



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

May 17, 2022
Honolulu, Hawai'i

Approval of Stream Channel Alteration Permit Application (SCAP.5860.3)
BRE Turtle Bay Resort, LLC for its New Roadway Access Project
‘Ō‘io Stream, Kahuku, O‘ahu, TMK: (1) 5-7-001:048, 049, and 052

APPLICANT

BRE Turtle Bay Resort, LLC
57-091 Kamehameha Highway
Kahuku, HI 96731

LANDOWNER

Same

SUMMARY OF REQUEST

Commission staff is seeking approval for a Stream Channel Alteration Permit (SCAP.5860.3) by BRE Turtle Bay Resort, LLC, for their new roadway access project. The landowner proposes a new Conspan culvert (pre-cast culvert arches and wingwalls) approximately 30-feet wide by 8-feet high by 108-feet long to accommodate a new roadway across the subject stream. Concrete wing walls ranging from 30-feet to 92-feet in length will also be installed on both the upstream and downstream ends of the culverts to protect the roadway embankment from erosion. Riprap is proposed to be placed at a depth of 3-feet at grade along the wing walls and in scour prone areas at the upstream end of the structure.

BACKGROUND

On January 27, 2022, the landowner filed a complete stream channel alteration permit application which can be viewed on the Commission website at https://files.hawaii.gov/dlnr/cwrm/swreview/SCAP_5860_3.pdf.

LOCATION: Kahuku, O‘ahu. See **Figure 1**.

Figure 1: Location, ‘Ō‘io Stream, Kahuku, O‘ahu.

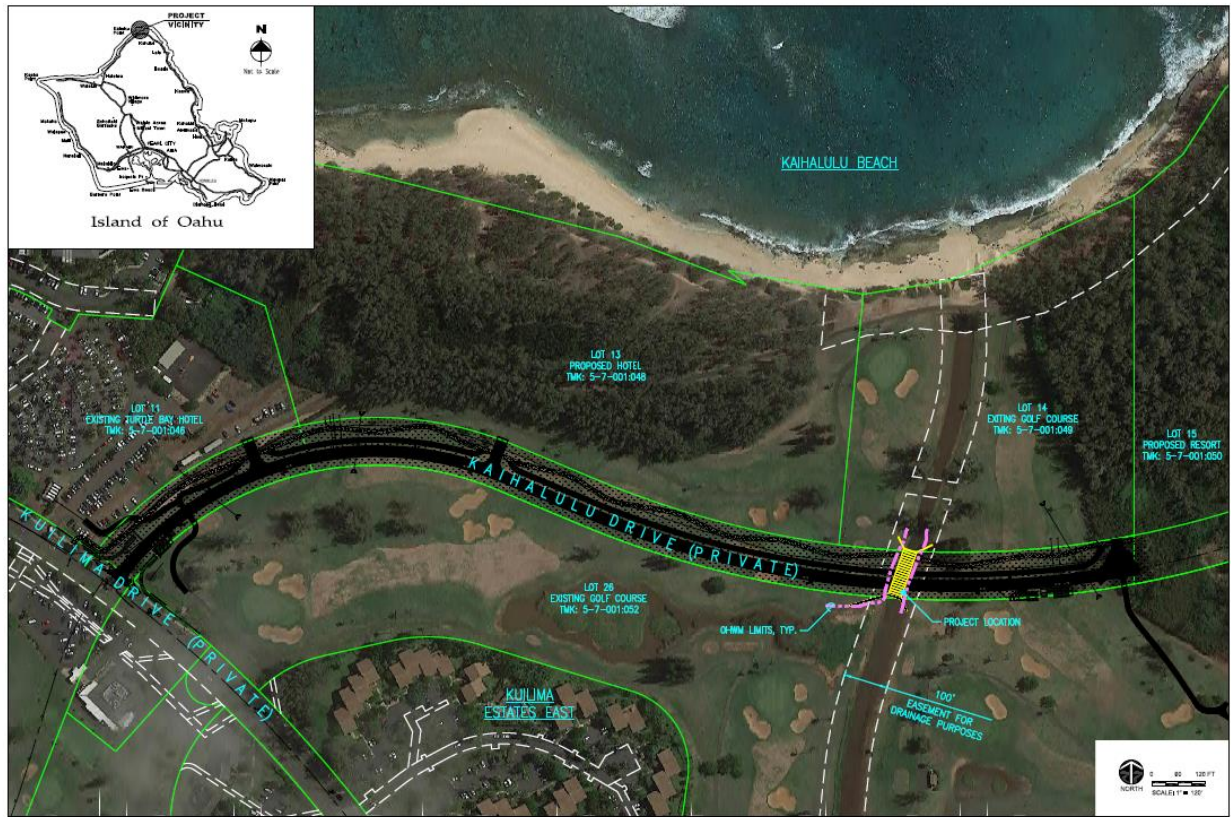


FIGURE A-1
LOCATION AND VICINITY MAP

TURTLE BAY ONSITE INFRASTRUCTURE IMPROVEMENTS - KAIHALULU DRIVE EAST / KAHUKU, OAHU, HAWAII

STREAM DESCRIPTION

According to the *Atlas of Hawaiian Watersheds and Their Aquatic Resources* (2008), the ‘Ō‘io Stream is a perennial stream about eight (8) miles long. The area of the watershed is 4.5 square miles with a maximum elevation of 1,680 feet. It is an unranked stream with few biota. See <https://www.hawaiiwatershedatlas.com/watersheds/oahu/31005.pdf>.

The National Hydrography Dataset classified the subject stream as intermittent. The Division of Aquatic Resources classified the stream as perennial. Within and downstream of the Project Area, ‘Ō‘io Stream is a *muliwai* (a brackish water estuary, usually with a beach berm across the mouth). Measured salinity levels ranged from 5.08 ppt to 15.65 ppt. The presence of the beach berm does not preclude a hydrologic surface connection between the stream and the ocean and the berm is naturally removed by winter swells and during major storm events. Upstream of the Project Area, the gulch loses most of its stream features (e.g., bed and banks) and functions as a grassed swale through the golf course. An adjacent golf course pond/wetland was constructed between 1983 and 1988 as part of the development of the resort and surrounding golf course. The pond/wetland connects to the stream via an excavated ditch through a man-made berm. Water levels within the project area typically range between 0-feet to 2-feet.

PROJECT DESCRIPTION

The landowner proposes a new Conspan culvert approximately 30-feet wide by 8-feet high by 108-feet long to accommodate a new roadway across the subject stream. Concrete wing walls ranging from 30-feet to 92-feet in length will also be installed on both the upstream and downstream ends of the culverts to protect the roadway embankment from erosion. Riprap is proposed to be placed at a depth of 3-feet at grade along the wing walls and in scour prone areas at the upstream end of the structure. See **Figure 2**.

Figure 2: Plan view of Conspan culvert installation.



AGENCY REVIEW COMMENTS

City and County of Honolulu, Department of Planning & Permitting (DPP): The DPP is currently reviewing the proposed project and recommend that the SCAP be conditioned on the approval of the plans by the DPP. See **Exhibit 1**.

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

Department of Hawaiian Home Land (DHHL): DHHL lands on O‘ahu comprise approximately 8,154 acres. Although none of its landholding are located in the vicinity of the project area, DHHL beneficiaries may exercise traditional and customary practices in the area of the project. Ten years has elapsed since the completion of the applicants’ Cultural Impact Assessment. As a result of ever-changing conditions at the shoreline below the project area and the potential discharge of contaminants to wetlands, streams, and the ocean in the surrounding area, follow up engagement and consultation is necessary with BRE Turtle Bay Resort, LLC’s Cultural Advisory Committee, the Office of Hawaiian Affairs, and other Native Hawaiian community groups whose traditional and customary rights and practices as well as nearshore marine resources are located in the surrounding area below the proposed project site. See **Exhibit 2**.

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

Department of Health (DOH): A summary of DOH comments are as follows: 1) Based on information contained in Exhibit C of the SCAP Application, project proponent submitted a Pre-Construction Notification (PCN) to the U.S. Army Corps of Engineers (USACE), Honolulu District (POH) under the Department of the Army (DA) Nationwide Permits (NWP) #14 (Linear Transportation) under File No. POH-2021-00120. Only PCN (e-signed and dated September 16, 2021) was submitted as the Exhibit C. DA NWP verification/work authorization was not submitted; 2) The SCAP Applicant’s (or project proponent) intent is to cover the project under the DA 2017 NWP #14 authorization and to be covered under DOH/CWB’s conditional blanket Section 401 Water Quality Certification (WQC) File No. WQC0901.FNL.20 (issued on May 26, 2020); 3) Oio Stream is Classified as “Class 2, Inland waters” as “Stream” by DOH-CWB. Pursuant to Hawaii Administrative Rules (HAR), Title 11, Chapter 54, §11-54-3(b)(2); 4) The project proponent must ensure the compliance with that “[T]he Conspan culvert system will be designed to retain a natural stream bottom and will be sized to accommodate a 100-year flood event” statement as specified in the second paragraph of item 30 and ensures there will be no “concrete lining any section of natural streambed or bank” – bioengineering design is recommended; 5) If the project cannot be verified or work cannot be authorized under 2017 DA NWP #14 or DA NWP, an individual WQC is required; and 6) DOH/CWB recommends all Applicants who submits request for a WQC obtaining an electric signature approval from the DOH. The DOH comment letter is attached as **Exhibit 3**.

CWRM Staff Response: The 2021 Nationwide Permits (NWP) are now in effect, the project will be authorized under the 2021 NWP #14 instead of the 2017 NWP referenced in Mr. Chen’s comments. A blanket Water Quality Certification (WQC) for the 2021

NWP has been issued so staff anticipates the project will receive coverage under the new blanket WQC. Staff believes that DOH review is satisfied.

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

DLNR, Aquatic Resources: No comments received.

DLNR, Engineering: No comments received.

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

DLNR, Historic Preservation (SHPD): The Archaeological Plan is well written and meets the minimum requirements of HAR §13-279-4. **It is accepted. SHPD hereby notifies** the DPP that construction activities for the current project shall proceed in accordance with the approved monitoring plan. The SHPD comment letter is attached as **Exhibit 4**.

CWRM Staff Response: Staff believes that SHPD review is satisfied.

DLNR, Land Division: Had no comments.

DLNR, State Parks: No comments received.

Office of Hawaiian Affairs: No comments received.

US Army Corps of Engineers: No comments received.

US Fish and Wildlife Service (FWS): There is no federally designated critical habitat within the immediate vicinity of the proposed project. Our data indicate the following federally listed species may occur or transit through the vicinity of the proposed project area: the endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*); the endangered Hawaiian petrel (*Pterodroma sandwichensis*), endangered Hawai‘i distinct population segment (DPS) of band-rumped storm-petrel (*Oceanodroma castro*), and threatened Newell’s shearwater (*Puffinus auricularis newelli*) (hereafter collectively referred to as Hawaiian seabirds); and the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*), endangered Hawaiian coot (*Fulica alai*), endangered Hawaiian gallinule (*Gallinula galeata sandvicensis*), and the endangered Hawaiian duck (*Anas wyvilliana*) (hereafter collectively referred to as Hawaiian waterbirds). Bird species federally protected under the Migratory Bird Species Act may also occur in the proposed project area. The FWS comment letter is attached as **Exhibit 5**.

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. Concur and added as a special condition.

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.

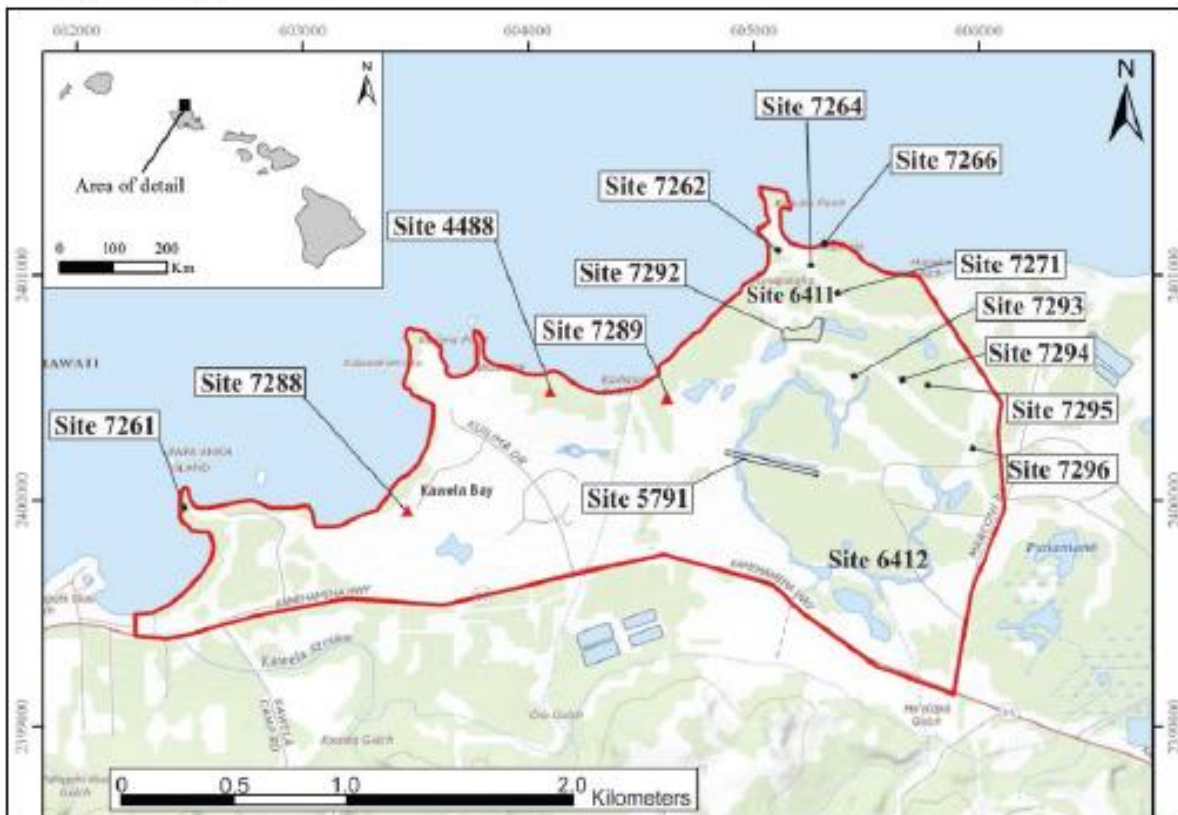
The Applicant stated “A Cultural Impact Assessment (CIA) dated August 2012 was prepared in support of the 2013 FSEIS. The CIA found that the TBR property and surrounding areas contain an array of cultural resources that are currently used for traditional cultural practices, including marine food sources, medicinal plants, plants used in crafts, wood for woodcarving, and salt for various uses. Also, the land and sea are used for a variety of traditional and non-traditional sports and recreational activities such as swimming, diving, fishing, surfing, and canoeing. With respect to the current Project Area there are no significant cultural, historical and natural resources in which traditional and customary native Hawaiian rights are exercised. The closest such activities take place offshore in shallow waters approximately 500 to 700 feet to the north and east of the Project Area. ASM Affiliates has completed the most recent archaeological work within the TBR development area and the locations of all the archaeological sites slated for preservation relative to the current Project Area are shown below (See **Figure 3**). There are no known archaeological sites within the Project Area, and ASM Affiliates has also completed an Archaeological Monitoring Plan that has been accepted by SHPD, which will be followed during project implementation. A copy of SHPD’s acceptance letter for the Archaeological Monitoring Plan along with SHPD’s letters accepting the other mitigation plans prepared for TBR are provided in Exhibit B.”

CWRM Staff Response: No comments were received by DLNR Aha Moku. No comments were received 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. Commission staff offers no further action as can be identified.

Figure 3: Excerpt of SCAP application; Known archaeological sites slated for preservation/protection within TBR development area (ASM Affiliates, 2020).

<i>Site No.*</i>	<i>Formal Type</i>	<i>Function</i>	<i>Age</i>
4488	Human remains	Burial	Prehistoric/early historic
5791	O. R. & L. railroad grade	Transportation	Historic
6411	Kahuku Point Archaeological Area/ Subsurface cultural deposit	Habitation/burial	Precontact
6412	Punaho'olapa Marsh	Agriculture/resource area	Prehistoric/early historic
7261	Concrete structure	Gun position	Historic
7262	Concrete slab	Indeterminate	Historic
7264	Revetment	Storage	Historic
7266	Concrete pier blocks	Indeterminate	Historic
7271	Asphalt area	Transportation	Historic
7288	Human remains	Burial	Prehistoric
7289	Cultural deposit with human remains	Habitation/burial	Prehistoric
7292	Subsurface cultural deposit	Habitation	Prehistoric
7293	Subsurface cultural deposit	Habitation	Prehistoric
7294	Subsurface cultural deposit	Habitation	Prehistoric
7295	Subsurface cultural deposit	Habitation	Prehistoric
7296	Subsurface cultural deposit	Habitation	Prehistoric

* Site Nos. preceded by prefix 50-80-02-



- 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, “Marine and Terrestrial Resources. No impacts to terrestrial resources are anticipated as none have been identified to occur within the Project Area. Potential impacts to near shore marine resources will be mitigated during construction through the implementation of a best management practices plan that will restrict the discharge of contaminants to wetlands, streams, and the ocean. The project will also be subject to the conditions of regulatory permits and controls, such as a Department of the Army Nationwide Permit, Section 401 Water Quality Certification, NPDES permit, State Water Quality Standards, and the City and County of Honolulu’s Rules Relating to Water Quality. In the long-term, all future development will be subject to State Water Quality Standards and the City’s Rules Relating to Water Quality. Moreover, the Applicant and/or its successors will be responsible for preparing a Coastal Resources Management Plan and developing an education program to be implemented with the future build out of the resort. Contemporary Use of Land and Sea. No impacts on contemporary and ancient versions of traditional activities as well as non-traditional activities or uses of the land and sea are anticipated with this project. Access to the shoreline areas and other areas used for traditional and non-traditional activities will be maintained during construction and generous shoreline setbacks provide unencumbered coastal access into the future. The Applicant will provide alternate access routes to near shore marine resources and activities should current routes be obstructed during construction.”

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, “The owners at the time the 2013 SEIS (Supplemental Environmental Impact Statement) was prepared re-reinforced meaningful community relationship with the public and particularly with the range of stakeholders involved with the lands at TBR. As a result, extensive public outreach went into the preparation of the accepted SEIS. Engagement strategies included individual and small talk story sessions, group meetings, traditional public meetings, convening of a Cultural Advisory Council and the Kahuku Burial Committee, establishing a website, public notices, and ethnographic interviews. What ultimately transpired was a commitment to reduce the proposed 3,500 units to only 725 units reflecting a significantly less density and a more culturally and environmentally sensitive approach to development in the area. Hundreds of acres were also entered into a conservation easement further reflecting the collaboration between the owners, government leaders, and North Shore community groups. The Applicant shares the same commitment and desire as its predecessor to maintain a meaningful relationship with the community and stakeholders, and to ensure a more culturally and environmentally sensitive approach to development is implemented. As such, the Applicant will continue to build off previous outreach efforts and will continue to consult with the community and numerous stakeholders to implement the previously defined recommendations

that will reasonably protect cultural, historical, and natural resources at TBR, including traditional and customary Native Hawaiian rights.”

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 Project Area is located within the Special Management Area and a permit was approved on Nov. 1, 1986 pursuant to Chapter 25, Revised Ordinances of Honolulu. In accordance with HRS §343-5(a) due to the use within a shoreline area, a finding of no significant impact was published in the March 8, 2003 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(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 Department of Health, Clean Water Branch, provided comments regarding their permit requirements in **Exhibit 3**. Staff believes that DOH review is satisfied.*

- (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 this stream is an unmeasured amount and the status quo of streamflow conditions on the effective date of this standard (1989), 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 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 no other stream diversions located on ‘Ō‘io Stream.

RECOMMENDATION

That the Commission:

1. Approve a Stream Channel Alteration Permit (SCAP.5860.3) Application subject to the standard conditions in **Exhibit 6** and the special conditions below.
 - a. A copy of the DPP plan approval must be sent to CWRM prior to issuance of the SCAP.
 - b. Prior, during and post engagement and consultation is required with BRE Turtle Bay Resort, LLC’s Cultural Advisory Committee, the Office of Hawaiian Affairs, and other Native Hawaiian community groups whose traditional and customary rights and practices may be impacted.
 - c. To avoid and minimize impacts to the endangered Hawaiian hoary bat we recommend that you 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); Do not use barbed wire for fencing.
- d. To avoid and minimize potential project impacts to seabirds we recommend that you fully shield all outdoor lights so the bulb can only be seen from below; 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.
 - e. To avoid and minimize potential project impacts to Hawaiian waterbirds we recommend 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 regarding work in aquatic environments that include:
 - i. 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 3 days of project initiation and after any subsequent delay of work of 3 or more days (during which the birds may attempt to nest).
 - ii. If a nest or active brood is found contact the U.S. Fish and Wildlife Service within 48 hours for further guidance.
 - iii. 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.
 - iv. 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.

Ola i ka wai,



M. KALEO MANUEL
Deputy Director

Exhibits:

1. City and County of Honolulu, Department of Planning and Permitting, dated March 28, 2022.
2. Department of Hawaiian Home Lands comment letter, dated April 6, 2022.
3. Department of Health comment letter via email, dated March 18, 2022.
4. State Historic Preservation comment letter, dated November 13, 2020.
5. U.S. Fish and Wildlife Service comment letter, dated March 21, 2022.
6. Standard Stream Channel Alteration Permit Conditions.
7. Legal Authorities.

Staff Submittal
'Ō'io Stream, Kahuku, O'ahu

May 17, 2022

APPROVED FOR SUBMITTAL:

Suzanne D. Case

SUZANNE D. CASE
Chairperson

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
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RICK BLANGIARDI
MAYOR



DEAN UCHIDA
DIRECTOR
DAWN TAKEUCHI APUNA
DEPUTY DIRECTOR
EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

March 28, 2022

2022/ELOG-570

Mr. M. Kaleo Manuel, Deputy Director
Commission on Water Resource Management
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, Hawaii 96809

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2022 APR -1 PM 2:27

Dear Mr. Manuel:

Stream Channel Alteration Permit Application (SCAP.5860.3)
BRE Turtle Bay Resort LLC, New Roadway Access Project
'Ō'io Stream (East Main Drain), Kahuku
Tax Map Key (TMK): 5-7-001: 048, 049 and 052

This is in response to your letter dated March 16, 2022 requesting the review and comments of the Department of Planning and Permitting (DPP) regarding the above-referenced Stream Channel Alteration Permit (SCAP) application.

The DPP is currently reviewing the construction plans for the proposed project. We recommend the SCAP be conditioned on the approval of the plans by the DPP.

Should you have any questions, please contact Mario Siu-Li, of our staff, at (808)768-8098.

Very truly yours,

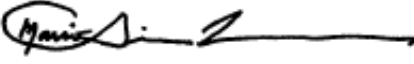

for Dean Uchida
Director

EXHIBIT 1

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P O BOX 1879
HONOLULU HAWAII 96805

April 6, 2022

MEMORANDUM

Ref.: PO-22-106

TO: Suzanne D. Case, Chairperson
Commission on Water Resource Management

COPY TO: Donald Goodman
BRE Turtle Bay Resort, LLC

FROM: William J. Aila, Jr., Chairman *WJA*
Hawaiian Homes Commission

RE: Stream Channel Alteration Permit Application
(SCAP.5860.3), BRE Turtle Bay Resort, LLC, New Roadway
Access Project, 'Ō'io Stream (East Main Drain), Kahuku
O'ahu, TMK: (1) 5-7-001:048, 049, and 052

The Department of Hawaiian Home Lands (DHHL) has reviewed SCAP No. 5860.3 'Ō'io Stream (East Main Drain), Kahuku O'ahu, TMK: (1) 5-7-001:048, 049, and 052.

We appreciate the opportunity to review this application and offer the following background and requests for action.

Background

The following points serve as context for our requests on this SCAP.

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.

EXHIBIT 2

Ms. Suzanne D. Case, Chairperson
April 6, 2022
Page 2 of 2

DHHL lands on O'ahu comprise approximately 8,154 acres. Although none of its landholdings are located in the immediate vicinity of the project area, DHHL beneficiaries may exercise traditional and customary practices in the surrounding area of the project.

DHHL understands that ten years have elapsed between the completion of the Applicant's August 2012 Cultural Impact Assessment in support of its 2013 FSEIS and its January 2022 SCAP Application submittal to the Commission. DHHL also understands that the North Shore of O'ahu and its communities are especially vulnerable to coastal erosion and flooding due to climate change and sea level rise. Such coastal hazards are leading to disproportionate impacts to frontline populations (those living near the shoreline) including Native Hawaiian communities with strong identity and place-based ties to coastal resources near the project area.

The Applicant has also articulated, in its SCAP application, their commitment to build off previous outreach efforts and continue to consult with the community and numerous stakeholders to implement recommendations that will reasonably protect cultural, historical, and natural resources at Turtle Bay Resort, including traditional and customary Native Hawaiian rights.

Because DHHL's beneficiaries may exercise traditional and customary practices in the proposed project area, DHHL has interest in this SCAP.

Requests for the applicant and Commission

Based on the above, the department offers a request regarding this SCAP: As a result of ever-changing conditions at the shoreline below the project area and the potential discharge of contaminants to wetlands, streams, and the ocean, in the surrounding area, follow up engagement and consultation is necessary, specifically with BRE Turtle Bay Resort, LLC's Cultural Advisory Committee, the Office of Hawaiian Affairs, and other Native Hawaiian community groups whose traditional and customary rights and practices as well as nearshore marine resources are located in the surrounding area below the proposed project site.

DHHL appreciates the opportunity to offer comments on this SCAP. Please contact Andrew Choy, Planning Program Manager, at andrew.h.choy@hawaii.gov for further information.

From: [Chen, Edward](#)
To: [Alakai, Rebecca R](#)
Cc: [Wong, Alec Y](#); [Lum, Darryl C](#); [CleanWaterBranch](#); [Saito, Mona](#); [Yoda, Kathy S](#); [Linda.Speerstra@usace.army.mil](#); [Chen, Edward](#)
Subject: Surface Water Permit Application Review: SCAP.5860.3 Oio Turtle Bay
Date: Friday, March 18, 2022 12:38:43 PM

Good Afternoon, Ms. Alakai:

The Department of Health (DOH) Clean Water Branch (CWB) has briefly reviewed information contained in SCAP.5860.3 Application (e-signed and dated January 19, 2022) and is provide the following comments:

1. Based on information contained in Exhibit C of the SCAP Application, project proponent submitted a Pre-Construction Notification (PCN) to the U.S. Army Corps of Engineers (USACE), Honolulu District (POH) under the Department of the Army (DA) Nationwide Permits (NWP) #14 (Linear Transportation) under File No. POH-2021-00120. Only PCN (e-signed and dated September 16, 2021) was submitted as the Exhibit C. DA NWP verification/work authorization was not submitted. Please contact POH at (808) 835-4303 regarding the status of this NWP #14 verification. Pursuant to Condition 4 of File No. WQC0901.FNL.20, issued on May 26, 2020, the DOH/CWB cannot find records of receiving any e-mail (through cleanwaterbranch@doh.hawaii.gov and darryl.lum@doh.hawaii.gov) notification with the required pdf copy of issued final verification from USACE POH.
2. The SCAP Applicant's (or project proponent) intent is to cover the project under the DA 2017 NWP #14 authorization and to be covered under DOH/CWB's conditional blanket Section 401 Water Quality Certification (WQC) File No. WQC0901.FNL.20 (issued on May 26, 2020). We note that an Individual Section 401 WQC is required from the DOH/CWB if: (a) the project proponent did not receive a NWP #14 verification/work authorization before March 19, 2022 – the date 2017 NWP #14 expires; or (b) the project was not determined to be covered by POH under DOH/CWB's conditional blanket WQC by March 18, 2022 – the date WQC0901.FNL.20 expires (which is today) or (c) the project was not under construction or under contract to construct by March 19, 2022.
3. Oio Stream is Classified as "Class 2, Inland waters" as "Stream" by DOH-CWB. Pursuant to Hawaii Administrative Rules (HAR), Title 11, Chapter 54, §11-54-3(b)(2) "[T]he objective of class 2 waters is to protect their use for recreational purposes, the support and propagation of aquatic life, agricultural and industrial water supplies, shipping, and navigation. The uses to be protected in this class of waters are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters." Per condition 3.e of WQC0901.FNL.20, the Applicant (or project proponent) shall "[E]nsure that the activities will not, after the completion of the activity, interfere or become injurious to any designated uses and/or existing uses of the receiving State water. Any such post-activity adverse impacts to the designated uses and/or existing uses of the receiving State water is a violation of HAR Chapter 11-54." The issuance of subject SCAP must ensure the compliance of objective and uses to be protected under HAR, §11-54-3(b)(2).
4. The project proponent must ensure the compliance with that "[T]he Conspan culvert system will be designed to retain a natural stream bottom and will be sized to accommodate a 100-year flood event" statement as specified in the second paragraph of item 30 and ensures

EXHIBIT 3

there will be no "concrete lining any section of natural streambed or bank" - bioengineering design is recommended.

5. If the project cannot be verified or work cannot be authorized under 2017 DA NWP #14 or DA NWP, an individual WQC is required and the "CWB Individual Section 401 WQC Form, VERSION 1.4" can be found in

<https://eha-cloud.doh.hawaii.gov/epermit/app/#/formversion/b01bcdfa-78eb-490e-8855-749bafeb30ae>.

6. DOH/CWB recommends all Applicants who submits request for a WQC obtaining an electric signature approval from the DOH. Electronic Signature Subscriber Agreement. VERSION 3.0 and Instruction can be found in:

<https://eha-cloud.doh.hawaii.gov/epermit/app/#/formversion/fa666bf3-2b31-40fc-b52e-9c29c1d10d7e>.

If you have any questions, please call me at (808) 586-4309.

Edward Chen
Environmental Engineer
Clean Water Branch
State of Hawaii Department of Health
Phone: (808) 586-4309

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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 RESOURCES MANAGEMENT
ROBERT K. MASUDA
FIRST DEPUTY
M. KALEO MANUEL
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAREOLANIS ISLAND RESERVE COMMISSION
LAND
STATE PARKS

November 13, 2020

Kathy K. Sokugawa., Director
Department of Permitting and Planning
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

Samantha Canon
BRE Turtle Bay Development, LLC
57-091 Kamehameha Highway
Kahuku, HI 96731
scanon@tbrdevelopment.com

Dear Ms. Sokugawa and Ms. Canon:

**SUBJECT: Chapter 6E-42 Historic Preservation Review –
Subdivision Application No. 2014/SUB-145 - Turtle Bay Resort
Archaeological Monitoring Plan
‘Ōpana, Kawela, Hanakaaoe, Ulupehupehu, Ō‘io, Punalau, and
Kahuku Ahupua‘a, Ko‘olaupua District, Island of O‘ahu.
TMK: (1) 5-6-003:054-062; (1) 5-7-001:013, 027-029, and 043-053; and
(1) 5-7-006:024-030**

IN REPLY REFER TO:
Log No. 2019.00055
Doc No. 2011GC06
Archaeology

This letter provides the State Historic Preservation Division’s (SHPD’s) review of the archaeological monitoring plan (AMP) titled, *Archaeological Monitoring Plan for Activities within the Turtle Bay Resort Development Area, ‘Ōpana, Kawela, Hanakaaoe, Ulupehupehu, Ō‘io, Punalau, and Kahuku Ahupua‘a, Ko‘olaupua District, Island of O‘ahu, TMK: (1) 5-6-003:054-062; (1) 5-7-001:013, 027-029, and 043-053; and (1) 5-7-006:024-030* (Gotay and Rechtman, December 2018).

ASM Affiliates (ASM) prepared this draft archaeological monitoring (AMP) on behalf of BRE Turtle Bay Development, LLC, in support of all proposed development activities that include subsurface disturbance within the Turtle Bay Resort development area on be. The Turtle Bay Resort property, totaling 840 acres is owned by a series of related entities, all private, including BRE Turtle Bay Development LLC (BRE), BRE Turtle Bay Resort LLC, and BRE Mauka Lands LLC. The resort property is bounded to the south by Kamehameha Highway (Hwy 83), to the east by Marconi Road, and to the west and North by the ocean.

The proposed development will expand the existing resort to include some combination of resort hotels, condo hotels, residential, commercial and recreation development on three defined, entitled and zoned oceanfront and other supporting infrastructure sites; as well as parks, shoreline setbacks, and public shoreline access points.

In 2014, the previous owner, Turtle Bay Resort LLC, agreed to designate more than 600 acres (out of the total 840 acres) as a conservation easement, to be called Punaho‘olapa Wildlife Preserve. The previous owner and current owner each agreed, in consultation with SHPD, to prepare and implement four archaeological mitigation plans: a data recovery plan, a burial treatment plan, an archaeological monitoring plan (current document), and an archaeological preservation plan.

Kathy Sokugawa and Samantha Canon
November 13, 2020
Page 2

The burial treatment plan was submitted to the O‘ahu Island Burial Council (OIBC) which made a determination of preservation for Sites 50-80-02-4488, 50-80-02-6411, 50-80-02-7289, and the Daniel Pahu grave site and reinternment area; relocation of Site 50-80-02-7288 to the Daniel Pahu grave site; and recommended that SHPD accept the BTP. SHPD accepted the BTP in a letter dated October 12, 2018 (Log No. 2018.02260, Doc. No. 1810RKH07).

The AMP stipulates the following monitoring procedures:

- A coordination meeting shall be conducted between construction team, representatives of the project proponent and the monitoring archaeologist(s) prior to construction activities so the construction team is aware of the plan. At this time, the archaeologist shall advise the participants of the monitor's responsibilities for daily documentation of construction activities, the ability to temporarily stop construction to investigate potential cultural remains, and the documentation requirements;
- On-site monitoring shall be conducted for all project-related ground disturbing activities. One monitor is required for each piece of ground altering machinery during this project;
- The archaeological monitor has the authority to temporarily halt all activity in the area in the event of a potential historic property being identified, or to record archaeological information for cultural deposits or features;
- If non-burial historic properties are identified, documentation shall include, as appropriate, recording stratigraphy using USDA soil descriptions, GPS point collection with a receiver capable of sub meter accuracy, recordation of feature contents through excavation or sampling of features, screening of features, representative scaled profile drawings, photo documentation using a scale and north arrow, and appropriate laboratory analysis of collected samples and artifacts. Additionally, photographs and profiles of excavations shall be collected from across the project area even if no significant historic properties are encountered. Representative profiles shall be a minimum of two-meter-long sections;
- If human remains are identified, work will cease in the vicinity and the find shall be secured, and provisions outlined within the Hawaii Revised Statutes (HRS) §6E-43 and HAR §13-300-40, and any SHPD directives, shall be followed;
- Project materials will be stored temporarily with ASM and final curation facilities shall be determined in consultation with SHPD and the landowner;
- Any samples suitable for radiocarbon analysis shall be submitted for wood taxa identification prior to radiocarbon dating;
- Final curation of collected items shall be determined in consultation with the landowner and the SHPD; and
- Any deviation from these provisions shall occur only in consultation with the SHPD.

The plan is well written and meets the minimum requirements of HAR §13-279-4. It is accepted. Please send one hard copy of the document, clearly marked FINAL, along with a copy of this letter and a text-searchable PDF version to the Kapolei SHPD office, attention SHPD Library. Please also provide a PDF copy of the plan to [Lehua K.Soare@hawaii.gov](mailto:Lehua.K.Soare@hawaii.gov).

SHPD hereby notifies the DPP that construction activities for the current project shall proceed in accordance with the approved monitoring plan. The permit has already been issued.

Upon completion of archaeological monitoring fieldwork, SHPD looks forward for review and acceptance a brief end of field work report within 30 days of completion of archaeological field monitoring. SHPD looks forward to reviewing an archaeological monitoring report meeting the requirements of HAR §13-279-5 within 60 days after completion of fieldwork.

Please contact Dr. Susan A. Lebo, Archaeology Branch Chief, at Susan.A.Lebo@hawaii.gov or at (808) 321-9000, for any questions regarding this letter.

Aloha,

Alan Downer

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

Staff Submittal
'Ō'io Stream, Kahuku, O'ahu

May 17, 2022

Kathy Sokugawa and Samantha Canon
November 13, 2020
Page 2

cc: Bob Rechtman, brechtman@asmaffiliates.com
Wallace Carvalho, wcarvalho@honolulu.gov
Perry Tamayo, ptamayo@honolulu.gov
Kanani Padeken, kpadeken@honolulu.gov

May 17, 2022



United States Department of the Interior

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



March 21, 2022

In Reply Refer To:
2022-0022215-S7-001

Ms. Rebecca Alakai
Commission on Water Resource Management
Department of Land and Natural Resources
State of Hawai'i
P.O. Box 621
Honolulu, Hawai'i 96809

Subject: Species List for the BRE Turtle Bay Resort Stream Channel Alteration TMK: (1) 5-7-001:048, 049, and 052 Kahuku, O'ahu

Dear Ms. Alakai:

Thank you for your email of March 16, 2022, requesting a species list and guidance for the proposed construction of a new 30 ft x 8 ft x 108 ft Conspan culvert across the 'Ō'io Stream (East Main Drain), TMK: (1) 5-7-001:048, 049, and 052, on the island of O'ahu. The proposed project is located in Kahuku and consists of the installation of concrete wing walls ranging from 30 ft to 92 ft in length on both the upstream and downstream ends of the culverts to protect the roadway embankment from erosion. Riprap is proposed to be placed at a depth of 3 ft at grade along the wing walls and in scour prone areas at the upstream end of the structure.

This letter has been prepared under the authority of and in accordance with provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (ESA). Based on this authority, we offer the following comments for your consideration. We have reviewed the information you provided and pertinent information in our files, as it pertains to listed species and designated critical habitat in accordance with section 7 of the ESA. There is no federally designated critical habitat within the immediate vicinity of the proposed project. Our data indicate the following federally listed species may occur or transit through the vicinity of the proposed project area: the endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*); the endangered Hawaiian petrel (*Pterodroma sandwichensis*), endangered Hawai'i distinct population segment (DPS) of band-rumped storm-petrel (*Oceanodroma castro*), and threatened Newell's shearwater (*Puffinus auricularis newelli*) (hereafter collectively referred to as Hawaiian seabirds); and the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*), endangered Hawaiian coot (*Fulica alai*), endangered Hawaiian gallinule (*Gallinula galeata sandvicensis*),

INTERIOR REGION 9
COLUMBIA-PACIFIC NORTHWEST

IDAHO, MONTANA*, OREGON*, WASHINGTON

*PARTIAL

INTERIOR REGION 12
PACIFIC ISLANDS

AMERICAN SAMOA, GUAM, HAWAII, I.

NORTHERN MARIANA ISLANDS

and the endangered Hawaiian duck (*Anas wyvilliana*) (hereafter collectively referred to as Hawaiian waterbirds). Bird species federally protected under the Migratory Bird Species Act may also occur in the proposed project area.

Hawaiian hoary bat

The Hawaiian hoary bat roosts in woody vegetation across all islands and will leave their young unattended in trees and shrubs when they forage. If trees or shrubs 15 feet or taller are cleared during the pupping season, June 1 through September 15, there is a risk that young bats could inadvertently be harmed or killed, since they are too young to fly or move away from disturbance. Hawaiian hoary bats forage for insects from as low as 3 feet to higher than 500 feet above the ground and can become entangled in barbed wire used for fencing.

To avoid and minimize impacts to the endangered Hawaiian hoary bat we recommend you incorporate the following applicable measures 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).
- Do not use barbed wire for fencing.

Hawaiian seabirds

Hawaiian seabirds may traverse the project area at night during the breeding, nesting and fledging seasons (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 light attraction.

To avoid and minimize potential project impacts to seabirds we recommend you incorporate the following measures into your project description:

- Fully shield all outdoor lights so the bulb can only be seen from below.
- 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.

Hawaiian waterbirds

Hawaiian waterbirds are currently found in a variety of wetland habitats including freshwater marshes and ponds, coastal estuaries and ponds, artificial reservoirs, kalo or taro (*Colocasia esculenta*) lo‘i or patches, irrigation ditches, sewage treatment ponds, and in the case of the Hawaiian duck, montane streams and marshlands. 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 incorporate the following 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 regarding work in aquatic environments into the project design (see enclosure).
- 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 3 days of project initiation and after any subsequent delay of work of 3 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.

We appreciate your efforts to conserve protected species. If you have questions regarding this letter, please contact Charmian Dang, Fish and Wildlife Biologist (phone: 808-792-9400, email: Charmian_Dang@fws.gov). When referring to this project, please include this reference number: 2022-0022215-S7-001.

Sincerely,

AARON
NADIG

Island Team Manager
O'ahu, Kaua'i, Northwestern Hawaiian
Islands, and American Samoa

Digitally signed by
AARON NADIG
Date: 2022.03.21
13:05:50 -10'00'

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 drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit;
 - (C) The commission shall establish guidelines for processing and considering applications for stream channel alterations consistent with section 174C-93;

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. (Eff. May 4, 1992).

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.