



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.5553.3) by the City and County of Honolulu, Department of Environmental Services for the Maunawili Estates Wastewater Main Repair and Improvements Project
Maunawili Stream, Kailua, O'ahu, Tax Map Keys: (1) 4-2-008:001; 4-2-067:001 and 002

APPLICANT

Wesley T. Yokoyama, P.E., Director
City and County of Honolulu
Department of Environmental Services
1000 Uluohia Street, Suite 308
Kapolei, Hawaii 96707

LANDOWNER

HRT, Ltd.
(1) 4-2-008:001
Zacarias G. Baricuatro, et al.
(1) 4-2-067:001
Yamada Trust
(1) 4-2-067:002

SUMMARY OF REQUEST

Approve the Stream Channel Alteration Permit (SCAP.5553.3) Application that proposes a temporary cofferdam, construction dewatering and water quality monitoring, subgrade preparation, restoration of the heavily eroded stream bed between the force main concrete jacket and the bridge culvert, and repair of the damaged concrete jacket. The restoration area is about 500 square feet (15-foot long by 33-foot wide), next to the bridge, including the concrete jacket within the stream and a short stream channel between the concrete jacket and the bridge culvert.

LOCATION: Maunawili Stream, Kailua, O'ahu. See **Figure 1**.

BACKGROUND

On January 4, 2021, the Applicant filed a complete stream channel permit application (SCAP.5553.3) that can be viewed on the Commission website at https://files.hawaii.gov/dlnr/cwrm/swreview/SCAP_5553_3.pdf

Figure 1: Location, Kawainui Surface Water Hydrologic Unit, Maunawili Stream, Kailua, O'ahu.



STREAM DESCRIPTION

Maunawili is a tributary of the Kawainui Stream and is perennial. The area of the watershed is about 11 square miles. According to the Hawaii Stream Assessment (1990), its total biological rating (native species, introduced genera, and all species) is a 4 on a scale of 10. A higher score reflects more native and less introduced species. Native gobies were not observed during a survey done as part of the environmental assessment process, however, gobies were reported in prior studies from Maunawili Stream and Kawainui Watershed.

Maunawili Stream appears on the list of impaired water bodies in the 2018 Water Quality Monitoring and Assessment Report. The report defines impaired waters as waters that do not

meet the State's water quality standards. Maunawili Stream is listed as impaired for trash, turbidity, nitrate+nitrite, total nitrogen, and total phosphorus based solely on visual assessments.

PROJECT DESCRIPTION

The project proposes a temporary cofferdam, construction dewatering and water quality monitoring, subgrade preparation, restoration of the heavily eroded stream bed between the force main concrete jacket and the bridge culvert, and repair of the damaged concrete jacket. The restoration area is about 500 square feet (15 feet long by 33 feet wide), next to the bridge, including the concrete jacket within the stream and a short stream channel between the concrete jacket and the bridge culvert. See Figures 2, 3, 4, and 5.

Figure 2: Site Map.

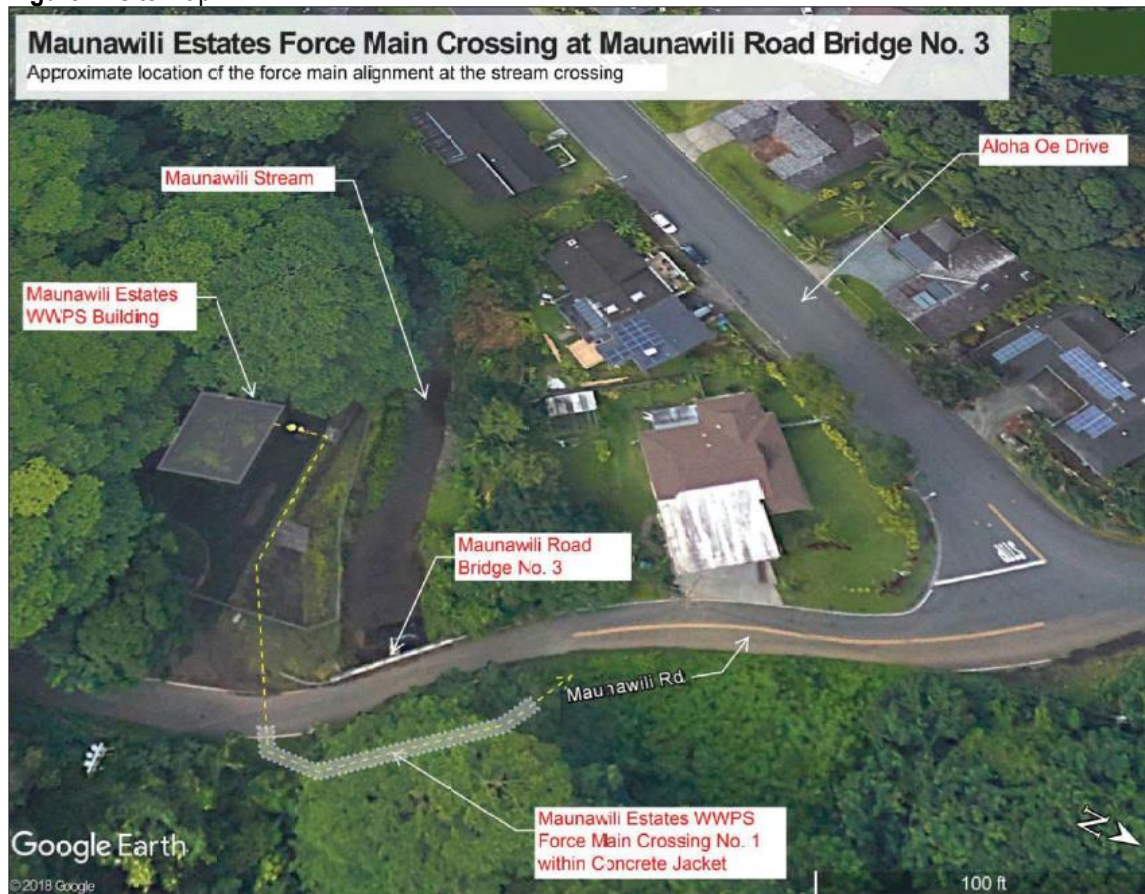


Figure 3: Close-up of force main crossing No. 1.



Figure 4: Existing Longitudinal Crossing Section

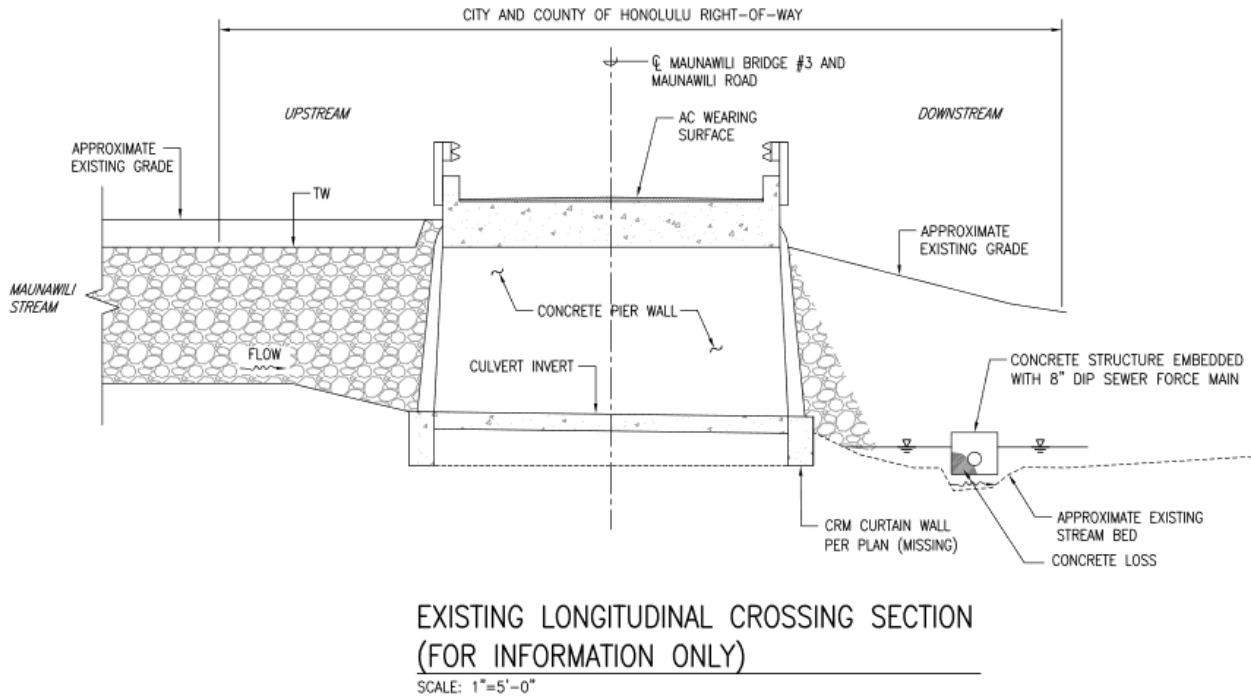
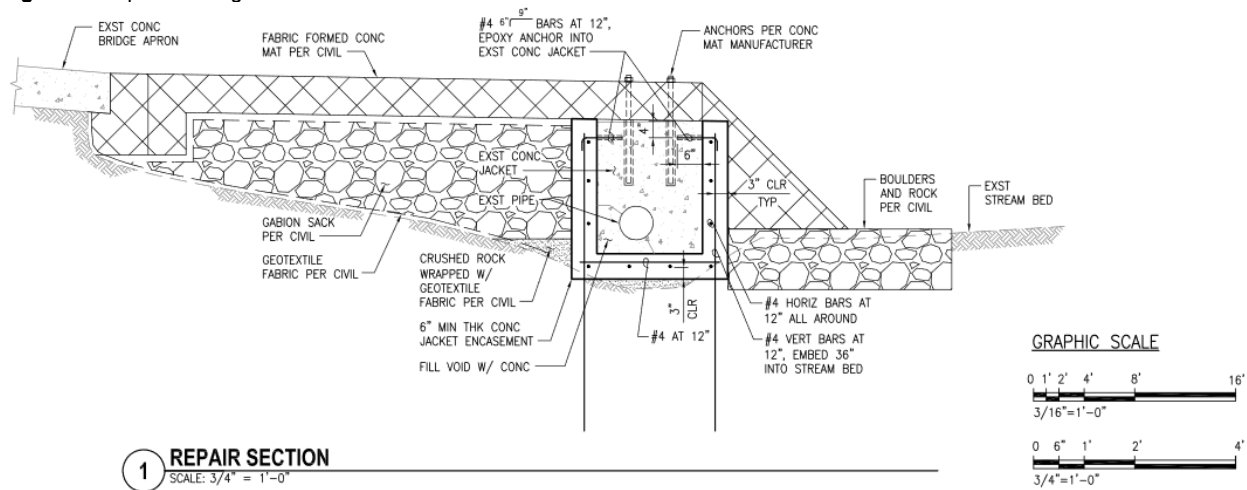


Figure 5: Repaired Longitudinal Section View



AGENCY REVIEW COMMENTS

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

Department of Hawaiian Home Land (DHHL): No objections.

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

DLNR, Aquatic Resources: The proposed project is not expected to have adverse impacts on the aquatic environment, but may have short-term impacts during the construction dewatering and restoration of the heavily eroded stream bed. Maunawili Stream is a tributary of the Kawainui Stream which provides habitat for native aquatic biota such as the striped mullet (*Mugil cephalus*), milkfish (*Chanos chanos*) and the Hawaiian flagtail (*Kuhlia sandvicensis*). It is also habitat for the native gobies, 'o'opu 'akupa (*Eleotris sandvicensis*), 'o'opu nōpili (*Sicyopterus stimpsoni*) and the native shrimp (*Atyoida bisulcata*) inhabits the lower to upper reaches of this stream. (ref. Atlas of Hawaiian Watersheds & Their Aquatic Resources, 2008). All the native gobies share an amphidromous life cycle which means they have a dependence on connectivity to the ocean. The adult animals lay their eggs in the stream and as the larvae hatch they are swept down stream into the ocean, where they grow into post-larvae/juveniles before migrating back upstream. Therefore, it is important that during the restoration activities continuous stream flow is maintained and the avoidance of creating barriers that could block this downstream and upstream movement of these animals. Best Management Practices (BMPs) outlined in the SCAP should help to minimize some of the impacts on the water quality parameters in the aquatic environment and as noted, stream flow will be maintained at all times. DAR requests that the following BMPs be implemented:

- 1) Minimize stream bank disturbance and areas denuded of vegetation should be planted or covered as quickly as possible to prevent erosion;
- 2) Scheduling work activities during periods of minimal rainfall and instream work during low flow conditions;

- 3) Prevent constructions materials, petroleum products, debris and landscaping products from falling, flowing or leaching into the aquatic environment; and,
- 4) Minimize the disturbance and impacts to stream channel bottom and its substrate (cobble, boulders, etc.,) as much as possible as these substrate are essential components of the habitat for the native stream biota.

CWRM Staff Response: Concur and added as special condition.

DLNR, Engineering: No comments.

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

DLNR, State Historic Preservation Division (SHPD): Per the applicant, “There is not a known historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Place within or near the project area.

“No historic properties were identified per the reconnaissance level survey (RLS) requested by SHPD. A site visit with SHPD staff and Fung Associates, Inc. was conducted in July 18, 2017. An Architectural RLS report was submitted to SHPD in 2018. The bridge next to the force main crossing is not eligible for listing on National and Hawai‘i Register of Historic Places based on the 2018 Architectural RLS report, and the 2014 Statewide Bridge Inventory, both prepared by Fung Associates, Inc. SHPD concurred the assessment of “no historic properties affected within the project’s area of potential effect (APE).”

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: No comments received.

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

Office of Hawaiian Affairs: The Office of Hawaiian Affairs (OHA) is currently concerned about possible impacts to cultural resources as it appears the archaeological reconnaissance level survey (RLS) performed for Hawai‘i Revised Statutes (HRS) 6E compliance is being used to supplant an effort to identify traditional and customary Native Hawaiian practices required by law. While these types of practices can often occur on historic properties and historic properties can in fact be considered cultural resources, this is not always the case. To minimize confusion, other projects have addressed historic properties and cultural resources separately. The difference is crucial as different methodologies are used to identify historic properties and cultural practices associated with cultural resources. The process for documenting cultural practices involves a greater degree of consultation and outreach, whereas an RLS may not

always require consultation and often solely relies on material findings. Currently, it's unclear what type of consultation and outreach occurred to identify cultural practices.

The reliance on an RLS could prevent the permit application reviewing agency, the Commission on Water Resource Management (CWRM), from assessing the identity and scope of valued cultural and natural resources in the area. Articles IX and XII of the State of Hawai'i Constitution are specifically cited on page 3 of CWRM's permit application section on "cultural impacts" as a requirement for government agencies to "promote and preserve cultural beliefs, practices, and resources of Native Hawaiians and other ethnic groups." Article XII Section 7 of the State of Hawai'i Constitution states:

"the State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778..."

In *Ka Pa'akai O Ka 'Aina v. Land Use Commission*, 94 Haw. 31 (2000), hereinafter *Ka Pa'akai*, the Hawai'i Supreme Court reiterated the importance of Section 7 and reaffirmed that the State and its agencies are obligated to reasonably protect the traditional and customary rights of Hawaiians. The Supreme Court ruling States that agencies are obligated to make the assessment of cultural practices, independent of the developer or applicant.

The *Ka Pa'akai* court decision set forth that a proper analysis of cultural impacts shall include: 1) the identity and scope of valued cultural, historical, or natural resources in the subject area, including the extent to which traditional and customary native Hawaiian rights are exercised; 2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and, 3) the feasible action, if any, to be taken by the (agency) to reasonably protect native Hawaiian rights if they are found to exist. Typically, a cultural impact assessment (CIA) done as part of the HRS 343 review process can assist reviewing agencies with determining whether a project satisfies *Ka Pa'akai* requirements. However, in review of the Final Environmental Assessment published for this project in October 2020, it does not appear any kind of CIA was carried out.

As the step to identify the scope of valued, cultural, historical, or natural resources is reliant on using the RLS, OHA requests that CWRM evaluate the methodology carefully to ensure this step of *Ka Pa'akai* is being fully executed as intended. Should it be found that *Ka Pa'akai* requirements are not met, further outreach aimed at acquiring information specific to traditional and customary practices could be conditioned prior to approving the SCAP.

If not done so already, we recommend the applicant reach out to Hui Maunawili-Kawainui as part of the process to identify cultural practices and resources in the area.

CWRM Staff Response: Concur and added as special condition. However, 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 channel.

US Army Corps of Engineers: On January 20, 2021, the Army Corps issued a Nationwide Permit No. 3 for the project.

US Fish and Wildlife Service (FWS): No comments received.

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 “There is not a known historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places within or near the project area. No historic properties were identified per the reconnaissance level survey (RLS) requested by SHPD. A site visit with SHPD staff and Fung Associates, Inc. was conducted in July 18, 2017. An Architectural RLS report was submitted to SHPD in 2018. The bridge next to the force main stream crossing is not eligible for listing on National and Hawaii Register of Historic Places based on the 2018 Architectural RLS report, and the 2014 Statewide Bridge Inventory, both prepared by Fung Associates, Inc. SHPD concurred the assessment of “no historic properties affected within the project's area of potential effect (APE).”

CWRM Staff Response: The area is zoned Urban 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. Special permit condition added that, “The Applicant shall formally consult with the Hui Maunawili-Kawainui to communicate project information and to determine if there are any traditional and customary practices that may be affected.”

- 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, “None. Temporary cofferdam will be removed after the repair work is done, and the stream channel will be back to its existing condition.”

CWRM Staff Response: Affected or impaired resources are minimal since the area is developed. Cofferdam activities should be restricted to one-half of the stream at a time, so there is consistent mauka to makai flow to minimize potential impacts to traditional and customary native Hawaiian rights. Special permit condition added that, “The Applicant shall formally consult with the Hui Maunawili-Kawainui to communicate project information and to determine if there are any traditional and customary practices that may be affected.” However, 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 channel.

- 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, "A reconnaissance level survey (RLS) of the project area was conducted in 2017 by Fung Associates Inc. Based on the final report of the RLS, submitted to SHPD in 2018, the determination is 'no historic properties are affected' and the project has 'no adverse effect.' The Hawaii SHPD accepts the determination."

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 County funds. A finding of no significant impact was published in the Environmental Notice on October 8, 2020 and found on the Office of Environmental Quality Control website at: http://oeqc2.doh.hawaii.gov/Doc_Library/2020-10-08-OA-FEA-Maunawili-Estates-Wastewater-Pump-Station-Repairs.pdf.

CONSISTENCY WITH THE HAWAI‘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 of stream water is unchanged. The Hawaii Department of Health is the lead agency regarding water quality (HRS §174C-66). The project is expected to have a positive impact on native stream organisms with repair of the scoured area beneath the concrete apron and improve fish passage. Cofferdam activities should be restricted to one-half of the stream at a time. This will allow amphidromous animals to use the stream during repair operations as a migratory pathway and maintain stream flow through the reach.

- (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 Windward O‘ahu is an unmeasured amount and the status quo of streamflow conditions on the effective date of this standard (May 4, 1992), and as that flow may naturally vary throughout the year (HAR §13-169-49.1). The identified instream uses include fish habitat and streamflow contribution to the nearshore waters, among others. The water quantity and quality appear unchanged.

- (3) The proposed channel 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 are no diversions on this stream.

RECOMMENDATION

That the Commission:

1. Approve the Stream Channel Alteration Permit (SCAP.5553.3) Application subject to the standard conditions in **Exhibit 1** and the special conditions below.
 - a. The Applicant shall formally consult with the Hui Maunawili-Kawainui to communicate project information and to determine if there are any traditional and customary practices that may be affected;
 - b. Incorporate fish ramps, on vertical surfaces to assist with fish passage and ensure that there are no overhangs that will prevent native species migration up and down stream
 - c. Implement the following Best Management Practices (BMP's) recommended by the Department's Division of Aquatic Resources during the repair and construction activities to minimize the potential for erosion, siltation, pollution, and degradation of the aquatic environment.
 - 1) Stream bank areas denuded of vegetation should be planted or covered as quickly as possible to prevent erosion;
 - 2) Scheduling work activities during periods of minimal rainfall;
 - 3) Prevent construction materials, petroleum products, debris and landscaping products from falling, blowing or leaching into the aquatic environment; and,
 - 4) Minimize the disturbance and impacts to stream channel bottom and its substrate (cobble, boulders, etc.) as much as possible as these substrate are essential components of the habitat for the native stream biota.
 - d. Contractors will be required to follow federal guidelines regarding endangered species when working in the stream.
 - e. Cofferdam activities shall be restricted to one-half of the stream at a time, so there is consistent mauka to makai flow to minimize potential impacts to traditional and customary native Hawaiian rights.

Ola i ka wai,



M. KALEO MANUEL
Deputy Director

Exhibits:

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

APPROVED FOR SUBMITTAL:

Suzanne D. Case

SUZANNE D. CASE
Chairperson

STANDARD STREAM CHANNEL ALTERATION PERMIT
(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 §13-169-49.1 Interim instream flow standard for Windward Oahu. The Interim Instream Flow Standard for all streams on Windward Oahu, as adopted by the commission on water resource management on April 19, 1989, 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.