



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

September 20, 2022
Honolulu, Hawai'i

Approval of Stream Diversion Works Permit (SDWP.5804.6) Application and Special Conditions to Abandon Registration of Stream Diversion Works and Declaration of Water Use No. 475.6, North Waiehu Ditch Intake by the Wailuku Water Co., LLC and Find that SDWP.5804.6 is Exempt from Hawaii Revised Statutes, Chapter 343 North Waiehu Stream, Waiehu Surface Water Management Area, Maui
Tax Map Key: (2) 3-2-014:001

APPLICANT
Wailuku Water Company, LLC
PO Box 2790
Wailuku, HI 96793

LANDOWNER
Wailuku Water Company, LLC
PO Box 2790
Wailuku, HI 96793

Board of Water Supply
200 South High St. 5th Floor
Wailuku, HI 96793

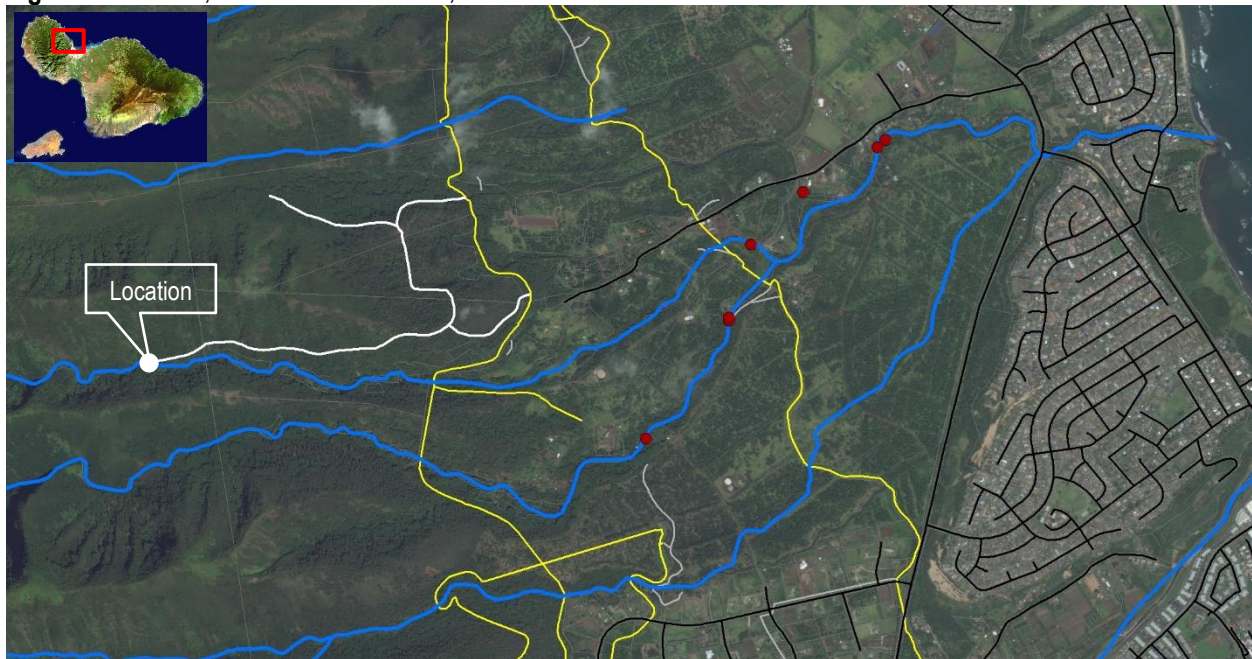
SUMMARY OF REQUEST

Approve Stream Diversion Works Permit (SDWP.5804.6) Application that proposes to abandon Registration and Declaration of Water Use No. 475.6 North Waiehu ditch intake on the North Waiehu Stream. The diversion washed away and the ditch is filled in with rocks and debris. No water is diverted.

Find that SDWP.5804.6 is exempt from Hawaii Revised Statutes, Chapter 343 per the Comprehensive Exemption List for the Commission, reviewed and concurred upon by the Environmental Council on January 5, 2021.

LOCATION: North Waiehu Stream. See **Figure 1**.

Figure 1: Location, North Waiehu Stream, Maui.



White: North Waiehu intake and ditch on the North Waiehu Stream. Yellow: Waihee and Spreckels ditches. Red dot: diversions.

BACKGROUND

In the early 1900's, the diversion was constructed for use in plantation agriculture.

In 1989, Wailuku Agribusiness Co, Inc., registered Diversion 475.6 consisting of a wooden structure with a divertible capacity of up to five million gallons per day (mgd). See **Exhibit 1**. From 1983-1987, approximately 45 million gallons per month was diverted. The diversion structure washed away years ago and the ditch is filled in with rocks and debris. See **Figure 2**.

The diversion was last active and used about 2012. The Wailuku Water Co., Ltd. (WWC), and previously known as the Wailuku Agribusiness Co., Inc., inactivated and closed the diversion after repeated storms washed away the diversion and filled the ditch with rocks.

In 2021, per CCH-MA 15-01, the Commission on Water Resource Management (Commission) required WWC to submit the subject application to abandon.

On October 29, 2021, WWC filed a complete SDWP.5804.6 application that can be viewed on the Commissions website: https://files.hawaii.gov/dlnr/cwrm/swreview/SDWP_5804_6.pdf.

STREAM DESCRIPTION

The Waiehu Stream is formed by the confluence of the North and South Waiehu Streams. The North Waiehu Stream is perennial and about 5 miles long. The project location is about 900 feet

elevation. Near an elevation of 880 feet, the Interim Instream Flow Standard (IIFS) is the natural flow from mauka to makai with no offstream diversion of water. This natural flow at Q90 is 1.7 mgd, Q70 is 2.5 mgd, and a Q50 is 3.2 mgd.

PROJECT DESCRIPTION

The project scope is to abandon Registration 475.6. No work is proposed. See **Figure 2**.

Figure 2: Site photos.



2A. North Waiehu Stream looking upstream, with Ditch, at center, located on the left bank and filled in.



2B. North Waiehu Stream looking downstream, at right, and ditch, located on the left bank is filled in (2021).



2C. North Waiehu Stream, looking upstream, flowing into the ditch. Photo taken by Commission staff, March 1989.

AGENCY REVIEW COMMENTS

Maui County, Planning Department: No objections.

Department of Hawaiian Home Lands (DHHL): No comments received.

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

DLNR, Aquatic Resources: The Division of Aquatic Resources' policy on the abandonment of diversion structures is the removal of the diversion structure and its associated infrastructure(s) restoring the stream channel as much as possible to its natural condition.

CWRM staff response: The diversion in the stream is gone. The channel going off site does not affect fish passage, is under a pile of rubble, and does not carry water.

DLNR, Engineering: Flood Hazard Zones are designated on FEMA's Flood Rate Maps. The official FIRMS's can be accessed through FEMA's Map Service Center (msc.fema.gov). Our Flood Hazard Assessment Tool (<http://gis.hawaiiinfip.org/fhat>) could also be used to research flood hazard information.

CWRM staff response: The project area is in Zone AE, a special flood hazard area subject to inundation by the 1% annual chance flood.

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

DLNR, State Historic Preservation Division (SHPD): No comments received.

DLNR, Land Division: No comments received.

DLNR, Office of Conservation and Coastal Lands: No comments received.

DLNR, State Parks: No comments received.

Dept. of Health (DOH), Clean Water Branch: The DOH standard comments can be reviewed on their website at: <https://health.hawaii.gov/cwb/files/2018/05/Memo-CWB-Standard-Comments.pdf>.

CWRM Staff Response: The lead agency for the protection of water quality is the Department of Health, Clean Water Branch, which administers the Federal Clean Water Act (33 U.S.C. §1251 et seq.) and the State Water Pollution Act (HRS Ch. 342D; HAR Ch. 11-54 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control). HAR §11-54-1 through §11-54-8 defines Best Management Practices and water quality criteria applicable to inland and nearshore waters and are based on the Federal Clean Water Act. HAR Ch. 11-55 Appendix C defines discharges of storm water associated

with construction activity. HRS 174C-66 states that the DOH oversees the State's water quality control program.

Office of Hawaiian Affairs: No comments received.

US Army Corps of Engineers: No comments received.

US Fish and Wildlife Service (FWS): No objections.

Public Comments: No comments received.

TRADITIONAL AND CUSTOMARY PRACTICES (KA PA'AKAI ANALYSIS)

In its Findings of Fact, Conclusions of Law, and Decision and Order in contested case hearing CCH-MA15-01¹, the Commission concluded that, "the required elements to qualify as a constitutionally protected traditional and customary practice have been established through testimony that kalo growing existed throughout all four watersheds prior to November 25, 1892, that the practice is related to family needs for subsistence, and that the manner in which the practice is conducted is consistent with tradition and custom. *Pratt I*, 124 Hawai'i at 352-54, 243 P.3d at 312-15. Therefore, existing and/or new water use permits for traditional and customary practices associated with growing kalo are issued in this case to any applicant who qualifies as a Native Hawaiian within the guidelines set forth in *PASH* and who do *not* intend to grow kalo for a *commercial purpose*" (COL 181).

- 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, "To the best of our knowledge, there may be native Hawaiians who are accessing Waiehu Valley lands for various cultural activities and gathering rights."

CWRM Staff Response: Cultural, historical, or natural resources in which traditional and customary native Hawaiian rights are generally protected on undeveloped land. PASH, 1993. No comments were received by DLNR Aha Moku. No comments from the public. Commission staff identified the following historic sites:

1. 50-50-04-01762-Ag Complex, Waihe'e Valley. Site consists of 4-5 terraces (450 sq m) and 1+ canals; located on stream flat on north side of Waihe'e River.
2. 50-50-04-01763-Ag Complex, Waihe'e Valley. Site consists of 2 features: terrace and canal; no data; located upstream of site 1762. Site consists of 12 features: 5+ terraces (1000 sq m); 1 canal; 1 terraced platform (12 sq m); located on same stream flat as site 1763, but farther upstream.

¹ The Findings of Fact, Conclusions of Law, and Decision and Order in contested case hearing CCH-MA15-01, Surface Water Use Permit Applications, Integration of Appurtenant Rights and Amendments to the Interim Instream Flow Standards, Na Wai Eha Surface Water Management Areas of Waihee, Waiehu, Iao and Waikapu Streams, Maui, was issued on June 28, 2021.

3. 50-50-04-01764-Ag/Habitation Complex, Waihe'e Valley. Site consists of 12 features: 5+ terraces (1000 sq m); 1 canal; 1 terraced platform (12 sq m); located on same stream flat as site 1763, but farther upstream.
4. 50-50-04-01765-Ag/Habitation Complex, Waihe'e Valley. Site consists of 3 features: 1 terraced platform with upright (25+ sq m); 2 canals; located on stream flat at joining point of Manaole Stream & Waihe'e River.
5. 50-50-04-01766-Habitation Site, Waihe'e Valley. Site consists of 1 stone alignment, 4 x 2m; site area 8 sq m; and possible wall, 0.5m high.
6. 50-50-04-01767-Habitation Site, Waihe'e Valley. Site consists of 1 enclosure, 4 x 3 x 0.5-0.6m; site area 12 sq m; located across from site 1766 on stream flat.
7. 50-50-04-01768-Agriculture Complex, Waihe'e Valley. Site consists of 5+ terraces (100 sq m) and 1+ canal; located downstream from site 1762 & on same stream flat.
8. 50-50-04-01769-Agriculture Complex, Waihe'e Valley. Site consists of 1 terrace (100+ sq m) and 1 possible canal; located adjacent to 1936 construction camp.
9. 50-50-04-01770-Agriculture Site, Waihe'e Valley. Site consists of 7+ terraces (9-20+ sq m); 2 canals; and 1 terraced platform (12 sq m); located on stream flat adjacent to site 1769.
10. 50-50-04-01771-Agriculture Complex, Waihe'e Valley. Site consists of 2 terraces (9-16+ sq m); 1 canal; located downstream of site 1770.
11. 50-50-04-01772-Agriculture Complex, Waihe'e Valley. Site consists of 20+ terraces (30-150 sq m); 1 canal; located on abrupt bend in river on south side 2nd swinging bridge.
12. 50-50-04-01773-Agriculture Complex, Waihe'e Valley. Site consists of 2 terraces (25 sq m); 1 canal; located on north side of river at downstream end of flat.
13. 50-50-04-01774-Ag/Habitation Complex, Waihe'e Valley. Site consists of 50+ terraces (30-100 sq m); 3+ canals; 1 terraced platform (35 sq m); pavement (20 sq m); enclosure; located on 1st stream flat in lower valley, on north side of river.

The historic sites listed above are not located at the subject diversion intake site. Therefore, the Commission's determination is that no historic properties are affected and requested SHPD concurrence. However, no SHPD determination letter was received by the agenda date of this submittal.

- 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, "There will be no impaired native Hawaiian rights by the abandonment of this intake off of North Waiehu Stream."

CWRM Staff Response: No water is diverted from this site so traditional and customary rights or uses should not be affected by this action.

- 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, “There is no action necessary by the CWRM to protect native Hawaiian rights as there will be no reduction/changes to those rights by this abandonment.”

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 proposed action triggers an EA because the diversion is located in the Conservation District. However, per Hawaii Administrative Rule (HAR) §11-200.1-15(a) some actions, because they will individually and cumulatively probably have minimal or no significant effects, can be declared exempt from the preparation of an EA.

The subject project is exempt from the preparation of an environmental assessment in accordance with HAR §11-200.1-15(c)(1), operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing.

The project is exempt from the preparation of an environmental assessment per HAR §11-200.1-15(c)(8), continuing administrative activities. The subject project also falls within the types of projects included in the Comprehensive Exemption List for the Commission, reviewed and concurred upon by the Environmental Council on January 5, 2021. Under General Type of Action 8, the List provides for “Continuing administrative activities: 7. Actions that are intended to maintain or support the sustainability and

management of water resources under the jurisdiction of the Commission, including regulation compliance, resources and environmental monitoring, debris or property removal, and other administrative and management measures.”

STAFF REVIEW

Review of the permit application by Commission staff is subject to the consideration of the legal authorities cited in **Exhibit 3**.

HAR §13-168-35(b) sets out the general criteria for ruling on abandoning a stream diversion works. Each application for a stream diversion permit to perform abandonment work shall be made on forms furnished by the commission, shall not require a fee, and shall include:

- (1) The name and address of the applicant;
- (2) The location and description of the proposed stream diversion work abandonment;
- (3) An assessment of the impact the abandonment will have on the stream environment;
- (4) Relevant maps, plans, and drawings; and
- (5) Other information as may be necessary for the commission to determine the merits of the proposed stream channel alteration, including any hazards to public health, safety, or welfare, and the desirability of issuing a permit.

CWRM Staff Response: Removing this registration and diversion from active management should not interfere with instream or noninstream uses as there are no diversions taking water from the subject ditch.

Per Box 34 SHPD review: If the affected parcel has not undergone SHPD review, attach a photo of the affected area, a schematic diagram (showing the location, access road and infrastructure for the alteration), and a short description of the prior uses of the land on which the alteration resides.

CWRM Staff Response: No alterations are proposed as the diversion structure washed away years ago. No historic structures are located at the diversion location.

RECOMMENDATION

That the Commission:

1. Approve Stream Diversion Works Permit (SDWP.5804.6) to abandon Registration of Stream Diversion Works and Declaration of Water Use No. 475.6 North Waiehu Intake on the North Waiehu Stream subject to the standard conditions in **Exhibit 2** and the special condition below.
 - a. Abandonment of diversion is subject to SHPD concurrence. If SHPD requires conditions, delegate to Deputy Director to attach those as conditions of abandonment.
2. Find that SDWP.5804.6 is exempt from HRS, Chapter 343.

Ola i ka wai,

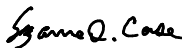


M. KALEO MANUEL
Deputy Director

Exhibits:


1. Registration of Stream Diversion Works and Declaration of Water Use 475.6 filed in 1989.
2. Standard Stream Diversion Works Permit Conditions.
3. Legal Authorities.

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson

Form 5810-2


STATE OF HAWAII
COMMISSION ON WATER RESOURCE MANAGEMENT
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF WATER RESOURCE MANAGEMENT

RECEIVED
19 MAY 26 P 4: 27
DIV. OF WATER &
LAND DEVELOPMENT

REGISTRATION OF STREAM DIVERSION WORKS AND DECLARATION OF WATER USE

INSTRUCTIONS: Please type or print. If information is not available or not applicable, indicate as N/A. Fill out as completely as possible, sign, and mail form to the Division of Water Resource Management, P.O. Box 373, Honolulu, Hawaii 96809. Phone 548-3948 or 548-7543 for assistance.

MULTI-SOURCE SYSTEMS: For a system of two or more diversion structures, submit a single package to describe the complete system. Include a single location map (or a set of maps if required) showing all diversion structures and measurement points, and a separate copy of this form for each structure and measurement point. On forms describing diversion structures, complete parts A, B, D, and E. On forms describing measurement points, complete parts A, B, and F.

STREAM NAME: North Waiehu Stream ISLAND: Maui
DIVERSION STRUCTURE NAME: North Waiehu Ditch Intake
DIVERSION SYSTEM NAME: North Waiehu

A. DIVERSION WORKS OPERATOR
Firm name: Wailuku Agribusiness
Contact person: Clayton S. Suzuki
Address: P. O. Box 520
Wailuku, Hawaii
Zip: 96793 Phone: 244-9567

B. OWNER OF DIVERSION WORKS SITE
Firm name: Wailuku Agribusiness
Contact person: Clayton S. Suzuki
Address: P. O. Box 520
Wailuku, Hawaii
Zip: 96793 Phone: 244-9567

C. STREAM DIVERSION LOCATION
Tax Map Key: 3-2-14-01 Town, Place, District: Waiehu, Maui
Attach USGS "Quad" map (scale 1:24,000), tax map, or other map showing the diversion location.

D. STREAM DATA
Streamflow at diversion site is: Perennial (Water is always flowing) Intermittent (Channel is sometimes dry)
Is streamflow gaged? Yes No
If yes, provide gage name, and show location on map. Name: _____
Average flow before diversion: _____ mgd gpm cfs

E. DIVERSION STRUCTURE DATA
Year constructed: Unknown Elevation (above mean sea level): 900'
Diversion structure is: Concrete Wood Pipe Other (Describe): _____
Diverted flow is: Controlled Uncontrolled
Divertable capacity is: 5 mgd gpm cfs

Submit an "as-built" drawing and dated photograph of the diversion works, if available.

... (continued over)

For Official Use Only:
Date received: _____ Date accepted: _____
Field checked by: _____ Date: _____ Latitude: _____ Hydrologic Unit: _____
Comments: _____ Longitude: _____ State Diversion No.: _____

References: Hawaii Revised Statutes, Chapter 174C.
Hawaii Administrative Rules, Chapters 13-167 to 13-171.

F. DECLARATION OF WATER USE

NOTE: The purpose of the Declaration of Water Use is to obtain information necessary for the management of the State's water resources. The Declaration does not confer a legal right to water or its use.

Location and name of measurement point (Show on location map): Waiehu, Maui
 Water use data are recorded: Continuously Daily Other: _____
 Method of measurement (Check box and describe below): Weir Rating flume Other
 Description: Estimated

Quantity of Use (Report gaged or estimated monthly water use from the diversion described on the reverse side of this form, for the calendar years 1983 through 1987):

WATER USE, IN MGD (unit of measurement)

	1983	1984	1985	1986	1987
January	46.5	40.5	46.5	46.5	46.5
February	42.0	43.0	42.0	42.0	42.0
March	46.5	46.5	46.5	46.5	46.5
April	45.0	45.0	45.0	45.0	45.0
May	46.5	46.5	46.5	46.5	46.5
June	45.0	45.0	45.0	45.0	45.0
July	46.5	46.5	46.5	46.5	46.5
August	46.5	46.5	46.5	46.5	46.5
September	45.0	45.0	45.0	45.0	45.0
October	46.5	46.5	46.5	46.5	46.5
November	45.0	45.0	45.0	45.0	45.0
December	46.5	46.5	46.5	46.5	46.5
ANNUAL	547.5	542.0	547.5	547.5	484.95

Typical times of usage: Continuous

Type of Use (Check all category boxes that apply and provide additional information as indicated):

Category	Additional Information
<input type="checkbox"/> Municipal (including resorts, hotels, businesses)	_____
<input type="checkbox"/> Domestic (systems serving 25 people or less)	Number of service connections: _____
<input checked="" type="checkbox"/> Irrigation	Acres Irrigated: _____ Crop(s): <input checked="" type="checkbox"/> Sugar <input checked="" type="checkbox"/> Pineapple <input checked="" type="checkbox"/> Other (specify): <u>Macadamia Nut Orchard</u> Non-Crop: <input type="checkbox"/> Landscape <input type="checkbox"/> Golf Course <input type="checkbox"/> Other (specify): _____ Method: <input checked="" type="checkbox"/> Drip <input type="checkbox"/> Furrow <input checked="" type="checkbox"/> Sprinkler
<input type="checkbox"/> Industrial	<input type="checkbox"/> Cooling <input type="checkbox"/> Manufacturing <input type="checkbox"/> Mill <input type="checkbox"/> Other (specify): _____
<input type="checkbox"/> Military	_____
<input type="checkbox"/> Other	Specify (livestock, hydroelectric, aquaculture, etc.): _____

Location of Use (Describe the location of water use, relative to the diversion, and indicate on location map. If water is used by others, submit a list of their names and addresses.):

I declare that the contents of the above Declaration of Water Use are, to the best of my knowledge and belief, true, correct, and complete.

Water User's Signature: Clayton S. Suzuki Date: APR 24 1989
 Printed Name: Clayton S. Suzuki
 Firm or Title (Diversion Operator, etc.): Wailuku Agribusiness Co., Inc.

STANDARD STREAM DIVERSION WORKS PERMIT 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 permittee, owner and/or operator of the stream diversion works shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage on a monthly (calendar or work schedule) basis to the Commission per HAR §13-168-7 Report of Water Use.
2. The project may require other agency approvals regarding wetlands, water quality, grading, stockpiling, endangered species, and floodways. The permittee shall comply with all other applicable statutes, ordinances, and regulations of the Federal, State and county governments, including, but not limited to, instream flow standards.
3. The permittee, his successors, assigns, officers, employees, contractors, agents, and representatives, shall indemnify, defend, and hold the State of Hawaii harmless from and against any claim or demand for loss, liability, or damage including claims for property damage, personal injury, or death arising out of any act or omission of the permittee or his successors, assigns, officers, employees, contractors, and agents under this permit or related to the granting of this permit.
4. The permittee shall notify the Commission, by letter, of the actual dates of project initiation and completion. The permittee shall submit a set of as-built plans and photos in pdf format of the completed work to the Commission upon completion of this project. This permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The proposed work under this stream channel alteration permit shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Commission upon showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Commission no later than three (3) months prior to the date the permit expires. If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.
5. Before proceeding with any work authorized by the Commission, the permittee shall submit one set of construction plans and specifications in PDF format to determine consistency with the conditions of the permit and the declarations set forth in the permit application.
6. The permittee shall implement site-specific, construction Best Management Practices in consultation with the DOH Clean Water Branch and other agencies as applicable, that are designed, implemented, operated, and maintained by the permittee and its contractor to properly isolate and confine activities and to contain and prevent any potential pollutant(s) discharges from adversely impacting State waters per HRS Ch. 342D Water Pollution; HAR §11-54-1 through §11-54-8 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control, Appendix C.
7. The permittee shall protect and preserve the natural character of the stream bank and stream bed to the greatest extent possible. The permittee shall plant or cover lands denuded of vegetation as quickly as possible to prevent erosion and use native plant species common to riparian environments to improve the habitat quality of the stream environment.
8. In the event that subsurface cultural remains such as artifacts, burials or deposits of shells or charcoal are encountered during excavation work, the permittee shall stop work in the area of the find and contact the Department's Historic Preservation Division immediately. Work may commence only after written concurrence by the State Historic Preservation Division.

LEGAL AUTHORITIES

Water as a Public Trust. The four public trust purposes are:

1. Maintenance of waters in their natural state.
2. Domestic water use of the general public, particularly drinking water.
3. The exercise of Native Hawaiian and traditional and customary rights, including appurtenant rights. *Waiahole*, 94 Hawaii 97; 9 P.3d 409 (2000).
4. Reservations of water for use on Hawaiian home lands. *Waiola O Molokai, Inc.*, 103 Hawaii 401; 83 P.3d 664 (2004).

Activities on undeveloped lands. *Public Access Shoreline Hawaii v. Hawaii County Planning Commission (PASH I)*. 79 Hawaii 246 (1993).

HRS §174C-26 Filing of declaration. (a) Any person making a use of water in any area of the State shall file a declaration of the person's use with the commission within one year from the effective date of rules adopted to implement this chapter.

(b) When the commission requires filing of declarations by rules, it shall cause public notice of the rule to be given statewide for filings in the city and county of Honolulu and areawide or countywide statewide for filings in counties other than the city and county of Honolulu. The commission shall also cause notice of the rules to be given by mail to any person required to file of whom the commission has or could readily obtain knowledge or who has requested mailed notice to be given when the commission adopts rules requiring the filing of declarations.

(c) The declarations shall be in such form and contain such information as the commission by rule prescribes, including the quantity of water used, the purpose or manner of the use, the time of taking the water, and the point of withdrawal or diversion of the water. Each declaration shall contain a statement, signed and sworn to by the person required to file the declaration, or by some other person duly authorized in the person's behalf, to the effect that the contents thereof are true to the best of the person's knowledge and belief.

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 noninstream 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;

HRS §174C-92 Registration of existing stream diversion works. Any person owning or operating a stream diversion works within or outside of a water management area shall register such work with the commission. Registration shall be on the forms provided by the commission. Reporting requirements on the registration forms shall be reasonable.

HRS §174C-95 Abandonment. Any owner of any stream diversion work wishing to abandon or remove such work shall first obtain a permit to do so from the commission.

HAR §13-168-2 Definitions.

“Instream flow standard” means a quantity or flow of water or depth of water which is required to be present at a specific location in a stream system at certain specified times of the year to protect aquatic life, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses.

“Instream use” means beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to:

- (1) Maintenance of aquatic life and wildlife habitats;
- (2) Outdoor recreational activities;
- (3) Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation;
- (4) Aesthetic values such as waterfalls and scenic waterways;
- (5) Navigation;
- (6) Instream hydropower generation;
- (7) Maintenance of water quality;
- (8) The conveyance of irrigation and domestic water supplies to downstream points of diversion; and
- (9) The protection of traditional and customary Hawaiian rights.

“Stream diversion” means the act of diverting, pumping or otherwise removing water from a stream into a channel, ditch, pipeline, or other conduit.

“Stream diversion works” means any artificial structure, excavation, pipeline, or other conduit constructed singly or in combination, for the purpose of diverting or otherwise removing water from a stream into a channel, ditch, tunnel, pipeline, etc.

HAR §13-168-5 Declaration of water use. (a) Any person making a use of water from a well or stream diversion works in existence on the effective date of these rules in any area of the state shall file a declaration of the person’s use with the commission within one year from the effective date of these rules.

(c) Declarations by the user shall be made on forms provided by the commission and shall contain information including, but not limited to, the location of the water sources and all usage-related facts, or information within his knowledge or possession. The user shall include a declaration of the manner, purposes, and time in which the water source is being used and

operated, the rate and volume of water being withdrawn or diverted therefrom, and the method or means of measuring and controlling the water taken or used. Each declaration shall contain a statement, signed and sworn to by the person required to file the declaration, or by some other person duly authorized in the person's behalf, to the effect that the contents thereof are true to the best of the person's knowledge and belief.

HAR §13-168-31 Registration of existing stream diversion works. Within one year from the effective date of these rules, the owner or operator of any stream diversion works in any area of the state shall register such facility with the commission. Registration shall be on the forms provided by the commission and shall include information such as location, dimensions, elevations, divertible capacity, construction plans, method of measuring flows, and all other facts or information reasonably required.

HAR §13-168-35 Abandoned stream diversion works. (a) The owner of any stream diversion works wishing to abandon or remove such works shall first obtain a stream diversion permit issued or caused to be issued by the commission. No abandonment work shall be undertaken by the applicant until such a permit is issued by the commission.

(b) Each application for a stream diversion permit to perform abandonment work shall be made on forms furnished by the commission, shall not require a fee, and shall include:

- (1) The name and address of the applicant;
- (2) The location and description of the proposed stream diversion work abandonment;
- (3) An assessment of the impact the abandonment will have on the stream environment;
- (4) Relevant maps, plans, and drawings; and
- (5) Other information as may be necessary for the commission to determine the merits of the proposed stream channel alteration, including any hazards to public health, safety, or welfare, and the desirability of issuing a permit.