



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

August 17, 2021
Honolulu, Hawaii

Approval of the Stream Channel Alteration Permit Application
(SCAP.5687.2) by the Hanalei Traders, Inc., for the
Biowall Stabilization Project
Hanalei River, Hanalei, Kaua'i, TMK: (4) 5-5-010:067

APPLICANT:

Roger Ross
Hanalei Traders, Inc.
5-5016 Kuhio Hwy
Hanalei, HI 96714

LANDOWNER

Hanalei Traders, Inc.
TMK: (4) 5-5-010:067

State of Hawaii
Hanalei River has no TMK

SUMMARY OF REQUEST

Commission staff is seeking approval for a Stream Channel Alteration Permit (SCAP.5687.2) by the Hanalei Traders, Inc., for their Biowall Stabilization Project. The landowner proposes to install a 7-foot high by 450-foot long bio-engineered wall (biowall) along the eroding left bank on Hanalei River. The biowall will be comprised of boulders, geogrid fabric, geotextile bags, and native vegetation plantings. On March 20, 2018, Stream Channel Alteration Permit (SCAP.3496.2) was approved. However, the Applicant was unable to start the project prior to its expiration due to a catastrophic flood event in April 2018 that caused significant structural damage to the property and financial hardship. There have been no changes to the project design since the previous approval.

LOCATION: Hanalei, Kaua'i (**Figure 1**).

BACKGROUND

On March 22, 2012, the landowner filed an incomplete stream channel alteration permit application. A portion of the work was on unencumbered State land and other permits were required to be completed before this action could be considered.

On December 6, 2017, the landowner filed a complete stream channel alteration permit application.

On March 20, 2018, Stream Channel Alteration Permit (SCAP.3496.2) was approved (Submittal: <https://files.hawaii.gov/dlnr/cwrmm/submittal/2018/sb20180320B2.pdf>; Minutes: <https://files.hawaii.gov/dlnr/cwrmm/minute/2018/mn20180320.pdf>). However, Hanalei Traders, Inc. was unable to start the project prior to the expiration of the permit due to a catastrophic flood event in April 2018 that caused significant structural damage to the property and financial hardship. The SCAP expired on March 20, 2020. There have been no changes to the project design since the previous approval.

On June 18, 2021, the landowner filed a complete Stream Channel Alteration Permit (SCAP.5687.2) application which can be viewed on the Commission website at https://files.hawaii.gov/dlnr/cwrmm/swreview/SCAP_5687_2.pdf.

STREAM DESCRIPTION

According to the *Atlas of Hawaiian Watersheds and Their Aquatic Resources* (2008), the Hanalei River is a perennial stream over 10 miles long. The area of the watershed is 24 square miles with a maximum elevation of 5,128 feet. The river is tidally influenced with an estuary that extends about 3.5 miles inland. There are numerous native aquatic species. For a complete list visit <https://www.hawaiiwatershedatlas.com/watersheds/kauai/21019.pdf>. The Hawaii Stream Assessment (1990) rates Hanalei River as an Outstanding stream. Its Overall Rating (total watershed and biological ratings) is an 8 on a scale of 10. A higher score reflects more native and fewer introduced species.

The subject property is located in this estuary about one mile upstream of the river mouth. Channel geometry in this stretch has been altered due to hau bush growth into the channel from the east side. A review of historic air images finds that the channel has decreased by 20 to 30 feet in sections where hau bush has encroached.

PROJECT DESCRIPTION

The 2.3 acre property hosts the Dolphin Restaurant, a fish market, gift shop, and five riverfront cottages. In total, 720 feet of the lot fronts the river. Along 450-feet, the bank has eroded approximately 28 feet inland over the past 25 years and threatens structures. The property is located on the outside bend at the apex of a large river meander, commonly known as an oxbow. This meander begins approximately 3,700 feet upstream of the property and ends 3,600 feet downstream of it. (**Figure 1**).

The hydrodynamics of the river along the project site have been altered by encroachment of hau bush (*Hibiscus tiliaceus*) into its channel and placement of riprap along the left bank upstream of the subject property. Hau bush along the opposite bank of the subject property, has reduced the channel width, resulting in forcing flow into the river bank fronting the subject property.

Figure 1: Location, Hanalei River, Hanalei Kaua'i.

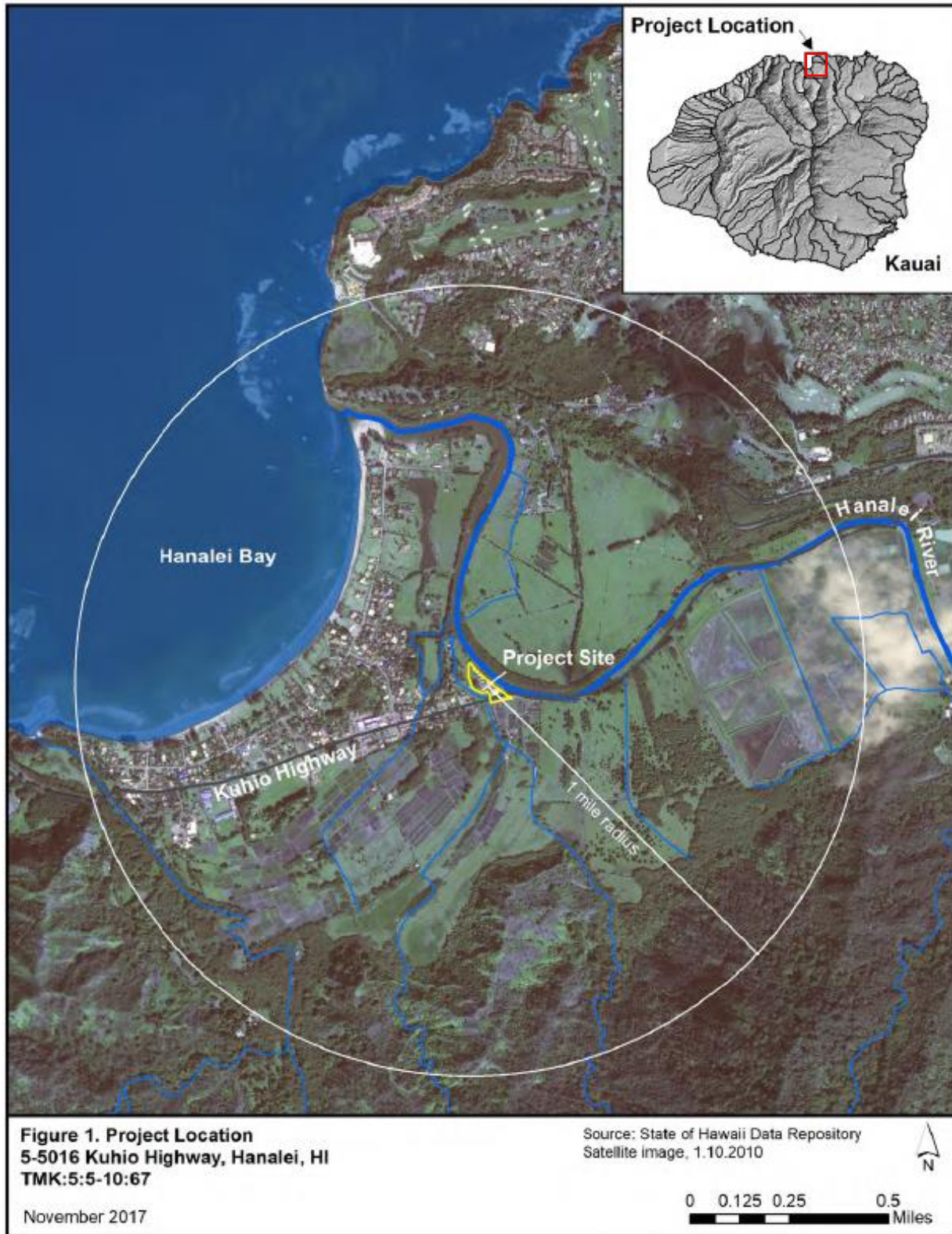
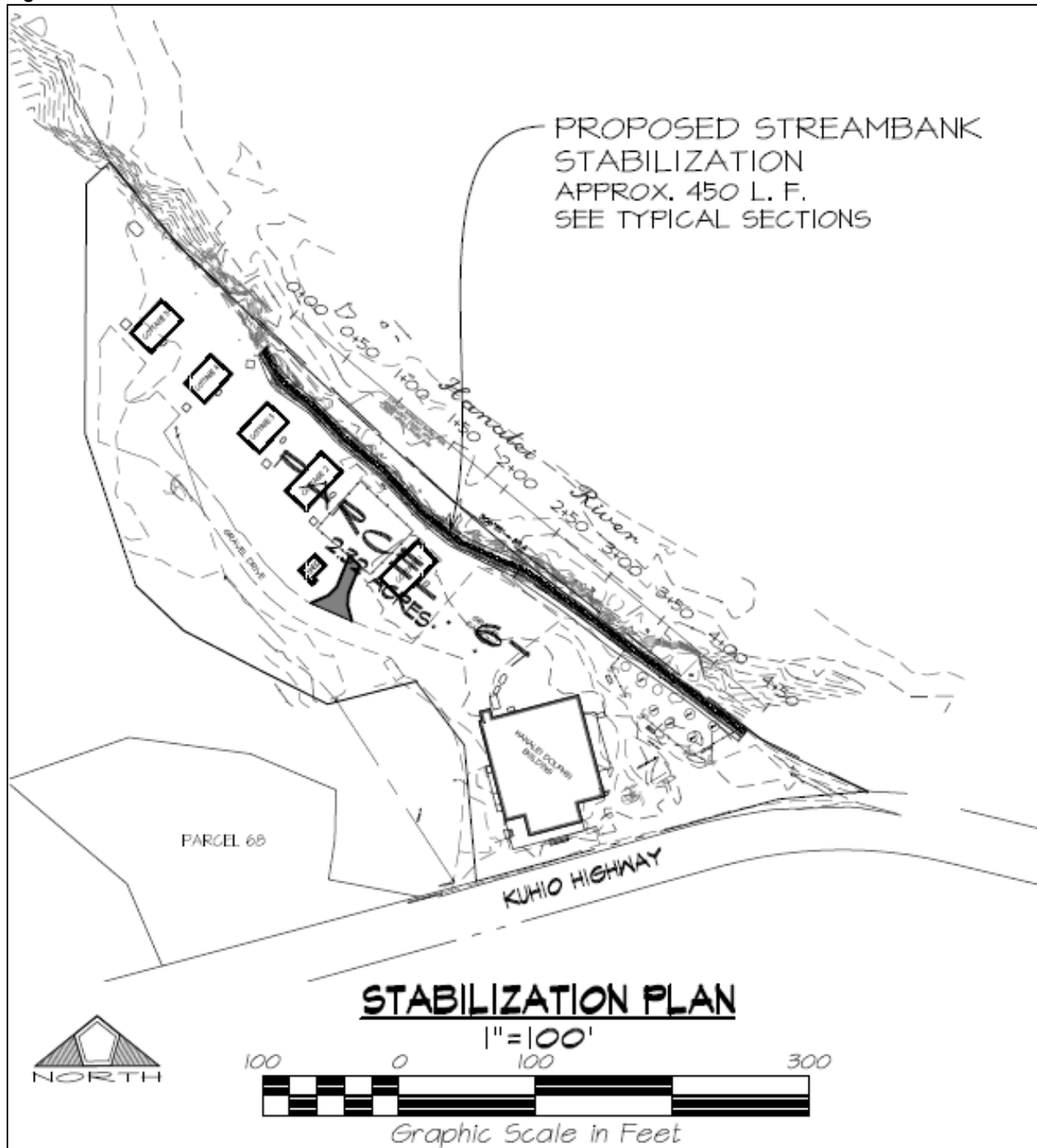
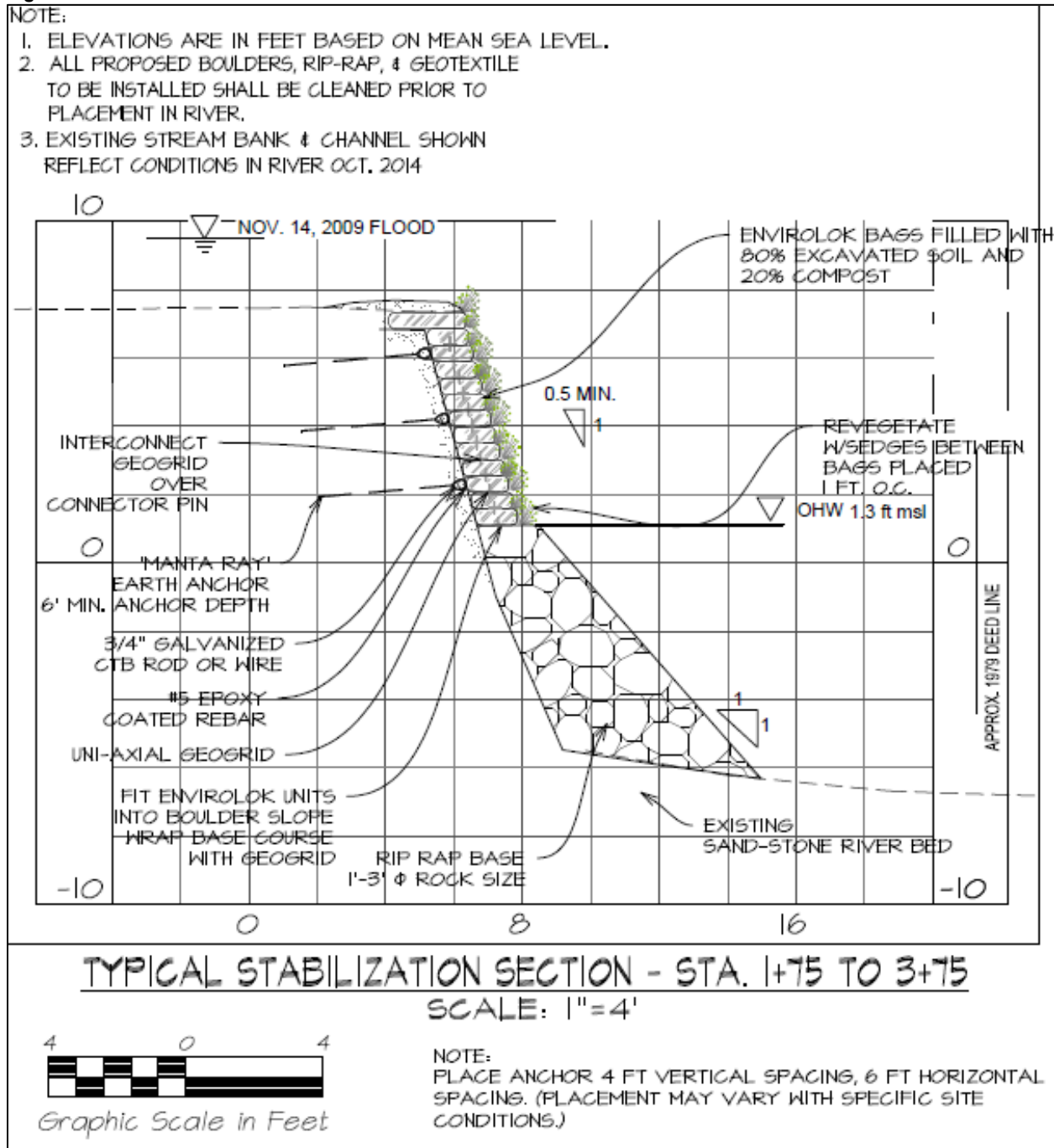


Figure 3: Stabilization Plan.



Two hundred sixteen (216) cubic yards of washed boulders (two to three feet in diameter) will be placed on the bed of the river channel against the toe of the bank (0 ft mean sea level (msl) up to the ordinary high water level (OHW) (+1.3 ft msl). See **Figure 4**.

Figure 4: Stabilization Plan.



Boulders will protect the toe from erosion and provide the foundation for placement of other materials. Approximately 180 cubic yards of a growth medium consisting of 80% washed sand and 20% compost (with no additional fertilizer or soil amendments) will be placed into geotextile bags and installed from the top of boulders up to the top of the existing river bank. Geogrid fabric will be used to secure and anchor the interlocking geotextile bags to the bank of the river. Three species of native sedges, uki grass (*Cladium jamaicense*), 'ahu'awa (*Cyperus javanicus*),

and makaloa (*Cyperus polystachyos*), will be planted between the geotextile bags from the top of the boulders to the top of the existing bank. Sedges will be installed concurrent to geotextile bags and geogrid fabric as sedges will be planted after each layer of bags has been installed. Plants installed as part of the design are expected to root into the geotextile bags and existing bank material. Woody native or Polynesian shrubs will be placed along top of existing bank after completion of biowall. Installation of the biowall does not require any dredging or excavation.

AGENCY REVIEW COMMENTS

County of Kauai, Public Works Department: (*From 2018*) The proposed improvements are located in Flood Zone AEF with a base flood elevation of 12 feet mean sea level. The proposed improvements will need to comply with the County's Flood Plain Management Ordinance No. 831. A grading and/or grubbing permit in compliance with the County's Sediment and Erosion Control Ordinance No. 808 is required if the work area exceeds one (1) acre and/or grading involving excavation or embankment or combination thereof exceeds more than 100 cubic yards. All existing drainage runoff volumes and flow patterns shall be maintained and subject to Best Management Practices (BMPs). BMPs shall be implemented at all times to the maximum extent practicable to prevent damage by sedimentation, erosion, dust to streams, watercourses, natural areas and the property of others.

CWRM Staff Response: Concur and added as special condition.

Department of Hawaiian Home Land (DHHL): The State (and particularly the Commission on Water Resource Management [Commission]) has a duty to protect the rights of DHHL to water resources, as enumerated in the Hawaiian Homes Commission Act (HHCA) §§ 101(4), 220, 221; Hawai'i Constitution, Article XI, §§ 1 and 7 and Article XII, § 7; and Hawaii Revised Statutes (HRS) Chapter 174C, the State Water Code. DHHL lands on Kauaʻi comprise approximately 20,565 acres of land. Particularly, DHHL owns 4,228 acres in Anahola and Kamalomaloʻo extending from the shoreline mauka to the Kealia Forest Reserve. The parcels are situated midway between Hanalei and Lihuʻe and just north of Kapaʻa. Anahola is the largest Hawaiian homestead community on Kauaʻi. There are currently 359 residential leases (165 acres or 3% of total area), 47 agricultural leases (241 acres or 5 % of total area), 20 acres to Project Faith, 154 acres in short term leases for pasture & commercial uses, while the remaining acreage is undeveloped. Unfortunately, in the five years which elapsed between the completion of Hanalei Traders, Inc.'s October 2016 Environmental Assessment and its June 2021 SCAP Application re-submittal to the Commission, the catastrophic flooding events of April 2018, August 2019, and April 2021 devastated the North Shore region of Kauaʻi. As a result of these recent floods, not only has the Hanalei River, other surrounding streams courses, and their respective landscapes significantly changed, but it has also caused severe and ongoing damage to Kuhio Highway located above the proposed project site. Moreover, after the April 2018 floods destroyed an ancient, pre-contact Native Hawaiian ʻauwai system relied upon by a group of Hanalei taro farmers, the farmers formalized themselves as the Waiʻoli Valley Taro Hui, Inc. (the Hui), a 501(c) nonprofit organization in 2020. The Hui produces the vast majority of the state's locally grown taro. Many of them not only come from families who have tended the fields there for

generations but are also DHHL beneficiaries. Because DHHL’s beneficiaries exercise traditional and customary practices in the proposed project area, DHHL anticipates significant interest in this SCAP. Based on the above, the department offers three requests regarding this SCAP:

Request #1. Since some members of the Hui are DHHL beneficiaries and many of their ho‘i are located mauka of the proposed project area, additional engagement and consultation is necessary, specifically with Board Member Sierra Stone, whose taro farm is located directly across the proposed project site and is in the impacted area.

Request #2. As a result of major changes in the surrounding river courses, Andrew Hood of Sustainable Resources Group Intn’l, Inc. should conduct an additional on-site project evaluation.

Request #3. Given that Kuhio Highway is the only highway in and out of the North Shore area and is located directly mauka of the proposed project site, additional consultation with the County of Kaua‘i and State of Hawai‘i Department of Transportation is necessary to ensure that none of the work at the proposed project site exacerbates conditions for the roadwork above.

CWRM Staff Response: Staff concurs and add the following items as special conditions: 1) The permittee shall consult with Wai‘oli Valley Taro Hui member Sierra-Lynn Stone, regarding the impact of the project to her taro ho‘i; 2) The project consultant, Andrew Hood shall provide an onsite project evaluation to ensure that project site conditions have not changed following the major flood events of 2018, 2019, and 2021; and 3) The permittee shall consult with the County of Kaua‘i and the State of Hawai‘i Department of Transportation, to ensure that work at the project site does not impact the current work on Kuhio Highway mauka of the project area. Evidence of meeting these conditions shall be provided to Commission staff prior to project initiation.

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

DLNR, Aquatic Resources: No comments received.

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): (From 2018) The State and Federally listed Hawaiian hoary bat or ‘ōpe‘ape‘a (*Lasiurus cinereus semotus*) has the potential to occur in the vicinity of the proposed project. DOFAW recommends to avoid using barbed wire, as bat mortalities have been documented as a result of becoming ensnared by barbed wire during flight. Hawaiian hoary bats roost in both exotic and native trees. If any trees are planned for removal during the bat breeding season there is a risk of injury or mortality to juvenile bats. To minimize the potential

for impacts to this species, woody plants greater than 15-feet tall should not be disturbed, removed, or trimmed during the bat birthing and pup rearing season (June 1 through September 15). Site clearing should be timed to avoid disturbance to breeding Hawaiian hoary bats. State and Federally listed waterbirds such as the Hawaiian duck (*Anas wyvilliana*), Hawaiian stilt (*Himantopus mexicanus knudseni*), Hawaiian moorhen (*Gallinula chloropus sandvicensis*), Hawaiian coot (*Fulica alai*), and Hawaiian goose (*Branta sandvicensis*) may occur in the vicinity of the proposed project site. DOFAW recommends avoiding disturbance to waterbirds that may be using the mouths of Waikoko and Waipā Streams at the bridge crossings. To minimize the potential for take, surveys for waterbirds by a qualified biologist are recommended at least two weeks prior to the start of the project, and should be repeated if these activities are delayed more than three days. If a bird is present during ongoing activities, then all activities within 100 feet of the bird should cease, and the bird should also not be approached. Work may continue after the bird leaves the area of its own accord. DOFAW notes that artificial lighting can adversely impact seabirds that may pass through the area at night causing disorientation which could result in collision with manmade artifacts or grounding of birds. If nighttime lighting is required DOFAW recommends that any lights used be fully shielded and downward facing to minimize impacts.

CWRM Staff Response: Concur and added as special condition.

DLNR, Historic Preservation: In a letter dated February 21, 2018, consultation with SHPD began in August 2015. On October 15, 2015, SHPD archaeologist, along with the landowner's consultants conducted a field inspection of the subject property. No historic properties were identified. However, a rock pile and a vertically-aligned rock set perpendicular to the riverbank between two cottages were noted. Accordingly, both the project proponent and the U.S. Army Corps of Engineers (Corps) conducted consultation with Native Hawaiian Organizations (NHOs) and individuals, including the Office of Hawaiian Affairs (OHA). Email and mailed letters were sent in September and October, 2015. The Hanalei Canoe Club responded with matters pertaining to the impediment of river access to Hanalei River. OHA responded via telephone, indicating they have no knowledge of existing traditional activities, rights or resources that may occur within or near the project area. No other comments were received. The applicant indicates that an archaeological monitor will be on site for the first two days of project implementation for identification purposes and to monitor the entire grubbing phase. Based on the information provided, SHPD concurs with archaeological monitoring for identification purposes during all ground disturbing activities.

CWRM Staff Response: Staff believes that SHPD review is satisfied. See Exhibit 1.

DLNR, Land Division: No comments received.

DLNR, State Parks: (*From 2018*) Not subject to our regulatory authority.

Office of Hawaiian Affairs: (*From 2021*) In review of our records, it appears that this particular TMK has a history of flooding and a necessity for various erosion control measures. OHA offers the following comments regarding historic preservation review. The application states that in

September and October 2015 that State Historic Preservation Division (SHPD) and OHA were both contacted about this project. No on-going traditional cultural activities or resources were noted at the time by SHPD and OHA. In an email chain with the SHPD Kauaʻi Lead Archaeologist dated April 16, 2016, included with the current SCAP application, it indicates that SHPD was not responding to the initiation of a National Historic Preservation Act (NHPA) Section 106 consultation request as they were waiting for receipt of a determination letter. As the Hanalei River empties into the ocean, a United States Army Corps of Engineers (USACE) permit was needed for and the Federal NHPA Section 106 process was also triggered. OHA does acknowledge that there was Section 106 related consultation done with Native Hawaiian organizations (NHOs) pursuant to requests from the USACE back in 2015 and comments were received from the Hanalei Canoe Club noting concerns regarding access, post-construction water quality monitoring, and erosion taking place elsewhere as a result of the proposed action. In response, the applicant indicated access would not be impeded and that water quality monitoring would occur post-construction. Hydrology models cited by the applicant indicate that there is likely to be no erosion elsewhere along the river caused by the proposed action. So, it is apparent to OHA that NHPA Section 106 consultation was initiated, but we do not see documentation indicating the conclusion of the process or a letter of concurrence from SHPD on a determination of no adverse effect. Thus, OHA requests a copy of the SHPD determination letter if Section 106 has been completed. Otherwise, it will be necessary for the applicant to complete this process prior to the initiation of construction work. While the State permitting process is separate from the Federal process, it is reasonable to assume CWRM would expect a commitment to comply with necessary Federal permits as well even if a SCAP is issued.

CWRM Staff Response: Staff believes that SHPD review is satisfied. See Exhibit 1.

US Army Corps of Engineers: (*From 2018*) The Army Corps issued a provisional Nationwide Permit #13, (Bank Stabilization) verification on November 29, 2017. (*From 2021*) No further response required from the Corps.

US Fish and Wildlife Service (FWS): (*From 2018*) Based on the information in our database and records, including data provided by the Hawaii Biodiversity and Mapping Program, the following are threatened or endangered species that may occur or transit through the vicinity of your proposed project area: the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*), Hawaiian gallinule (*Gallinula galeata sandvicensis*), Hawaiian coot (*Fulica alai*), and Hawaiian duck (*Anas wyvilliana*) (hereafter collectively referred to as Hawaiian waterbirds); the endangered Hawaiian goose (*Branta sandvicensis*); the endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*); the endangered Hawaiian petrel (*Pterodroma sandwichensis*), the threatened Newell's shearwater (*Puffinus auricularis newelli*), the endangered band-rumped storm-petrel (*Oceanodroma castro*), and the wedge-tailed shearwater (*Ardenna pacificus*), a seabird species federally protected under the Migratory Bird Treaty Act (hereafter collectively referred to as Hawaiian seabirds). *The FWS made numerous recommendations regarding avoidance and minimization measures, and offered assistance with Endangered Species Act compliance. See Exhibit 2.*

CWRM Staff Response: Concur and added as a special condition by reference.

PUBLIC COMMENTS

No public comments were 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 “During September and October 2015, sixteen non-governmental organization and individuals, as well as the Office of Hawaiian Affairs (OHA) and the State Historic Preservation Division (SHPD) were contacted via email and mailed letters to inquire if they had any knowledge of on-going traditional activities, rights, or resources that might occur in the vicinity of the proposed project, specifically within and along this section of the Hanalei River. Activities were defined to include, but not limited to cultural practices, subsistence activities, and religious and spiritual customs. SRGII received one written response to this inquiry, from the Hanalei Canoe Club. The Canoe Club comments were mainly ecological in nature, however they did remark that the installation work should not impede river access for the Club or any other river users. SRGII (the consultant) responded to all comments and indicated that the installation will not impede river access. Both OHA and SHPD responded via phone that they did not have any knowledge of on-going traditional activities, rights, or resources that might occur in the vicinity of the proposed project.”

CWRM Staff Response: No comments were received by DLNR Aha Moku. No comments from the public. There are no anticipated impacts to traditional and customary practices or the upstream/downstream migration of native macrofauna due to the project’s limited impacts to the stream bed. The Office of Hawaiian Affairs’ Kipuka database (See Table below) shows the following awards. Commission Staff offers no further action as can be identified.

Land Commission Awards	Historic Sites	Crown Lands
None	None	None identified

- 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 proposed development will not affect any Native Hawaiian customary and traditional rights protected under Article XII, Section 7 of the Hawaii State Constitution. The proposed project will not change existing access to the river, adversely affect any natural resources (e.g. plants, wildlife, water quality), or hinder in any fashion the ability of Native Hawaiians to continue to exercise all rights, customarily and traditionally employed for subsistence, cultural, and religious purposes.”

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, “N/A.”

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.

CWRM Staff Response: The action triggered an environmental assessment pursuant to HRS §343-5(a) due to the use of State lands. A finding of no significant impact was issued on September 30, 2016 and published in the October 23, 2016 Environmental Notice.

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(c) set 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 Hawai‘i Department of Health, Clean Water Branch did not provide comments.

- (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 Kaua‘i is an unmeasured amount and the status quo of streamflow conditions on the effective date of this standard (October 8 1988), and as that flow may naturally vary throughout the year (HAR §13-169-45). 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 below the minimum established interim instream flow standard.

- (3) The proposed channel alteration 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 is limited to the project area and should not interfere with instream or non-instream uses. There are two existing ditches located downstream of the subject property. It is not expected that the subject action will interfere with their use as water availability from Hanalei River will not be impacted by the project.

RECOMMENDATION

That the Commission:

1. Approve a Stream Channel Alteration Permit (SCAP.3496.2) Application subject to the standard conditions in **Exhibit 3** and the special conditions below.

- a. The proposed improvements will need to comply with the County's Flood Plain Management Ordinance No. 831. A grading and/or grubbing permit in compliance with the County's Sediment and Erosion Control Ordinance No. 808 is required if the work area exceeds one (1) acre and/or grading involving excavation or embankment or combination thereof exceeds more than 100 cubic yards. All existing drainage runoff volumes and flow patterns shall be maintained and subject to Best Management Practices (BMPs). BMPs shall be implemented at all times to the maximum extent practicable to prevent damage by sedimentation, erosion, dust to streams, watercourses, natural areas and the property of others.
- b. Site clearing should be timed to avoid disturbance to breeding Hawaiian hoary bats. State and Federally listed waterbirds may occur in the vicinity of the proposed project site and DOFAW recommends avoiding disturbance to waterbirds. To minimize the potential for take, surveys for waterbirds by a qualified biologist are recommended at least two weeks prior to the start of the project, and should be repeated if these activities are delayed more than three days. If a bird is present during ongoing activities, then all activities within 100 feet of the bird should cease, and the bird should also not be approached. Work may continue after the bird leaves the area of its own accord. DOFAW notes that artificial lighting can adversely impact seabirds that may pass through the area at night. If nighttime lighting is required, DOFAW recommends that any lights used be fully shielded and downward facing to minimize impacts.
- c. Per DHHL recommendations: 1) The permittee shall consult with Wai'oli Valley Taro Hui member Sierra-Lynn Stone, regarding the potential impact of the project to her taro ho'i; 2) The project consultant, Andrew Hood shall provide an onsite project evaluation to ensure that project site conditions have not changed following the major flood events of 2018, 2019, and 2021; and 3) The permittee shall consult with the County of Kaua'i and the State of Hawai'i Department of Transportation, to ensure that work at the project site does not impact the current work on Kuhio Highway mauka of the project area. Evidence of meeting these conditions shall be provided to Commission staff prior to project initiation.
- d. Permittee shall observe all recommendations regarding avoidance and minimization measures for threatened or endangered species that may occur or transit through the vicinity of the project area, incorporated herein by reference as set forth in U.S. Fish and Wildlife Service letter dated February 14, 2018.

Ola i ka wai,



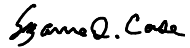
M. KALEO MANUEL
Deputy Director

Exhibits:

1. State Historic Preservation Letter dated February 21, 2018.

2. U.S. Fish and Wildlife Service Letter dated February 14, 2018.
3. Standard Stream Channel Alteration Permit Conditions.
4. Legal Authorities.

APPROVED FOR SUBMITTAL:

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

SUZANNE D. CASE
Chairperson

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCE
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCE ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KALOOALAE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

February 21, 2018

Jeffrey T. Pearson, Deputy Director
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809
c/o Rebecca Alakai, Rebecca.R.Alakai@hawaii.gov

IN REPLY REFER TO:
Log No. 2018.00147
Doc No. 1802GC11
Archaeology

Dear Mr. Pearson:

**SUBJECT: Chapter 6E-42 Historic Preservation Review –
Application for a Stream Channel Alteration Permit – Ref: SCAP 3496.2
Hanalei River Bank Stabilization
Hanalei Ahupua'a, Halele'a District, Island of Kaua'i
TMK: (4) 5-5-010: 067**

This letter provides the State Historic Preservation Division's (SHPD's) review comments regarding the subject request. The submittal indicates that the applicant and owner, Roger Ross, of Hanalei Traders Inc., proposes to stabilize an approximately 450-foot long section of eroding riverbank that fronts the 2.3-acre parcel. In this section, the river bank is eroding at an accelerated rate, and has shifted the top of the river bank horizontally approximately 28-feet inland over the past 25 years. The river bank erosion threatens existing structures on the property and is a chronic source of sediment into the river. SHPD received this submittal on January 19, 2018.

The proposed scope of work includes installing a 450-foot long bio-wall along the river bank. The bio-wall will be comprised of boulders, geogrid fabric, geotextile bags, and native vegetation. Best Management Practices will be used throughout the project including grubbing of vegetation. The installation of the bio-wall will not require any dredging or excavation. Ingress, egress, staging and storage will be within the privately-owned property.

Per the submittal, consultation with SHPD began in August 2015. On October 15, 2015, SHPD archaeologist, along with the landowner's consultants conducted a field inspection of the subject property. No historic properties were identified. However, a rock pile and a vertically-aligned rock set perpendicular to the riverbank between two cottages were noted. Accordingly, both the project proponent and the U.S. Army Corps of Engineers (Corps) conducted consultation with Native Hawaiian Organizations (NHOs) and individuals, including the Office of Hawaiian Affairs (OHA). Email and mailed letters were sent in September and October, 2015. The Hanalei Canoe Club responded with matters pertaining to the impediment of river access to Hanalei River. OHA responded via telephone, indicating they have no knowledge of existing traditional activities, rights or resources that may occur within or near the project area. No other comments were received. The applicant indicates that an archaeological monitor will be on site for the first two days of project implementation for identification purposes and to monitor the entire grubbing phase.

A review of SHPD records indicates that SHPD received a *Draft Environmental Assessment for the Hanalei Traders Inc., Proposed River Bank Stabilization Measures along the Hanalei River* on November 02, 2015. Subsequently, SHPD received a Final Environmental Assessment titled *Hanalei Traders Bioengineered River Bank Stabilization* (Sustainable Resources Group Intn'l Inc, September 2016). On September 15, 2017, SHPD received a request for consultation from the U.S. Army Corps of Engineers (USCOE) titled *Hanalei River Bank Stabilization, Department of the Army File No. POH-2009-00354, Hanalei, Kauai*.

EXHIBIT 1

Mr. Jeffrey T. Pearson
February 21, 2018
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Based on the information provided, **SHPD concurs with archaeological monitoring** for identification purposes during all ground disturbing activities. Pursuant to HAR §13-279-4(b), "an archaeological monitoring plan shall be reviewed and approved by the SHPD prior to the monitoring project, unless otherwise agreed to by the SHPD". SHPD stipulates that an accepted archaeological monitoring plan is not required and that archaeological monitoring for the subject project shall be guided by the following provisions:

- Following selection of the archaeological firm, the project manager and the archaeological principal investigator and the archaeological monitor shall consult with our office regarding the monitoring provisions;
- The project manager shall provide to SHPD and the selected archaeological consultant, a detailed description of the project scope of work and project maps showing the project area;
- The archaeological principal investigator shall meet the professional qualifications specified in HAR §13-281-3 and, per HAR §13-279-5, shall prepare the archaeological monitoring report;
- The archaeological monitor shall conduct a pre-construction coordination briefing with all project personnel (project manager, contractors, etc.);
- On-site archaeological monitoring shall be conducted during all ground disturbing activities for the first two days;
- Photographic documentation shall be completed both pre- and post-project work, as well as during the first two days of the project;
- In the event that non-burial historic properties are identified, SHPD shall be notified of the find and consulted regarding documentation, assessment of significance; and treatment in accordance with HAR §13-280;
- If human remains are identified, work will cease in the vicinity, SHPD shall be notified, and compliance with procedures outlined in HRS 6E-43, HAR §13-300-40, and SHPD directives shall be followed;
- An archaeological monitoring letter report meeting the reporting requirements of HAR §13-279-5 shall be prepared and submitted to SHPD for review within 30 days of completion of archaeological monitoring;
- Final curation and archiving of any collections shall be determined in consultation with the SHPD and the landowner; and
- Departure from these provisions shall occur only in consultation with and written concurrence from SHPD.

The SHPD website at: <http://dlnr.hawaii.gov/shpd/about/branches/archaeology> provides a list of archaeological consultants permitted to conduct archaeological services.

SHPD looks forward to consulting with the project manager and the archaeological principal investigator and archaeological monitor prior to initiation of the project.

Please contact Ka'āhiki Solis, Cultural Historian at (808) 692-8030 or at Sheleigh.Solis@hawaii.gov for any concerns regarding cultural resources, and Dr. Susan A. Lebo, Archaeology Branch Chief, at (808) 692-8019 or at Susan.A.Lebo@hawaii.gov for any concerns regarding this letter.

Aloha,



Alan S. Downer, PhD
Administrator, State Historic Preservation Division
Deputy State Historic Preservation Officer

cc: Kauai County: cbukoski@kauai.gov, mvalenciano@kauai.gov; jgalinato@kauai.gov



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawaii 96850

In Reply Refer To:
01EPIF00-2018-TA-0144

FEB 14 2018

Ms. Rebecca Alakai
State of Hawaii
Department of Land and Natural Resources
Commission on Water Resource Management
PO Box 621
Honolulu, Hawaii 96809

Subject: Review of the Permit Application for the Hanalei Stream Channel Alteration Project, Hanalei, Kauai

Dear Ms. Alakai:

The U.S. Fish and Wildlife Service (Service) received your email on January 19, 2018, requesting our comments on the Permit Application for the proposed Hanalei Stream Channel Alteration project on the Hanalei River, Kauai [TMK 5-5-010: 067]. We understand Sustainable Resources Group International, Inc. has prepared the permit application on behalf of the applicant, Hanalei Traders, Inc. The proposed project will address erosion problems and protect infrastructure. The bioengineered wall will be constructed of boulders and geo-synthetic bags filled with washed sand and compost. The project will remove non-native species and plant native species. This letter has been prepared under the authority of and in accordance with provisions of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*) and the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712) (MBTA). Based on these authorities, we offer the following comments for your consideration so that impacts to trust resources can be avoided.

The Permit Application does not address the comments and recommendations provided by the Service during the review of the draft Environmental Assessment (2016-TA-0469). We recommend you include the following avoidance and minimization measures for the species identified below as part of the final Permit Application in the project description.

Based on the information in our database and records, including data provided by the Hawaii Biodiversity and Mapping Program, the following are threatened or endangered species that may occur or transit through the vicinity of your proposed project area: the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*), Hawaiian gallinule (*Gallinula galeata sandvicensis*), Hawaiian coot (*Fulica alai*), and Hawaiian duck (*Anas wyvilliana*) (hereafter collectively referred to as Hawaiian waterbirds); the endangered Hawaiian goose (*Branta sandvicensis*); the

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endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*); the endangered Hawaiian petrel (*Pterodroma sandwichensis*), the threatened Newell's shearwater (*Puffinus auricularis newelli*), the endangered band-rumped storm-petrel (*Oceanodroma castro*), and the wedge-tailed shearwater (*Ardenna pacificus*), a seabird species federally protected under the MBTA (hereafter collectively referred to as Hawaiian seabirds).

Hawaiian waterbirds

Listed Hawaiian waterbirds are found in fresh and brackish-water marshes and natural or man-made ponds. Hawaiian stilts may also be found wherever ephemeral or persistent standing water may occur. Threats to these species include non-native predators, habitat loss, and habitat degradation. Hawaiian ducks are also subject to threats from hybridization with introduced mallards.

To avoid and minimize potential project impacts to Hawaiian waterbirds we recommend you consider incorporating the following applicable measures into your project description:

- In areas where waterbirds are known to be present, post and implement reduced speed limits, and inform project personnel and contractors about the presence of endangered species on-site.
- If water resources are located within or adjacent to the project site, incorporate applicable best management practices (see enclosure) regarding work in aquatic environments into the project design.
- Have a biological monitor that is familiar with the species' biology conduct Hawaiian waterbird nest surveys where appropriate habitat occurs within the vicinity of the proposed project site prior to project initiation. Repeat surveys again within three days of project initiation and after any subsequent delay of work of three or more days (during which the birds may attempt to nest).

If a nest or active brood is found:

- Contact the Service within 48 hours for further guidance.
- Establish and maintain a 100-foot buffer around all active nests and/or broods until the chicks/ducklings have fledged. Do not conduct potentially disruptive activities or habitat alteration within this buffer.
- Have a biological monitor that is familiar with the species' biology present on the project site during all construction or earth moving activities until the chicks/ducklings fledge to ensure that Hawaiian waterbirds and nests are not adversely impacted.

Hawaiian goose (Nene)

Nene are found on the islands of Hawaii, Maui, Molokai, and Kauai predominately, with a small population on Oahu. They are observed in a variety of habitats, but prefer open areas, such as pastures, golf courses, wetlands, natural grasslands and shrublands, and lava flows. Threats to the species include introduced mammalian and avian predators, wind facilities, and vehicle strikes.

To avoid and minimize potential project impacts to Nene we recommend you consider incorporating the following applicable measures into your project description:

- Do not approach, feed, or disturb Nene.

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- If Nene are observed loafing or foraging within the project area during the Nene breeding season (September through April), have a biologist familiar with the nesting behavior of Nene survey for nests in and around the project area prior to the resumption of any work. Repeat surveys after any subsequent delay of work of three or more days (during which the birds may attempt to nest).
- Cease all work immediately and contact the Service for further guidance if a nest is discovered within a radius of 150 feet of proposed work, or a previously undiscovered nest is found within said radius after work begins.
- In areas where Nene are known to be present, post and implement reduced speed limits, and inform project personnel and contractors about the presence of endangered species on-site.

Hawaiian hoary bat

The Hawaiian hoary bat roosts in both exotic and native woody vegetation across all islands and will leave young unattended in trees and shrubs when they forage. If trees or shrubs 15 feet or taller are cleared during the pupping season, there is a risk that young bats could inadvertently be harmed or killed since they are too young to fly or may not move away.

To avoid and minimize impacts to the endangered Hawaiian hoary bat we recommend you consider incorporating the following applicable measure into your project description:

- Do not disturb, remove, or trim woody plants greater than 15 feet tall during the bat birthing and pup rearing season (June 1 through September 15).

Hawaiian seabirds

Hawaiian seabirds may traverse the project area at night during the breeding season (March 1 to December 15). Outdoor lighting could result in seabird disorientation, fallout, and injury or mortality. Seabirds are attracted to lights and after circling the lights they may become exhausted and collide with nearby wires, buildings, or other structures or they may land on the ground. Downed seabirds are subject to increased mortality due to collision with automobiles, starvation, and predation by dogs, cats, and other predators. Young birds (fledglings) traversing the project area between September 15 and December 15, in their first flights from their mountain nests to the sea, are particularly vulnerable.

To avoid and minimize potential project impacts to Hawaiian seabirds we recommend you consider incorporating the following applicable measures into your project description:

- Fully shield all outdoor lights so the bulb can only be seen from below bulb height and only use when necessary.
- Install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.
- Avoid nighttime construction during the seabird fledging period, September 15 through December 15.

If additional information becomes available, or it is determined that the proposed project may affect federally listed species, we recommend you coordinate further with our office so that we may assist you with ESA compliance. We thank you for your efforts to conserve listed species and native habitats. Please contact Stacey Lowe, Fish and Wildlife Biologist (phone: 808-792-

Staff Submittal
Hanalei River, Kaua'i

August 17, 2021

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9400, email: stacey_lowe@fws.gov) should you have any questions pertaining to this response or require further guidance. When referring to this project, please include this reference number: 01EPIF00-2018-TA-0144.

Sincerely,



Aaron Nadig
Island Team Manager
Oahu, Kauai, Northwestern Hawaiian
Islands and American Samoa

Enclosure

**U.S. Fish and Wildlife Service
Recommended Standard Best Management Practices**

The U.S. Fish and Wildlife Service (USFWS) recommends the following measures to be incorporated into project planning to avoid or minimize impacts to fish and wildlife resources. Best Management Practices (BMPs) include the incorporation of procedures or materials that may be used to reduce either direct or indirect negative impacts to aquatic habitats that result from project construction-related activities. These BMPs are recommended in addition to, and do not over-ride any terms, conditions, or other recommendations prepared by the USFWS, other federal, state or local agencies. If you have questions concerning these BMPs, please contact the USFWS Aquatic Ecosystems Conservation Program at 808-792-9400.

1. Authorized dredging and filling-related activities that may result in the temporary or permanent loss of aquatic habitats should be designed to avoid indirect, negative impacts to aquatic habitats beyond the planned project area.
2. Dredging/filling in the marine environment should be scheduled to avoid coral spawning and recruitment periods, and sea turtle nesting and hatching periods. Because these periods are variable throughout the Pacific islands, we recommend contacting the relevant local, state, or federal fish and wildlife resource agency for site specific guidance.
3. Turbidity and siltation from project-related work should be minimized and contained within the project area by silt containment devices and curtailing work during flooding or adverse tidal and weather conditions. BMPs should be maintained for the life of the construction period until turbidity and siltation within the project area is stabilized. All project construction-related debris and sediment containment devices should be removed and disposed of at an approved site.
4. All project construction-related materials and equipment (dredges, vessels, backhoes, silt curtains, etc.) to be placed in an aquatic environment should be inspected for pollutants including, but not limited to; marine fouling organisms, grease, oil, etc., and cleaned to remove pollutants prior to use. Project related activities should not result in any debris disposal, non-native species introductions, or attraction of non-native pests to the affected or adjacent aquatic or terrestrial habitats. Implementing both a litter-control plan and a Hazard Analysis and Critical Control Point plan (HACCP – see <http://www.haccp-nrm.org/Wizard/default.asp>) can help to prevent attraction and introduction of non-native species.
5. Project construction-related materials (fill, revetment rock, pipe, etc.) should not be stockpiled in, or in close proximity to aquatic habitats and should be protected from erosion (*e.g.*, with filter fabric, etc.), to prevent materials from being carried into waters by wind, rain, or high surf.
6. Fueling of project-related vehicles and equipment should take place away from the aquatic environment and a contingency plan to control petroleum products accidentally spilled during the project should be developed. The plan should be retained on site with the person responsible for compliance with the plan. Absorbent pads and containment booms should be stored on-site to facilitate the clean-up of accidental petroleum releases.
7. All deliberately exposed soil or under-layer materials used in the project near water should be protected from erosion and stabilized as soon as possible with geotextile, filter fabric or native or non-invasive vegetation matting, hydro-seeding, etc.

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 I*, 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 §13-169-45 Interim instream flow standard for Kauai. The Interim Instream Flow Standard for all streams on Kauai, as adopted by the commission on water resource management on June 15, 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. (Eff. Oct. 8, 1988).

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.