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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

April 28, 2015
Waimea, Kaua'i

Authorize the Commission on Water Resource Management to
Conduct a Limited Meeting to View Portions of the
Kōke'e and Kekaha Ditch Irrigation Systems In Waimea, Kaua'i, Hawai'i

SUMMARY OF REQUEST:

The Commission on Water Resource Management (Commission) proposes to conduct a site visit to view portions of the Kōke'e and Kekaha Ditch Irrigation Systems in Waimea, Kaua'i, Hawai'i. This is not a regular Commission meeting. There will be no deliberations or decision making related to this site visit though public testimony will be allowed. Due to safety and accessibility concerns, the visit needs to be conducted as a "limited meeting."

BACKGROUND:

On July 24, 2013, Po'ai Wai Ola and West Kaua'i Watershed Alliance, through their attorneys Earthjustice, filed: 1) a Complaint for Dispute Resolution; 2) a Petition to Amend Interim Instream Flow Standards; and 3) a Complaint for Declaratory Order Against Waste in the Waimea River and its tributaries, Waimea, Hawai'i.

On May 27, 2014, the Commission executed a Contract for Professional Services with Element Environmental, LLC which included the following services: 1) Project management, coordination and meetings; 2) Literature research and base map preparation; 3) Conducting a physical condition survey (field work); 4) Conducting a water budget analyses; and 5) Report of findings.

On February 18, 2015, Steve Spengler of Element Environmental, LLC provided a project update to the Commission including an overview of the physical conditions of the Kōke'e and Kekaha Ditch Irrigation Systems and preliminary findings of ditch flow measurements.

ANALYSIS:

There is a need for the Commission to understand the physical topography and characteristics of an area where it is not practical or it is not safe for the public to attend a site visit, the law provides for “limited meetings.”

Haw. Rev. Stat. §92-31 provides for the limited meeting process as follows:

§92-3.1 Limited meetings. (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:

- (1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;
 - (2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and
 - (3) Notice of the limited meeting is provided in accordance with section 92-.
- (b) At all limited meetings, the board shall:
- (1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;
 - (2) Make the videotape available at the next regular meeting; and
 - (3) Make no decisions at the meeting. [L 1995, c 212, §1; am L 2008, c 20, §1]

It is important for the Commission to visit and see portions of the Kōke‘e and Kekaha Ditch Irrigation Systems to better understand the topography and extent of the issue. Some of the sites are safe for the public to attend and are publicly accessible; however, it may not be practicable for the public to attend every site due to vehicular and handicap accessibility and general public safety concerns.

On April 17, 2015, the Commission staff sent a Request for the Office of Information Practices’ Concurrence for a Limited Meeting along with a draft site visit agenda. The Office of Information Practices (OIP) responded later the same day concurring that the Commission could hold a limited meeting for the Kaua‘i site visit on the grounds of impracticability and waived the video tape requirement only for the car travel and hiking portions of the site visit (Exhibit 2). The OIP Concurrence was signed by Jennifer Brooks on behalf of Director Cheryl Kakazu Park with the understanding that the two-thirds (2/3) voting requirement would be met on the same day and prior to the limited meeting agenda (Exhibit 1.). All other portions of the site visit will be video recorded and made accessible via the Commission website.

A two-thirds (2/3) vote of all the votes that CWRM is entitled to is required in favor of holding the limited meeting. The failure to obtain the required number of votes will result in cancellation of the site visit.

Therefore, the Commission should approve a “limited meeting” for this site visit in accordance with the provisions of Haw. Rev. Stat. §92-3.1.

RECOMMENDATION:

Staff recommends that the Commission, pursuant to and consistent with Haw. Rev. Stat. §92-3.1:

1. Find that a “limited meeting” to visit portions of the Kōke‘e and Kekaha Ditch Irrigation Systems, as described in Exhibit 1, is necessary for practical and safety reasons.
2. Authorize a limited meeting to visit portions of the Kōke‘e and Kekaha Ditch Irrigation Systems provided it is conducted in accordance with the legal requirements set forth in the statutes and the OIP Concurrence response (Exhibit 2).

Respectfully submitted,


W. ROY HARDY
Acting Deputy Director

- Exhibit 1. Agenda for the Limited Meeting of the Commission on Water Resource Management to conduct a site visit to the Kōke‘e and Kekaha Ditch Irrigation Systems.
- Exhibit 2. Request for the Office of Information Practices’ Concurrence for a Limited Meeting sent and responded to on April 17, 2014.

APPROVED FOR SUBMITTAL:


CARTY S. CHANG
Interim Chairperson



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

**AGENDA
FOR THE LIMITED MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT**

DATE: April 28, 2015
TIME: 9:30 am – 4:00 pm
PLACE: Various Sites in West Kauai

The Commission on Water Resource Management (Commission) will conduct a site visit to the Kōke'e and Kekaha Ditch Irrigation Systems in connection with the complaint against waste in the Waimea River and its tributaries filed by Earthjustice on Behalf of Po'ai Wai Ola and the West Kauai Watershed Alliance.

The April 28, 2015 public site visit times and locations are outlined below. The limited meeting is open to the public but all times are tentative, parking is limited, and some field conditions are unsafe. Any member of the public who attends will be responsible for his / her own transportation, safety, and special access needs. Public testimony regarding the site visit will only be taken at the Waimea Neighborhood Center. 4WD vehicles may be required pending weather and road conditions.

A. ACTION ITEM

Waimea Neighborhood Center 9:30 am
4556 Makeke Road, Waimea HI 96796

Authorize the Commission on Water Resource Management to Conduct a Limited Meeting to View Portions of the Kōke'e and Kekaha Ditch Irrigation Systems in Waimea, Kaua'i, Hawai'i

Prior concurrence for the limited meeting as specified under agenda Item B was obtained from the Director of the Hawai'i State Office of Information Practices (OIP) to hold the West Kaua'i site visit tentatively scheduled for 9:45 a.m. to 4:00 p.m. on April 28, 2015 as a limited meeting according to HRS § 92-3.1. This is on the basis of impracticability and concerns regarding public safety in accommodating the public on the approximately six hour trek to show key aspects along publically accessible roads, lookouts, and viewable sites of the Kōke'e and Kekaha Ditch Irrigation Systems in West Kaua'i. Parking is limited and gathering along roadsides is unsafe. No decision-making is allowed. Videotaping of the sites will be conducted in accordance with HRS § 92-3.1(c).

*Restroom(s) available

EXHIBIT 1

West Kaua'i Site Visit
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A 2/3 vote of all the votes that CWRM is entitled to is required in favor of holding the limited meeting. The failure to obtain the required number of votes will result in cancellation of the site visit.

B. SITE VISITS

SITE # 1

Waimea Neighborhood Center 9:45 am (15 minutes)
 4556 Makeke Road, Waimea HI 96796 (See map)

Welcome and short briefing by Kekaha Agriculture Association (KAA) on the Kōke'e and Kekaha Ditch Systems.

SITE # 2

Waimea Canyon Lookout* 10:30 am (15 minutes)
 Heading north on Kōke'e Road (Hwy 550), (See map)
 Turn right ~0.3 miles after mile marker 10

Waimea Watershed with view of Waipo'o Falls (Kōke'e Stream). Flow in Kōke'e Stream is augmented by water returned from Kōke'e Ditch downstream of Kawaikoi, Waiakoali, and Kauaikinanā Stream Diversions.

SITE # 3

Pu'u Lua Reservoir* 11:00 am (20 minutes)
 Heading north on Kōke'e Road (Hwy 550), (See map)
 turn left at mile marker 12

Water from Kōke'e Ditch flows into Pu'u Lua Reservoir, which is located downstream of the sluice gate to Kauhao Gulch. The reservoir is maintained below 60 feet due to dam safety regulations and is used by the Division of Aquatic Resources (DAR) for sport fishing (trout are raised and released). Outflow from the reservoir continues towards the Pu'u Moe Divide.

[Lunch] 11:20 am – 12:00 pm

*Restroom(s) available

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SITE # 4

Pu'u Moe Ditch Divide 12:30 pm (30 minutes)

Heading south on Kōke'e Road (Hwy 550), (See map)
 ~0.4 miles after mile marker 10

Kōke'e Ditch downstream of Pu'u Lua Reservoir. Water is divided between the Department of Hawaiian Home Lands (DHHL) lessees and the Kōke'e Ditch towards Kitano Reservoir.

SITE # 5

Black Pipe Siphon Viewpoint 1:15 pm (20 minutes)

Heading south on Waimea Canyon Drive (Hwy 550), (See map)
 ~0.6 miles after mile marker 4

The Kekaha Ditch siphon conveys water from the eastern side of the valley to the western side. The siphon is located below the Mauka Hydropower Plant. Water continues in the Kekaha Ditch to the diversion point for the Menehune Ditch and on to the Mānā Plain.

SITE # 6

End of Koke'e Ditch 1:45 pm (20 minutes)

Heading south on Waimea Canyon Drive (Hwy 550), (See map)
 ~0.1 miles after mile marker 3

Water exiting Kōke'e Ditch flows downslope into Kekaha Ditch.

SITE # 7

Kekaha Ditch Crossing at Hwy 550 2:15 pm (15 minutes)

Heading south on Waimea Canyon Drive (Hwy 550), (See map)
 ~0.7 miles after mile marker 2

Kekaha Ditch downstream of Menehune Ditch withdrawal and before inflow from Kōke'e Ditch.

*Restroom(s) available

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SITE # 8

Public testimony on West Kauai Site Visit	2:45 pm – 4:00 pm~
Waimea Neighborhood Center	(See map)
4556 Makeke Road, Waimea HI 96796	

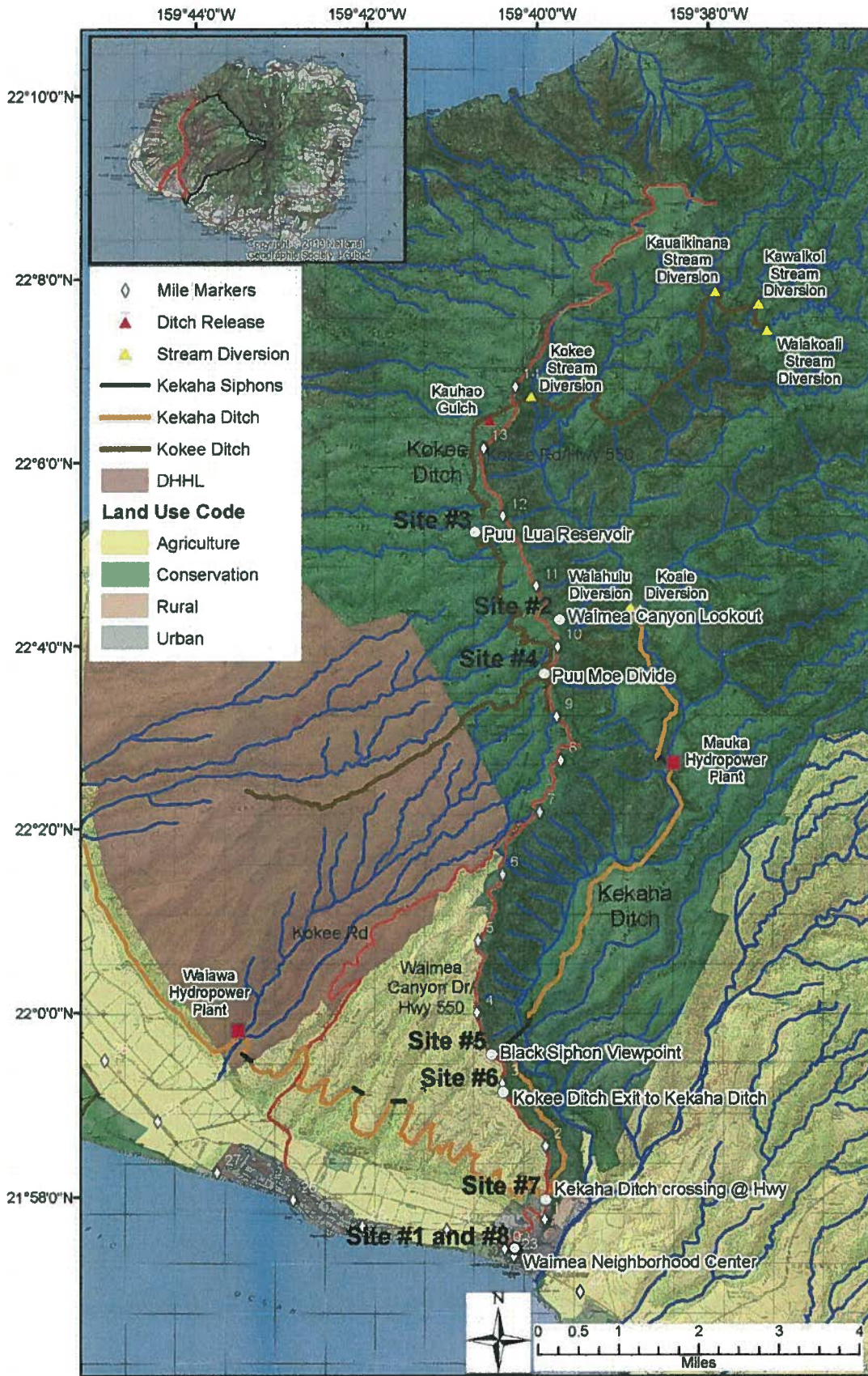
~ Public testimony period may end earlier if it is apparent there is no further testimony.

For further information, please contact the Commission on Water Resource Management.

Commission on Water Resource Management
1151 Punchbowl St. Rm 227
Honolulu, Hawaii 96813
ph (808) 587-0214
Web: <http://dlnr.hawaii.gov/cwrm/>
e: dlnr.cwrm@hawaii.gov

Site visit agenda and map are also available on the CWRM website.
<http://dlnr.hawaii.gov/cwrm/newsevents/meetings/>

*Restroom(s) available



**Request for the Office of Information Practices' Concurrence
for a Limited Meeting
(HRS § 92-3.1)**

Date: April 17, 2015

Name of Board: Commission on Water Resource Management
Contact Person: Roy Hardy Tel: 587-0274
Fax: 587-0219 Email: roy.hardy@hawaii.gov
Board's Attorney: Colin Lau Tel: 586-2991
Fax: 586-1239 Email: _____
Date of Proposed Limited Meeting: April 28, 2015
Place/Location of Proposed Limited Meeting: _____
Island of Kaua'i - Waimea area - Kōke'e and Kekaha Ditch Systems

1. Type of Limited Meeting:

- ~~location is dangerous to health or safety of the public~~
- public attendance is impracticable

2. Board has, after sufficient public deliberation at a prior regular meeting, determined by vote of two-thirds of all voting members that:

- ~~the limited meeting is necessary and the location would be dangerous to the health or safety of the attending public~~
- the on-site inspection is necessary and public attendance is impracticable

Board has made this determination based upon the following:
Remote roadside stops with live traffic and no ADA, public transportation, or parking availability.

3. Notice of the Limited Meeting under HRS § 92-7 (attach agenda):

- was filed on _____
- will be filed by April 22, 2015

4. Required Videotape of the Limited Meeting:

- will be made
- Board requests a waiver of this requirement because:
Is an open meeting at publically accessible sites

CONCURRENCE

The Director of the Office of Information Practices has reviewed the request made for a Limited Meeting and:

- concurs *on grounds of: impracticability*
- does not concur

- waives the videotape requirement *only as to car travel/hiking portion*

If concurrence is granted above, the Board must:

1. provide notice in accordance with HRS § 92-7;
2. make no decisions at the Limited Meeting;
3. comply with all requirements of HRS § 92-9; and
4. videotape the meeting and make it available at its next regular meeting, unless this requirement is waived above.



Cheryl Kakazu Park
Director