



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 16, 2021
Honolulu, Hawai'i

Approval of Stream Channel Alteration Permit Application
(SCAP.5513.3) by the Department of Transportation, Highways Division, for the
Installation of H-3 Hālawā Viaduct Pier 26 Riprap Revetment Project
North Hālawā Stream, Hālawā, O'ahu, Tax Map Keys: (1) 9-9-010:010 and 9-9-073:023

APPLICANT

Jade Butay, Director
Department of Transportation
Highways Division
601 Kamokila Blvd., Room 688
Kapolei, HI 96707

LANDOWNER

Queen Emma Land Company
1301 Punchbowl Street
Honolulu, HI 96813

SUMMARY OF REQUEST

Approve the Stream Channel Alteration Permit (SCAP.5513.3) Application that proposes to construct a 30-foot wide x 4-foot high x 150-foot long riprap revetment on the left and right banks of the North Hālawā Stream to protect the existing H-3 Freeway Pier 26 from erosion. This is a resubmittal. This project was previously approved and permitted under OA-411 (SCAP.1705.3) on August 15, 2007. There were three timely-requested permit extensions granted, with a fourth permit extension requested on September 5, 2019, over two years past the expiration of the third permit extension. Due to the expiration of the previous permit, a new SCAP permit application was filed.

LOCATION: North Hālawā Stream, Hālawā, O'ahu. See **Figure 1**.

BACKGROUND

On August 15, 2007, the Commission originally approved SCAP-OA-411 (now referred to under SCAP.1705.3) that expired on August 15, 2009.

On December 1, 2009, the State Department of Transportation (DOT) requested a two-year extension via memo, citing project delays “due to negotiations during the acquisition of right-of-way from the adjacent property owner which required design revisions to accommodate their concerns.” The Chair, under delegation of the Commission, approved a two-year SCAP extension on December 8, 2009, that expired on August 15, 2011.

On July 15, 2013, DOT again requested an extension via memo, citing that “advertisement of the project for bids did not occur during the permit extension period due to unresolved right-of-way issues.” Despite the permit having expired in August 2011, the Chair approved a four-year SCAP extension on August 8, 2013, ending August 15, 2015.

On January 14, 2016, DOT requested another extension via email, citing that construction had not yet started and advertisement for the project would begin in Spring of 2016. The Chair approved a two-year SCAP extension on February 2, 2016, that expired on August 15, 2017.

On September 5, 2019, via email, DOT requested another extension despite the permit having expired in August 2017, citing that “the project was put on hold and has started up again.”

On February 20, 2020, the DOT requested reconsideration regarding the need for a permit stating that it was a maintenance project and one of several miscellaneous tasks that need to be completed for Interstate Route H-3. Since the project was under construction by May 27, 1988, it was exempted from a SCAP per HAR 13-169-50(b) which states, “Project under construction or projects reviewed and approved by the appropriate federal, state, or county agency prior to the effective date of this chapter will not be affected by this chapter.”

On March 13, 2020, the Commission responded by stating this project is considered accessory to the larger H-3 project as evidenced by DOT’s original filing of a SCAP application on June 15, 2007. In light of the project history and three prior extensions, the Deputy Director requested that DOT complete another SCAP application for review and action.

On December 28, 2020, the Applicant filed a complete stream channel alteration permit application to construct a 30-foot wide x 4-foot high x 150-foot long riprap revetment on the left and right banks of the North Hālawā Stream to protect the existing H-3 Freeway Pier 26 from erosion. The stream channel permit application (SCAP.5513.3) can be viewed on the Commission website at https://files.hawaii.gov/dlnr/cwrm/swreview/SCAP_5513_3.pdf.

STREAM DESCRIPTION

The project area is about four (4) miles upstream from Pearl Harbor near the Hawaiian Cement quarry. The North Hālawā Stream is a tributary of Hālawā Stream. The North Hālawā stream flows from Hālawā valley and joins the South Hālawā Stream within the H-3/H-201 Highways Exchange. The Hālawā Stream is perennial and drains into a tidal estuary in Pearl Harbor Lagoon. At the project site, the stream flows over highly weathered alluvium. There is usually water in the stream and it flows in response to rainfall events. At times, there are only isolated pools in the stream, but after a large storm, there can be rapid flow down the stream channel.

Riparian vegetation at the stream mouth is dominated by mangroves and non-native aquatic species. Water quality at the mouth of the stream is low due to high turbidity. No site-specific flora and fauna surveys are available for the project location. According to the Hawaii Stream Assessment (1990) it is an unranked stream. Its total biological rating (native species, introduced genera, and all species) is a 3 on a scale of 10. A higher score reflects more native and less introduced species.

Figure 1: Location, North Hālawā Stream, Hālawā, O'ahu.



PROJECT DESCRIPTION

Construct a riprap revetment on the left and right banks of the North Hālawā Stream to protect the existing H-3 Freeway Pier 26 from erosion. See **Figures 2** thru **5**. The slope on the right and left banks will be smoothed and a trench will be dug for the installation of the toe of the embankment. A permeable separator will be laid on the slope and covered with dumped riprap. The riprap will average 4-feet thick and will not be grouted. The distance along the stream is about 150-feet and the riprap will extend on average about 30-feet up the slope. A silt fence and sandbags will be used for pollution control. Trees, vegetation, and other debris will be cleared and grubbed from the project area. Riprap installation will take about six months.

In 2001, the intent was to fully line approximately 1,000 feet of the Hālawā Stream channel to protect the H-3 viaduct piers. After numerous discussions with DOT, Federal Highways Administration, the Commission and other agencies, the limits of riprap protection were reduced to protect the stream. The current design is now limited to the area where the stream crosses under H-3 at Pier 26. This area, which is approximately 150-feet long will be protected from lateral stream migration with riprap placed only on the side slopes. There will be no work within the stream channel, thereby protecting stream fauna habitat.

Figure 2: From left bank looking toward right bank.



Figure 3: Looking downstream. Pier 26 on the right bank.



Figure 4: Pier 26, left bank.



Figure 5: Pier 26, right bank.



AGENCY REVIEW COMMENTS

City and County of Honolulu, Department of Planning and Permitting: Did not comment.

Department of Hawaiian Home Lands (DHHL): No objections but offers the following comments related to the level of analysis related to the potential impact the proposed action may have on Native Hawaiian traditional and customary practices. DHHL notes that both the Chapter 343 governor's acceptance document and the Chapter 6E-8 Historic Preservation Review document, which this project relies on, are from 1987 and 2009, respectively. Since the initial research and drafting of these documents, knowledge of the area's know traditional and cultural resources may have changed and developed. DHHL understands that it is ultimately the Commission's legal duty to protect Native Hawaiian cultural practices and resources throughout the permitting process; nevertheless, DHHL notes that the applicant can better demonstrate that its proposed activities will not interfere or harm such practices and resources through more proactive outreach with the Native Hawaiian community. Moreover, the Department of Transportation (DOT) stated, with categorical assurance, that "No traditional and customary Native Hawaiian rights will be impacted or impaired by the project." However, we do not see any evidence that DOT spoke to any known practitioners in the area. Minimally, the applicant should demonstrate that adequate research and community outreach was recently conducted.

CWRM Staff Response: This property is zoned Industrial and was developed decades ago. The current project scope is the same as what was approved in 2007. There are no anticipated impacts to traditional and customary practices or upstream/downstream movement of native macrofauna due to the project's limited impacts to the stream bed. Additionally, the State Historic Preservation Division determined that no historic properties would be affected by the project because: 1) intensive cultivation has altered the land; 2) Residential development/urbanization has altered the land; and 3) Previous grubbing/grading has altered the land.

Department of Land and Natural Resources (DLNR), Aha Moku: Did not comment.

DLNR, Aquatic Resources: The Hālawā Stream provides habitat for 2 species of native macrofaunal. These include native fish species such as *Lentipes concolor* and *Mugil cephalus*. The stream also provides habitat for 2 native dragonflies, *Anax junus* and *Anax strenuous* and the 5 native damselflies *Megalagrion hawaiiensis*, *Megalagrion koelense*, *Megalagrion leptodemas*, *Megalagrion nigrohamatum*, and *Megalagrion oahuense* (ref. DAR Aquatic Resources Database, Oct. 6, 2006). The construction of the riprap revetment is not expected to have any significant impact on the aquatic resource values in this area. However, the following mitigative measures should be implemented during the construction to minimize the potential for erosion, siltation and pollution of the aquatic environment:

- 1) lands denuded of vegetation should be planted or covered as quickly as possible to prevent erosion;
- 2) scheduling site work (particularly the excavation) during periods of minimal rainfall; and,
- 3) prevent construction materials, petroleum products, debris and landscaping products at the construction site and staging areas from falling, blowing or leaching into the aquatic environment.

CWRM Staff Response: Concur and added as special condition.

DLNR, Engineering: The owner of the project property and/or their representative is responsible to research the Flood Hazard Zone designation for the project which can be viewed on our website at <http://gis.hawaiiinfip.org/fhat>.

CWRM Staff Response: The project area is considered Zone AEF. Floodway areas in Zone AE. The floodway is the channel of stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without increasing the Base Flood Elevation (BFE).

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

DLNR, State Historic Preservation Division (SHPD): In 2009, SHPD commented that no historic properties will be affected by this project because intensive cultivation, residential development/urbanization and previous grubbing/grading has altered the land. In the event that historic resources including human skeletal remains are identified during construction all work needs to cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance and SHPD contacted.

CWRM Staff Response: Per Stream Channel Alteration Permit Standard Condition No. 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."

DLNR, Land Division: Did not comment.

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

Office of Hawaiian Affairs: Did not comment.

US Army Corps of Engineers: Activity complies with the terms and conditions of Nationwide Permit #13, Bank Stabilization, issued on March 19, 2017 and valid until March 19, 2022.

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

Public Comments: No comments received.

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 project is next to Pier 26 in the State right of way beneath the Halawa Valley viaduct for Interstate Route H-3. The site is adjacent to the Hawaiian Cement's base yard. The soil and plants were disturbed by previous construction. The

riprap area, which is approximately 150 feet long, will be used to protect Pier 26 from lateral stream migration. There are no cultural, historical, and natural resources in which traditional and customary native Hawaiian rights are exercised in the project area. According to the SHPD, intensive cultivation, residential development/urbanization and previous grubbing/grading has altered the land.”

CWRM Staff Response: The area is zoned Industrial and was developed decades ago. 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. There are no anticipated impacts to traditional and customary practices or upstream/downstream movement of native macrofauna due to the project’s limited impacts to the stream bed. Additionally, the State Historic Preservation Division determined that no historic properties would be affected by the project because: 1) intensive cultivation has altered the land; 2) Residential development/urbanization has altered the land; and 3) Previous grubbing/grading has altered the land.

- 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, “No cultural, historical and natural resources will be impacted by the dumped riprap placed on the side slopes of the North Halawa Stream. No traditional and customary Native Hawaiian rights will be impacted or impaired by the project. SHPD concurs that no historic properties will be affected.”

CWRM Staff Response: There are no anticipated impacts to traditional and customary practices or upstream/downstream movement of native macrofauna due to the project’s limited impacts to the stream bed.

- 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. No cultural, historical and natural resources will be impacted by the dumped riprap placed on the side slopes of North Halawa Stream. No traditional and customary Native Hawaiian rights will be impacted or impaired by the project.”

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 it uses State funds. The Final Environmental Impact Statement (Final EIS) for Interstate Route H-3 was accepted in August 1972. In 1987, the Governor accepted the third supplemental to the Final EIS as satisfactory fulfillment of the requirement of HRS Chapter 343.

CONSISTENCY WITH THE HAWAII‘I WATER PLAN

The Water Resource Protection Plan (WRPP), updated in 2019, provides an outline for the conservation, augmentation, and protection of statewide ground and surface water resources, watersheds, and natural stream environments. The legal framework of the Code for the issuance of Stream Channel Alteration Permits, as outlined in this submittal, is covered in more detail and context in the WRPP, Appendix I.

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.

- (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.

CWRM Staff Response: Upon approval of the construction plans as proposed, the quantity and quality of stream water is unchanged. 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 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.

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 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 project is not anticipated to impact water quantity and quality.

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

CWRM Staff Response: The proposed work plan should not interfere with instream or non-instream uses. There is one registered diversion located about 0.3 miles downstream of the project area. The downstream diversion provides water to Hawaiian Cement, which does not report its water use, but the registered water use was negligible (50 gallon per minute pump for dust control on quarry roads, 3,000 gallons annually). The proposed project will not divert water from the stream and thus is not anticipated to impact the availability of water for the registered diversion.

RECOMMENDATION

That the Commission:

1. Approve the Stream Channel Alteration Permit (SCAP.5513.3) Application subject to the standard conditions in **Exhibit 1** and the special conditions below.
 - a. Implement the following mitigative measures recommended by the Department’s Division of Aquatic Resources during the construction activities to minimize the potential for erosion, siltation and pollution of the aquatic environment:
 - 1) Lands denuded of vegetation should be planted or covered as quickly as possible to prevent erosion;
 - 2) Scheduling site work (particularly the excavation) during periods of minimal rainfall; and,
 - 3) Prevent construction materials, petroleum products, debris and landscaping products at the construction site and staging areas from falling, blowing or leaching into the aquatic environment.

Ola i ka wai,

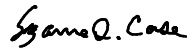


M. KALEO MANUEL
Deputy Director

Exhibits:

1. Standard Stream Channel Alteration Permit Conditions.
2. Legal Authorities.

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink that reads "Suzanne D. Case". The signature is written in a cursive style.

SUZANNE D. CASE
Chairperson

STREAM CHANNEL ALTERATION PERMIT STANDARD CONDITIONS
(Revised December 15, 2020)

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-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 drainage way 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 §13-169-49 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.