the tunnel head gate. From an operational standpoint, this diversion has been used as a flow regulator for the entire ditch by controlling ditch flows through head gate adjustments and by releasing excess flows into the downstream channel through the stop log bay.

Figure 4. Satellite image of the Kōkeʻe diversion.

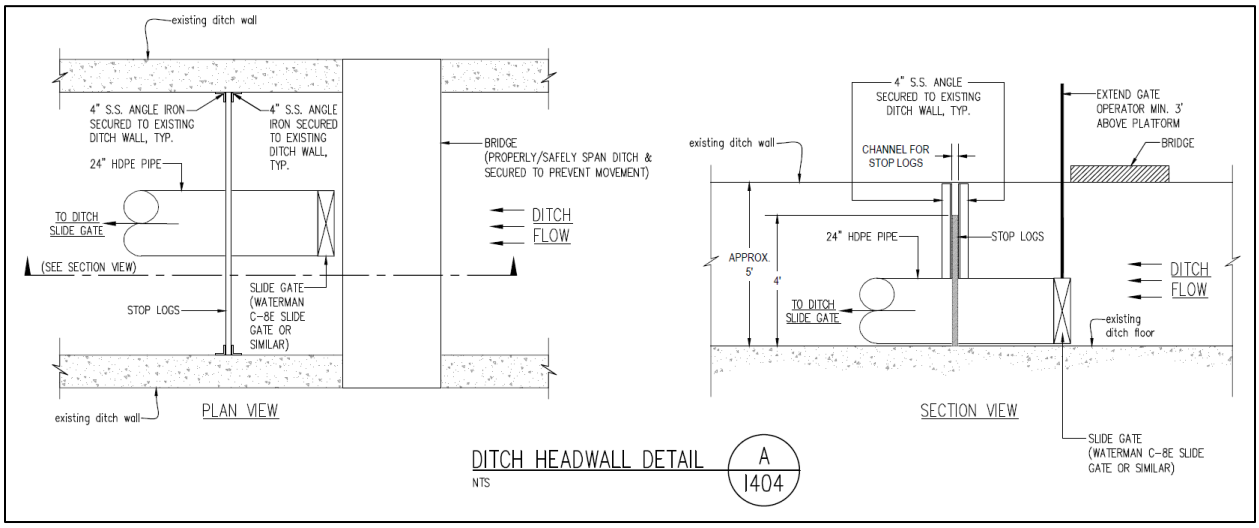


The Phase One IIFS value is the natural flow of the stream. After the proposed work is completed, the estimated diversion flow capacity will be a range of 0 to 10 mgd.

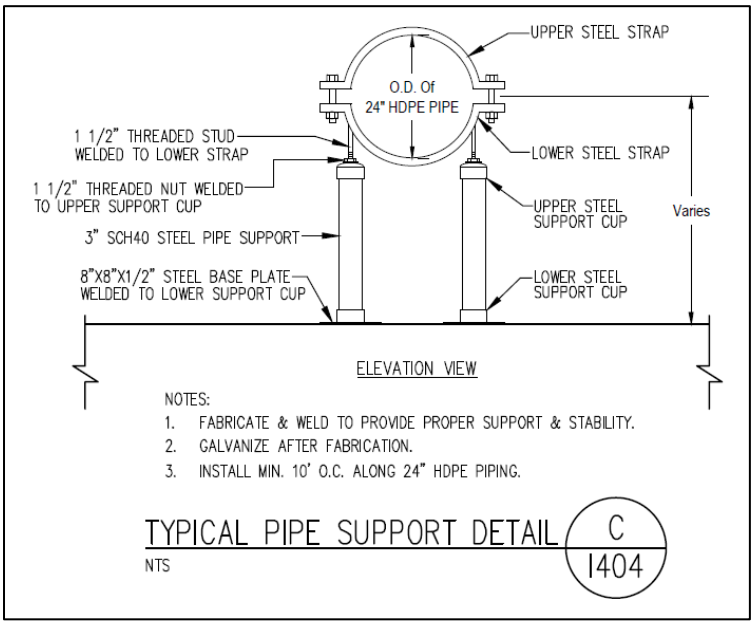
The proposed modification for Kōkeʻe involves the use of the stop log bay in the spillway as a release point. The Phase One IIFS is equal to natural streamflow and will be passed through the existing stoplog bay. The ditch flow will be conveyed in an HDPE pipe flume from the end of

the open ditch channel (coming in from the left bank or east-side of Kōkeʻe Stream), bypassing the diversion dam structure and connecting to the rehabilitated tunnel head gate on the opposite (right or west-side) bank of Kōkeʻe Stream. The HDPE pipe flume will crossover and will not be connected to Kōkeʻe Stream.

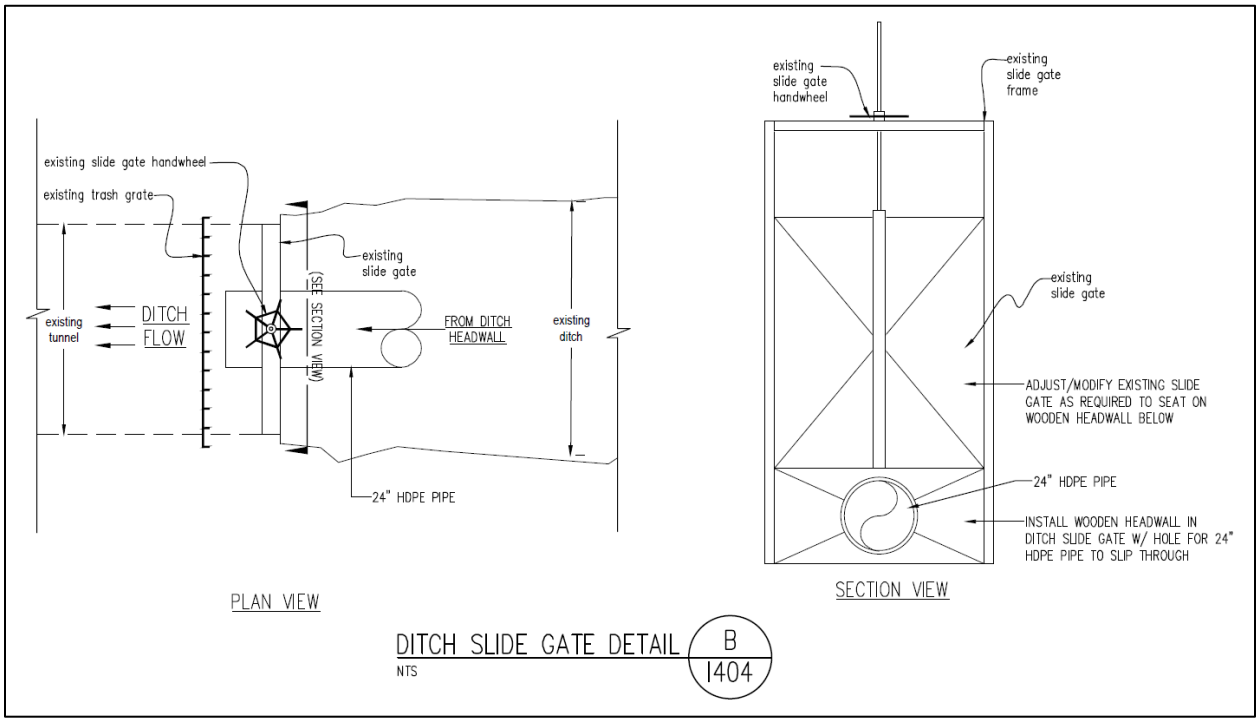
a. Ditch Headwall and Slide Gate. A 36-inch tall timber bulkhead will be installed at the end of the concrete ditch section. This bulkhead will be approximately 24 inches lower than the ditch sidewalls to protect upstream ditch integrity. The bulkhead will be mounted to steel brackets bolted to the ditch sidewalls.



b. HDPE Pipe Flume. An 85-foot long, 24-inch diameter HDPE pipe flume will be installed from the ditch bulkhead, across the stream, upstream of the diversion, and into the bulkhead under the tunnel headgate leaf. The pipe will be partially submerged during all flow conditions and will have supports every 10 feet to secure it in place. The HDPE pipe flume will be capable of conveying up to 10 mgd of combined diverted ditch flow of the three upstream diversions. The inlet to the HDPE pipe will be fitted with a gate to allow dewatering of the downstream tunnel or passing flushing flows for maintenance.



c. Tunnel Head Gate Rehabilitation. The existing wooden gate, gate frame, hoist and operator's platform will be repaired as needed to restore full reliability and control of its operation. A new 36-inch bulkhead will be installed in the gate slots underneath the gate leaf. The new bulkhead will have a fitting that connects the new HDPE flume and seals out water from Kokee stream.



AGENCY REVIEW COMMENTS

County of Kauai, Department of Public Works: 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: In the application, there is mention that stream surveys from 2018 showed no native species in the areas of work (#44 in the SDWP Application form). DAR is requesting access to these stream survey documents to see what species were found in the area and downstream from the proposed work sites. Additionally, DAR requests that if any native species are seen during work activities, that DAR is contacted to divert organisms to a safer location. DAR would like to request notification and photo-documentation of any occurrence where above-average amounts of sediment or pollution have entered the water, in order to assess impact, if any.

> *CWRM Staff Response: Commission staff recommends that KIUC forward relevant stream surveys, as mentioned in the application, to the Division of Aquatic Resources and work with DAR if native biota are found in the stream during construction.*

DLNR, Engineering: No comments received.

DLNR, Forestry and Wildlife (DOFAW): State listed waterbirds such as the Hawaiian Duck (*Anas wyvilliana*), Hawaiian Stilt (*Himantopus mexicanus knudseni*), and Hawaiian Goose or Nēnē (*Branta sandvicensis*) have the potential to occur in the vicinity of the proposed project site. If any of these species are present during construction activities, then all activities within 100 feet (30 meters) should cease, and the bird should not be approached. Work may continue after the bird leaves the area of its own accord. If a nest is discovered, please contact the Kauaʻi DOFAW Office. The State listed Hawaiian Hoary Bat or ʻŌpeʻapeʻa (*Lasiurus cinereus semotus*) has the potential to occur in the vicinity of the project area and may roost in nearby trees. If any site clearing is required this should be timed to avoid disturbance during the bat birthing and pup rearing season (June 1 through September 15). If this cannot be avoided, woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or trimmed without consulting DOFAW. We note that artificial lighting can adversely impact seabirds that may pass through the area at night by causing disorientation. This disorientation can result in collision with manmade artifacts or grounding of birds. For nighttime lighting that might be required, DOFAW recommends that all lights be fully shielded to minimize impacts. Nighttime work that requires outdoor lighting should be avoided during the seabird fledging season from September 15 through December 15. This is the period when young seabirds take their maiden voyage to the open sea. To prevent the spread of Rapid ʻŌhiʻa Death (ROD), if ʻōhiʻa trees are present and will be removed, trimmed, or potentially injured DOFAW requests that the guidance at the following website be reviewed and followed: https://cms.ctahr.hawaii.edu/rod. DOFAW recommends minimizing the movement of plant or soil material between worksites, such as in fill. Soil and plant material may contain invasive fungal pathogens (e.g. Rapid ʻŌhiʻa Death), vertebrate and invertebrate pests, or invasive plant parts that could harm our native species and ecosystems. We recommend consulting the Kauaʻi Invasive Species Committee at (808) 821-1490 in

planning, design, and construction of the project to learn of any high-risk invasive species in the area and ways to mitigate spread. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species.

CWRM Staff Response: Contractors will be required to follow invasive species protocol including guidance for Rapid ʻŌhiʻa Death.

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

DLNR, Land Division: No comments received.

DLNR, State Parks: No comments received.

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 comments received.

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 "The proposed work is on the existing Kokee Ditch system, which is actively diverting water for irrigation, recreational fishing and other state facility uses. The proposed work is for the purpose of stream restoration consistent with the IIFS for each stream. During our community and stakeholder outreach for the proposed work, we did not identify any native Hawaiians who access this area for traditional and customary practices. Several people mentioned that due to difficulty of accessing the area, it isn't an ideal location for their purposes. Access is by a rough road, accessible by four wheel drive vehicles only, that terminates in a foot path. The footpath is approximately 1/4 mile in distance, steep and lightly maintained. However, it is possible there are native

Hawaiians who do access the area for traditional plant gathering, fishing and ceremonial practices. Based on stream surveys conducted in 2018, no native aquatic species were found in Waiakoali, Kawaikōī and Kōkeʻe Streams downstream of each diversion. Flora and fauna surveys in the area indicated the predominant vegetation coverage is alien forest with some scattered remnant native koa and ohia."

CWRM Staff Response: The Office of Hawaiian Affairs' Kipuka database, shows no historic sites, land awards, or crown lands involved. No comments were received by DLNR's Aha Moku Advisory Committee. Applicant needs State Historic Preservation Division review. 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, "The sole purpose of the proposed work will result in stream restoration per the IIFS adopted by CWRM as part of the Mediation Agreement for the Waimea Watershed, which was approved by CWRM in April 2017. If any traditional and customary native Hawaiian practices occur in the area, the stream restoration will likely provide for improved aquatic and riparian habitats. Because all modifications/installations will be within the footprint of the existing ditch system, this proposed work is not expected to negatively impact any traditional and customary Native Hawaiian rights on land around the ditch system or in the streams."

CWRM Staff Response: No further action as identified.

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, "As previously mentioned, the purpose of the proposed work is restoring stream flows consistent with the IIFS adopted by CWRM as part of the Mediation Agreement for the Waimea Watershed, which was approved by CWRM in April 2017. DHHL was a party to the mediation and has approved the proposed work."

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 Oʻahu;

(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 diversions are located on State land and 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 subject 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; and, (5) basic data collection, research, experimental management, and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource.

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: The action is intended to increase streamflow downstream of the diversions per the Mediation Agreement. 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: The IIFS for the Waimea Watershed Area was approved on April 18, 2017 by the Commission. Upon approval of the proposed work plan, it is anticipated that identified instream uses will be better supported.

(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: The proposed work plan should not interfere with instream or non-instream uses. There are no nearby previously permitted diversion works.

RECOMMENDATION

That the Commission:

1. Approve the Stream Diversion Works Permit (SDWP.5321.2) Application subject to the standard conditions in **Exhibit 1** and special conditions below.

   a. KIUC shall forward relevant stream surveys, as mentioned in the application, to the Division of Aquatic Resources and work with DAR if native biota are found in the stream during construction.

   b. Contractors will be required to follow invasive species protocol including guidance for Rapid ‘Ōhi‘a Death.

2. Find that SDWP.5321.2 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.
4. Letter from Office of Conservation and Coastal Lands dated February 12, 2019.

APPROVED FOR SUBMITTAL:

SUZANNE D. CASE
Chairperson

Staff Submittal September 15, 2020
Waiakōali, Kawaikōī, Kōkeʻe Tributaries of the Waimea River

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.

EXHIBIT 1

Staff Submittal September 15, 2020
Waiakōali, Kawaikōī, Kōkeʻe Tributaries of the Waimea River

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.5321.2) by Kauaʻi Island Utility Cooperative for the Kōkeʻe Ditch Diversion Modifications
Project / Reference No.:	SDWP.5321.2
Project Location:	TMK: (4) 1-4-001:003 and 013. Waiakōali, Kawaikōī, Kōkeʻe Tributaries of the Waimea River, Kauai
Project Description:	1) Waiakōali Stream: Construction of a ditch intake headwall and spillway release gate; 2) Kawaikōī Stream: Construction of a trash rack and earthen cofferdam with culvert and slide gate; and 3) Kōkeʻe Stream: Construction of a 36-inch ditch headwall and slide gate, installation of one 85-foot long, 24-inch HDPE pipe flume, and rehabilitation of the tunnel head gate.
Chap. 343 Trigger(s):	(1) use of state land; and (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; and, (5) basic data collection, research, experimental management, and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource.
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, the construction is low impact with a minimal footprint and improves instream flow values.
Consulted Parties:	DLNR Division of Aquatic Resources DLNR Division of Forestry and Wildlife DLNR Office of Conservation and Coastal Lands
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

EXHIBIT 2

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-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 non-instream 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-93 Permits for construction or alteration. No person shall construct or alter a stream diversion works, other than in the course of normal maintenance, without first obtaining a permit from the commission.

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 §13-168-32 Stream diversion permits. (a) No person shall construct or alter a stream diversion works, other than in the course of normal maintenance, without first obtaining a stream diversion permit from the commission.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

Correspondence: KA 19-117

FEB 12 2019

Galen Nakamura
Shiramiu Loo & Nakamura
4357 Rice St., Suite 102
Lihue, HI 96766

SUBJECT: Kōke'e Ditch Diversion Modification and Monitoring Proposal Located at Napali-Kona Forest Reserve, Kaua'i, Vicinity of TMKs: (4) 1-4-001:003 & 013

Dear Mr. Nakamura:

The Office of Conservation and Coastal Lands (OCCL) has reviewed your information regarding the subject matter. According to your information the Waimea Watershed Area Mediation Agreement approved by the Commission on Water Resource Management calls for modifications to several existing diversion structures on the Ditch system and the installation of flow measurement equipment on the ditch and on diverted streams.

For this particular request, Kaua'i Island Utility Cooperative (KIUC) is proposing to: 1) Modify four diversions on the Ditch system to increase the natural flows of Waiakoali, Kawaikōī, Kauaikinanā, and Kōke'e streams to satisfy interim instream flow standards adopted by CWRM and 2) install flow measurement equipment in the noted streams and/or associated ditch.

In addition, KIUC is requesting a determination as to what type of authorization would be required for the proposed project and also if the proposed project could be exempt from HRS, Chapter 343.

The OCCL notes the subject area lies within the Resource subzone of the Conservation District. The Koke'e Ditch system is a nonconforming land use as it was created [1926] prior to the advent of the Conservation District.

What is being proposed are identified land uses in the Conservation District pursuant to the Hawai'i Administrative Rules, Chapter 13-5, §13-5-22 P-1 DATA COLLECTION (B-1) Basic data collection, research, education, and resource evaluation that results in a minor disturbance to natural resources or land; P-8 STRUCTURES AND LAND USES, EXISTING (B-1) Demolition, removal, or minor alteration of existing structures, facilities, lad, and equipment. Any historic property shall be evaluated by the department for historical significance; and P-9 STRUCTURES, ACCESSORY (B-1) Construction or placement of structures accessory to existing facilities or uses.

The proposed land uses would require the filing of a Site Plan Approval (SPA) that can be authorized administratively by the OCCL. The SPA application should focus on describing the proposed land uses in detailed layman terms, the construction methodology, best management practices and any proposed mitigation. The SPA application can be found on our website at **dlnr.hawaii.gov/occl** under applications.

EXHIBIT 4

Galen Nakamura
Shiramiu Loo & Nakamura

Correspondence: KA 19-117

At this time, the OCCL believes that the proposed modifications and monitoring improvements may be considered an exempt action pursuant to Hawaii Revised Statutes (HRS), Chapter 343 as amended, HAR, Chapter 11-200, and pursuant to the Exemption List for the Department, specifically exemption class 1-Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing; DLNR exemption 1-22) Repair and maintenance of existing water diversions and intake structures, including valves, gates, intake boxes, and lines, in order to collect or improve the collection at the location of the existing water source diversion works; 1-42) Actions that are intended to maintain or support the sustainability of those natural resources under the jurisdiction of the Department, including law enforcement, regulation compliance, resources and environmental monitoring, debris or property removal, and other administrative and management measures; Exemption Class 3 Construction and location of single new, small facilities or structures and the alteration and modification of same and installation of new, small, equipment and facilities and the alteration and modification of same; DLNR exemptions 3-13) Installation of new, small groundwater, surface water, or climatological monitoring and data collection equipment, structures that house or protect this equipment, and installation of electrical, telemetry, or communications systems to service this equipment; Exemption Class 4 Minor alteration in the conditions of land, water, or vegetation; Exemption Class 5 Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource; DLNR exemption 5-5) Installation of climatological stations and equipment and streamflow gaging stations and equipment, and other similar equipment necessary to measure environmental factors and collect data; and Exemption Class 6 Construction or placement of minor structures accessory to existing facilities. When processing the SPA application, the OCCL shall seek concurrence with another State agency to hopefully exempt the proposed improvements from HRS, Chapter343.

In addition, as the Koke'e Ditch Irrigation System is considered a historic feature, the State agency that has oversight of the entire system should submit the HRS 6E Submittal Form on behalf of KIUC in regards to historic properties. This form can be found on the State Historic Preservation Division website under FORMS.

The OCCL notes the plans for Documentations and Modifications of Four Koke'e Diversions has the wrong tax map key. OCCL staff has deduced the subject location's TMKs. Please include the proper location, preferably a TMK. Should you have any questions regarding this correspondence, contact Tiger Mills of our Office at (808) 587-0382 or via e-mail at kimberly.mills@hawaii.gov .

Sincerely,

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

C: CWRM/HP/KDLO
DOA
County of Kaua'i
-Planning