



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

April 20, 2021
Honolulu, Hawai'i

Approve the Payment Plan Proposed by Rainer Werner Bock, Trustee,
For Fines Imposed on November 17, 2020 under Item B-4 in Conjunction with Issued
After-the-Fact Stream Channel Alteration Permit (SCAP.5422.6)
East Kuiaha Stream, Ha'ikū, Maui, TMK (2) 2-7-012:254

SUMMARY OF REQUEST

Request approval of the payment plan proposed by Mr. Rainer Werner Bock, Trustee, for fines imposed by the Commission on November 17, 2020 under Item B-4, in conjunction with the issued after-the-fact Stream Channel Alteration Permit (SCAP.5422.6).

PERMITTEE:

Rainer Werner Bock, Trustee
P.O. Box 681
Ha'ikū, HI 96708

LOCATION: East Kuiaha Stream, Ha'ikū, Maui

BACKGROUND

On August 3, 2016, Commission staff received a complaint regarding mud and debris in the subject stream allegedly caused by the Applicant. According to a downstream landowner, mud and debris damaged a road and caused erosion to their land that, in almost 20 years, never happened until the Applicant graded and grubbed in and outside of the stream channel.

On May 25, 2017, a Request for Response to Complaint was mailed to the Applicant.

On June 15, 2017, the Applicant responded to the Complaint letter by requesting a site visit with staff to review construction activities and discuss matters identified in the complaint.

In July 2017, staff conducted a site visit and compiled the following photos from the complaint and site visit to document the alleged violations:

1. Streambank hardening downstream of the footbridge.
2. Makai culvert with overhanging lip looking upstream, an 8-ft wide x 6-foot tall x 20-ft long road structure with two 42-inch culverts across stream channel.
3. Streambank hardening.
4. Channelized about 800 feet of the East Kuiaha Stream.
5. Streambank hardening downstream of the mauka culvert. From the County of Maui website, dated 2015.
6. Mauka culvert looking downstream, an 8-ft wide x 15-foot tall x 20-ft long road structure with two 42-inch and three 24-inch culverts across stream channel.

On August 23, 2017, a Notice of Alleged Violation and Order was mailed to the Applicant.

On October 26, 2017, the Applicant filed the first of three after-the-fact Stream Channel Alteration Permit (SCAP.4700.6) Applications regarding the construction of two culverts and the Remediation Plan that proposed to widen the stream cross section to a more natural state, reduce the side slopes of the channel to a 2:1 maximum slope, recreate riffles and pools, stream bank stabilization with riparian vegetation, placement of rocks where practicable to protect the stream banks, and raising of the streambed at the makai culvert outlet for native biota passage.

On May 15, 2018, by a 4-0 vote, the Commission:

1. Found that the Applicant and Landowner, Bock Family Revocable Trust, violated Section 174C-71, Hawaii Revised Statutes (HRS) and §13-169-50, Hawaii Administrative Rules (HAR) by installing two road structures and culverts in the East Kuiaha Stream and channelizing about 800 feet of stream bed and banks without authorization;
2. Deferred imposing a fine of \$1,000 and assessing \$500 in administrative fees against the Landowner pursuant to HRS §174C-15 and HAR §13-169-3;
3. Denied the after-the-fact Stream Channel Alteration Permit (SCAP.4700.6) application for the installation of two road structures and culverts and the channelization of about 800 feet of stream bed and banks, and requested staff to provide more information regarding the length of time of the serious and on-going violations;
4. Directed staff to work with the parties on a Remediation Plan, pursuant to HRS §174C-71(3), to be submitted to the Commission within six months with a permit request to conduct the work contemplated by that Plan. Remediation shall consist of stream bank stabilization, planting riparian vegetation, the placement of rocks and such to recreate riffles and pools, recreate flood storage capacity which may include the removal of structures and fill, and other restorative measures to support the maintenance of waters in their natural state and protect stream channels whenever practicable to provide for fisheries, wildlife and other beneficial instream uses.

5. Issue a written warning to the Landowner indicating any future violations involving a stream channel alteration without the necessary permits may be considered a repeat violation with fines assessed for each day of violation.

On July 18, 2018, the Applicant filed a Notice of Appeal in the State Supreme Court appealing the denial of a stream channel alteration permit.

On October 1, 2018, the Court consolidated the appeals and stayed the deadlines and requirements until January 31, 2019, and established a briefing schedule.

On November 9, 2018, the Applicant's consultant, Stacy Otomo of Otomo Engineering, Inc., filed a remediation plan for review by Commission staff. A draft stream channel alteration permit application was submitted on November 16, 2018.

On December 11, 2018, the Applicant filed a stipulation to continue briefing schedules, noting that the parties have made progress toward achieving a resolution but will not be able to achieve a resolution before January 31, 2019, thus extending the stay to March 31, 2019.

On December 17, 2018, the Applicant filed the second of three after-the-fact Stream Channel Alteration Permit (SCAP.5017.6) Applications regarding the construction of two culverts and the Remediation Plan that proposes to widen the stream cross section to a more natural state, reduce the side slopes of the channel to a 2:1 maximum slope, recreate riffles and pools, stream bank stabilization with riparian vegetation, placement of rocks where practicable to protect the stream banks, and raising of the streambed at the makai culvert outlet for native biota passage.

On February 19, 2019, by a 5-0 vote, the Commission:

1. Deferred action on the Stream Channel Alteration Permit (SCAP.5017.6) application and Remediation Plan (Plan), including the imposition of a fine and administrative fee against the Applicant. The Deputy Director shall write a letter to the applicant indicating that the Commission has reviewed the proposed Plan and finds that the Plan is in compliance with the State Water Code, Chapter 174C, Hawaii Revised Statutes. However, the Commission has concerns with flooding issues that must be addressed in consultation with the County of Maui, Planning Department, U.S. Army Corps of Engineers, and the Hawai'i Department of Health's Clean Water Branch.
2. Delegated authority to the Chairperson to approve the letter from the Deputy Director to the applicant; and
3. Following consultation with other government agencies to address flooding concerns, a new Stream Channel Alteration Permit application and detailed Remediation Plan shall be submitted to the Commission that must include a narrative of what the Plan objectives are, how the Plan shall be implemented to meet objectives, detailed descriptions and hydrologic analyses with relation to the construction drawings, a timeline of

performance, and a flowchart depicting permitting requirements and/or review of the project by all relevant government agencies.

On August 31, 2020, the Applicant filed the third of three after-the-fact Stream Channel Alteration Permit (SCAP.5422.6) Applications regarding the construction of two culverts and the Remediation Plan that proposes to widen the stream cross section to a more natural state, reduce the side slopes of the channel to a 2:1 maximum slope, recreate riffles and pools, stream bank stabilization with riparian vegetation, placement of rocks where practicable to protect the stream banks, and raising of the streambed at the makai culvert outlet for native biota passage.

On November 17, 2020, the Commission, by a 6-0 vote, approved staff's recommendations, with amendments, as follows:

1. Find that the Applicant violated HRS §174C-71 and HAR §13-169-50 by installing two culverts in the East Kuiaha Stream, and hardened and channelized about 800 feet of stream bed and banks without a permit.
2. Issue a written notice of violation to the Applicant, pursuant to HRS §174C-15 and HAR §13-169-3, and authorize imposing a fine of \$39,000 (Alternative No. 2), due within 90 days of Commission action; issue a written warning that any future violations involving a stream channel alteration without the necessary permits shall be considered a repeat violation; and suspend any pending or future applications¹.
3. Approve the after-the-fact Stream Channel Alteration Permit (SCAP.5422.6) application to construct: 1) Makai culvert which is an 8-ft wide x 6-ft high x 20-ft long structure and includes two (2) 42-inch culverts across entire stream channel; and 2) Mauka culvert which is an 8-ft wide x 15-ft high x 20-ft long structure and includes two (2) 42-inch culverts and three (3) 24-inch culverts across entire stream channel, subject to the standard permit conditions and special conditions below:
 - a. Implement Best Management Practices (BMPs) recommended by the Department's Division of Aquatic Resources and have a stream geomorphologist review the project in all stream bed restoration projects.
 - b. Implement the Remediation Plan to widen the stream cross section to a more natural state, reduce the side slopes of the channel to a 2:1 maximum slope, recreate riffles and pools, stream bank stabilization with riparian vegetation, placement of rocks where practicable to protect the stream banks, and raising of the streambed at the mauka and makai culverts to create a level condition at the inlet and outlet of the culverts and stream bed further described below:
 - 1) Remediation area #1: 64-ft wide x 5-ft high x 150-ft long bank stabilization, restoration, retention basin, and grading.

¹ Notice of Commission Action/Notice of Violation sent to permittee incorrectly stated that the fine was, "due within 120 days of Commission action" and added a condition to "Submit a progress report to the Commission staff in 90 days on funding for fine and remediation project."

- 2) Remediation area #2: 45-ft wide x 5-ft high x 120-ft long bank stabilization, restoration, retention basin, and grading, including a 10-ft wide x 10-ft long riprap scour pad.
- 3) Remediation area #3: 90-ft wide x 7-ft high x 65-ft long bank stabilization, restoration, retention basin, and grading.
- 4) Remediation area #4: 35-ft wide x 8-ft high x 260-ft long bank stabilization, restoration, retention basin, and grading.
- 5) Remediation area #5: 42-ft wide x 6-ft high x 220-ft long bank stabilization, restoration, retention basin, and grading.

On February 16, 2021, Mr. Bock emailed Commission staff, his consultant Stacy Otomo, and his attorney Paul Mancini stating below:

“To the Water Commission Board

My name is Rainer Werner Bock and I was fined by your board \$39000 for a violation. I was told that I had to inform you within 90 days, which ends tomorrow the 17th of February, how I intent [sic] to pay this fine. Here is my situation: since February 2020 until today and most likely all of 2021 Im unable to work because of Covid 19 restrictions. All public venues for my work have been canceled all of last year and will still be canceled until the end of 2021. A bank will not loan me money because of the liability I have on the property due to the Water commission case against our family trust. That leaves me only with the possibility to get a loan from family but due to Covid 19 all our family is not in a good financial situation. My only possibility now is to sell some of my personal belongings which Im in the process of doing. I would be able to start paying the fine over a period of 6 month max, starting with paying \$10000 down before end of March. Hope this will be agreeable to the Board of the Water Commission
Aloha
R.W. Bock”

STAFF REVIEW

In compliance with recommendations approved by the Commission at its November 17, 2020 Commission meeting, Mr. Bock met the 90-day deadline to provide a progress report on his efforts to obtain funding for the fine imposed by the Commission. Given Mr. Bock’s stated circumstances, his payment plan for paying of the \$39,000 appears reasonable. The Commission staff recommend the following payment plan based on his proposal dated February 16, 2021:

- \$10,000, due April 30, 2021;
- \$5,000, due May 31, 2021;
- \$4,800, due June 30, 2021;
- \$4,800, due July 31, 2021;
- \$4,800, due August 31, 2021;
- \$4,800, due September 30, 2021; and
- \$4,800, due October 31, 2021.

The Commission staff understands that Mr. Bock may also have difficulty initiating the remediation work approved under SCAP.5422.6 until the fine is paid. The Commission staff would like to reiterate that the Commission deliberately “decoupled the fine from the actual initiation of beginning the remediation work,” so that work on the remediation project could proceed despite the status of the fine.

RECOMMENDATION

That the Commission:

1. Approve the payment plan proposed by Mr. Rainer Bock as follows:
 - \$10,000, due April 30, 2021;
 - \$5,000, due May 31, 2021;
 - \$4,800, due June 30, 2021;
 - \$4,800, due July 31, 2021;
 - \$4,800, due August 31, 2021;
 - \$4,800, due September 30, 2021; and
 - \$4,800, due October 31, 2021.

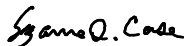
2. Direct Mr. Bock to proceed with the remediation work despite the status of the fine and affirm the Stream Channel Alteration Permit expiration date of November 17, 2022. Provide an update on the status of implementing the remediation plan, approved under SCAP.5422.6, by April 30, 2021.

Ola i ka wai,



M. KALEO MANUEL
Deputy Director

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson