



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

November 15, 2022  
Honolulu, Hawai'i

Approval of Stream Channel Alteration Permit Application (SCAP.5933.6)  
County of Maui, Department of Public Works, Kaupakalua Road Culvert Repair  
Opaepilau Stream, Ha'ikū, Maui, TMK: (2) 2-7-013:097

APPLICANT

Jordan Molina, Director  
County of Maui, Department of Public Works  
200 South High Street, Room 410  
Wailuku, HI 96793

LANDOWNERS

County of Maui, Department of Public Works  
Sylvia A. Cenzano  
1120 Kaupakalua Road  
Haiku, HI 96708

SUMMARY OF REQUEST

Approve Stream Channel Alteration Permit (SCAP.5933.6) application by the County of Maui. The proposed project includes new soil nail walls adjacent to the existing outlet end of the box culvert and new wingwalls to replace the existing wingwalls that collapsed. The scope of work also includes a new cellular confinement system infilled with concrete to stabilize and protect the roadway embankment, realignment of an existing water pipeline, and a new paved roadway shoulder with guardrails that are outside of the ordinary high water mark.

BACKGROUND

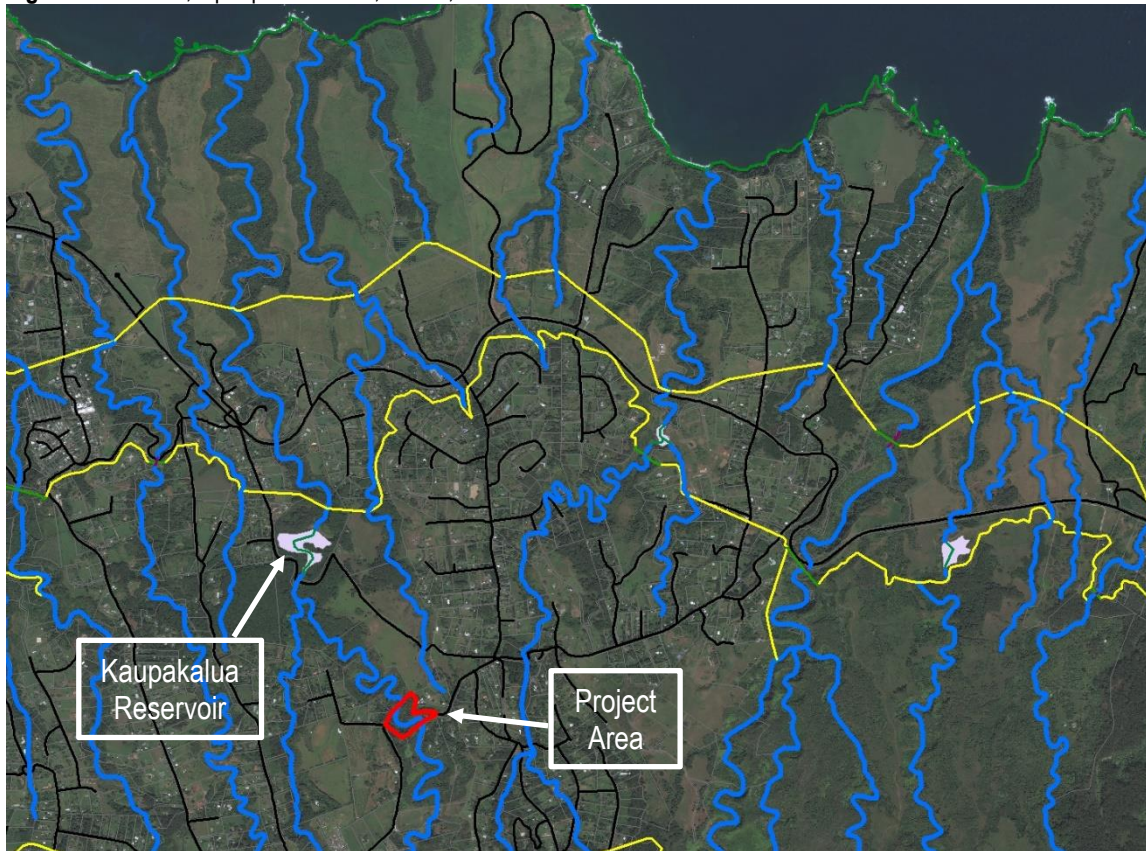
On March 9, 2021, Governor Ige issued an emergency proclamation for Maui after a storm caused damage to roads and infrastructure. Phase 1 of the repairs commenced before the expiration of the emergency proclamation. During this time, the Opaepilau Stream overtopped an existing culvert at Kaupakalua Road that resulted in shoulder and embankment erosion on both sides of the roadway.

On September 22, 2022, the Applicant filed a complete Stream Channel Alteration Permit application for Phase 2 of the repairs not covered by the Governor's emergency proclamation.

The application can be viewed on at  
[https://files.hawaii.gov/dlnr/cwrm/swreview/SCAP\\_5933\\_6.pdf](https://files.hawaii.gov/dlnr/cwrm/swreview/SCAP_5933_6.pdf).

**LOCATION:** Haiku, Maui. See **Figure 1**.

**Figure 1:** Location, Opaepilau Stream, Ha'ikū, Maui.



### STREAM DESCRIPTION

Opaepilau Stream, or Opaepilau Gulch, is a tributary of East Kaupakulua Gulch. The National Hydrography Dataset classified the stream as intermittent, while the Division of Aquatic Resources classified the stream as perennial. The total drainage area of Kaupakulua Gulch is 3.73 square miles with a maximum basin elevation of 2,750 feet asl, mean annual precipitation of 112 inches, and the longest flow path is 11 miles long. An Environmental Survey and Assessment provided by the Applicant describes Kaupakulua Gulch as, “an interrupted stream, and flow in the upper reaches is continuous year round (perennial), but flow in the lower reaches is interrupted. At the time of the survey, even with the recent Kona low that produced up to 327 millimeters (mm) (12.9 inches) of rainfall on Maui from December 5 to 8, 2021, no water flow was observed in ‘Ōpaepilau Stream (stream bed elevation of 257 meters (m) (844 feet (ft) above sea level (ASL)). While ‘Ōpaepilau Stream has both gaining and losing reaches, the project site is situated on a losing reach, where flow in the channel recharges the ground water (USGS, 1999). Standing water with guppies and tadpoles was present as an isolated pool some 60 m (197 ft) downstream of Kaupakalua Road crossing.” See **Figure 2**.

**PROJECT DESCRIPTION**

The County of Maui, Department of Public Works, proposes a new wingwall on the west side of the stream to replace the existing wingwall that collapsed due to a storm, and a small corner portion of a new wingwall on the east side of the stream. The new west wingwall is approximately 16-feet (ft.) long x 1.33-ft. wide with grading around the wall of approximately 150 square feet (sq. ft.). The portion of the east wingwall is approximately 4.5-ft. long.

During excavation, the contractor may use excavators and other standard earthwork equipment. Installation of concrete walls may require similar equipment. Cofferdams will be used as a type of best management practice during the construction of the new concrete rubble apron. Dewatering area, stock piles/staging area, and concrete wash out areas will be on the project site property but outside of the gulch area. Expected construction time is 180 working days. See **Figures 3 and 4.**

**Figure 2.** Site photos.



Stream channel just above the project area, look upstream.



Stream channel upstream of the culvert, looking downstream.



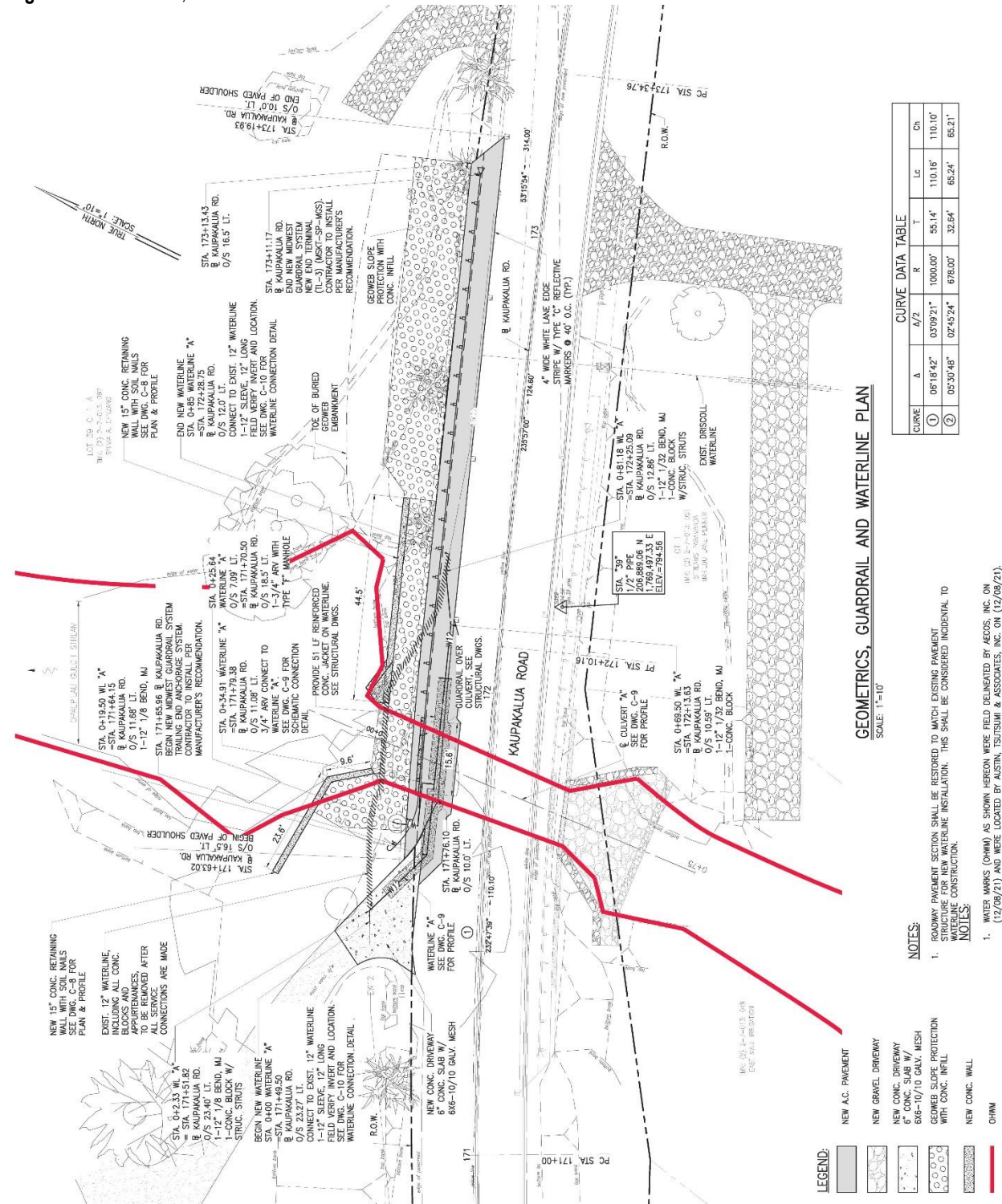
Stream channel at the project area, looking upstream.



Stream channel, looking downstream of the project area.



Figure 4. Geometrics, Guardrail and Waterline Plan



AGENCY REVIEW COMMENTS

County of Maui, Planning Department: No objections.

Department of Hawaiian Home Lands (DHHL): While DHHL does not have any objections to the application, there are some concerns about the possibility that there may be those who exercise T&C practices below the proposed project area. Since the proposed project has triggered the National Historic Preservation Act Section 106 Consultation process, meaningful engagement and consultation with the Applicant's listed state, county, and community organizations (See Applicant's Exhibit C) should be completed prior to the issuance of this SCAP. Particularly, Applicant should reach out to the Po'ō of Hamakualoa, Aha Moku o Maui, Inc., Joyclynn Costa (jkalai.kauihou@gmail.com), to confirm whether there are traditional and customary practices occurring below the proposed project area. As a kupa of this moku or region, she has deep ties and ancestral knowledge of the people and traditional practices in or around the proposed project area.

*CWRM staff response: While no comments were received from the DLNR's Aha Moku, the agency and community engagement recommended above will be added as a special condition.*

Dept. of Health (DOH), Clean Water Branch: The DOH standard comments can be reviewed on the DOH 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.*

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

DLNR, Aquatic Resources: No objections.

DLNR, Engineering: No comments received.

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

DLNR, Historic Preservation (SHPD): No determination letter received.

*CWRM Staff Response: The proposed action is subject to SHPD concurrence and will be added as a special condition.*

DLNR, Land Division: No comments received.

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): Provided avoidance and minimization measures to avoid take of waterbirds and our Best Management Practices to avoid adverse effects related to in-water work.

*CWRM Staff Response: Comments will be incorporated, by reference, as a special condition (See **Exhibit 1**).*

### 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 “Consultation with Native Hawaiian Organizations (NHOs) and the State Historic Preservation Division (SHPD) has been initiated under Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (2006) and as part of the State of Hawai’i Revised Statutes Chapter 6E-8 consultation process. Based on preliminary research, no cultural, historical, or natural resources in which traditional and customary native Hawaiian rights are exercised are present within the project area.”

*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 and the lack of perennial streamflow at the project site. A March 2022 AECOS environmental survey found that “Streamflow is characterized as infrequent in the Project area, with no aquatic animals being recorded in our survey. However, 60 m (200 ft) downstream, poecilid fish, physid snails, lymnaeid snails, cane toad eggs and tadpoles (*Rhinella marina*), and mosquito larvae were observed in an isolated pool of water (Figure 3). Additionally, scarlet skimmers (*Crocothemis servilia*) were observed downstream of the OHWM survey area. These observations were similar to surveys done near the Kaupakalua Reservoir in 1995 and along Awalau Stream in 2021 (AECOS, 1995, 2021c) where, in addition to some of the aforementioned species, biologists found crayfish (*Procambarus clarki*) and lavender dragonflies (*Orthemis cf. ferruginea*) in*

*1995 and globe skimmers (Pantala flavescens) and American bullfrog (Lithobates catesbeianus) in 2021.” Commission staff offers no further action as can be identified.*

- 2) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action.

The Applicant stated, “No significant adverse impacts to traditional and customary cultural resources are anticipated from the proposed project”

*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, “No mitigation measures are proposed for the protection of native Hawaiian rights as no significant native Hawaiian rights or cultural practices have been identified in the project area.”

*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 triggers an EA because it proposes (1) the use of state or county lands or the use of state or county funds. On October 7, 2021, the County*



*of Maui exempted the action under Exemption Class 2 Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height and dimensions as the structure replaced – roadways, driveways. Minor street widening and improvements within existing or future County streets rights of way. Concurred upon by the Environmental Council on January 10, 2007.*

### CONSISTENCY WITH THE HAWAII 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.

The proposed stream channel alteration will not divert any water from Opaepilau Stream and should not impact the quantity or quality of water resources, public trust uses, or water rights.

### 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 and quality of stream water should not be adversely affected. Applicant states that, “long-term water quality impacts can be avoided with implementation of appropriate Best Management Practices (BMPs). A plastic-lined sandbag dike or cofferdam is proposed for containing disturbed material at the site and to keep flowing water away from the construction area. The cofferdam would surround the outside perimeter of the work area that is within the ordinary high water mark (OHWM). It is proposed to size the cofferdam to protect from the median daily flow rate at a minimum, and to provide at least one (1) foot of freeboard above that level. The cofferdam should only remain in place until the area it is protecting is stabilized. As much as practical, construction work will be limited to what can be installed and stabilized by the end of each working day. This is especially important for the work within the OHWM, which could be subject to flooding by unanticipated storm events.”*

*Furthermore, “The staging and stockpiling will be done on high ground outside of the OHWM area on TMK (2) 2-7-013:097. Staging, stockpiling, dewatering and any ground disturbance areas will be enclosed with filter-sock perimeter controls. A gravel ingress/egress will also be installed to access the project area. If possible, work should take place in low-rainfall months of May to October. The contractor is recommended to*

*follow daily weather forecasts and avoid construction when rain events are expected. Construction activities should be limited to one-half of the gulch cross-section at a time to help maintain streamflow through the gulch.”*

- (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 identified instream uses include agriculture, fish habitat and streamflow contribution to the nearshore waters, among others. The project is not anticipated to impact the current status quo 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 noninstream uses. Downstream of the subject area are the Haiku and Lowrie Ditches, which divert water from the main Kaupakulua Stream. There are also six registered diversions located upstream of the project area, three of which are operated by East Maui Irrigation Company and one registered by Maui Land and Pineapple Company, Inc.. No adverse impacts are anticipated.*

RECOMMENDATION

That the Commission:

1. Approve Stream Channel Alteration Permit (SCAP.5933.6) Application subject to the standard conditions in **Exhibit 2** and the special conditions below.
  - a. Approval is subject to SHPD concurrence. If SHPD requires conditions, authority shall be delegated to the Deputy Director to attach those as a condition of the stream channel alteration permit.
  - b. In conformance with the Department of Hawaiian Home Lands recommendations, the permittee shall reach out to the Po‘o of Hamakualoa, Aha Moku o Maui, Inc., Joyclynn Costa (jkalai.kauihou@gmail.com), to confirm whether there are traditional and customary practices occurring below the proposed project area. A summary of communications shall be submitted to Commission staff. If traditional and customary practices are found to exist that may be impacted by the project, the permittee shall take all practicable measures to mitigate the impacts.

Ola i ka wai,

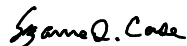


M. KALEO MANUEL  
Deputy Director

Exhibits:

1. U.S. Fish and Wildlife Service comments, dated February 2022.
2. Stream Channel Alteration Permit Standard Conditions.
3. Legal Authorities.

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE  
Chairperson

**FINAL Avoidance and Minimization Measures (AMMs)**  
**Final revised Feb 2022**

**ESA Listed Species**

**Endangered Hawaiian waterbirds (Hawaiian stilt, *Himantopus mexicanus knudseni*; Hawaiian coot, *Fulica alai*; Hawaiian duck, *Anas wyvilliana*):** 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.

Based on the project details provided, your project may result in the creation of standing water or open water that could attract Hawaiian waterbirds to the project site. In particular, the Hawaiian stilt is known to nest in sub-optimal locations (e.g., any ponding water), if water is present. Hawaiian waterbirds attracted to sub-optimal habitat may suffer adverse impacts, such as predation and reduced reproductive success, and thus the project may create an attractive nuisance. Therefore, we recommend you work with our office during project planning so that we may assist you in developing measures to avoid impacts to listed species (e.g., fencing, vegetation control, predator management).

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.

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

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

1. Authorized dredging and filling-related activities that may result in the temporary or permanent loss of aquatic habitats should be designed to avoid indirect, negative impacts to aquatic habitats beyond the planned project area.
2. Dredging/filling in the marine environment should be scheduled to avoid coral spawning and recruitment periods, and sea turtle nesting and hatching periods. Because these periods are variable throughout the Pacific islands, we recommend contacting the relevant local, state, or federal fish and wildlife resource agency for site specific guidance.
3. Turbidity and siltation from project-related work should be minimized and contained within the project area by silt containment devices and curtailing work during flooding or adverse tidal and weather conditions. BMPs should be maintained for the life of the construction period until turbidity and siltation within the project area is stabilized. All project construction-related debris and sediment containment devices should be removed and disposed of at an approved site.
4. All project construction-related materials and equipment (dredges, vessels, backhoes, silt curtains, etc.) to be placed in an aquatic environment should be inspected for pollutants including, but not limited to; marine fouling organisms, grease, oil, etc., and cleaned to remove pollutants prior to use. Project related activities should not result in any debris disposal, non-native species introductions, or attraction of non-native pests to the affected or adjacent aquatic or terrestrial habitats. Implementing both a litter-control plan and a Hazard Analysis and Critical Control Point plan (HACCP – see <https://www.fws.gov/policy/A1750fw1.html>) can help to prevent attraction and introduction of non-native species.
5. Project construction-related materials (fill, revetment rock, pipe, etc.) should not be stockpiled in, or in close proximity to aquatic habitats and should be protected from erosion (e.g., with filter fabric, etc.), to prevent materials from being carried into waters by wind, rain, or high surf.
6. Fueling of project-related vehicles and equipment should take place away from the aquatic environment and a contingency plan to control petroleum products accidentally spilled during the project should be developed. The plan should be retained on site with the person responsible for compliance with the plan. Absorbent pads and containment booms should be stored on-site to facilitate the clean-up of accidental petroleum releases.
7. All deliberately exposed soil or under-layer materials used in the project near water should be protected from erosion and stabilized as soon as possible with geotextile, filter fabric or native or non-invasive vegetation matting, hydro-seeding, etc.

STREAM CHANNEL ALTERATION PERMIT STANDARD CONDITIONS  
(Revised December 15, 2020)

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

## LEGAL AUTHORITIES

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

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

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

HRS §174C-71 Protection of instream uses. The commission shall establish and administer a statewide instream use protection program. In carrying out this part, the commission shall cooperate with the United States government or any of its agencies, other state agencies, and the county governments and any of their agencies. In the performance of its duties the commission shall:

- (2) Establish interim instream flow standards;
  - (D) In considering a petition to adopt an interim instream flow standard, the commission shall weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for non-instream purposes, including the economic impact of restricting such uses;
- (3) Protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses;
  - (A) The commission shall require persons to obtain a permit from the commission prior to undertaking a stream channel alteration; provided that routine streambed and 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.

§13-169-44 Interim instream flow standard for East Maui. The Interim Instream Flow Standard for all streams on East Maui, as adopted by the commission on water resource management on June 15, 1988, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted offstream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard. [Eff. Oct. 8 1988].

HAR §13-169-50 Permit required. (a) Stream channels shall be protected from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. No stream channel shall be altered until an application for a permit to undertake the work has been filed and a permit is issued by the commission; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit.

HAR §13-169-52 Criteria for ruling on application. (a) The commission shall act upon an application within ninety calendar days after acceptance of the application.

(b) Based upon the findings of fact concerning an application for a stream channel alteration permit, the commission shall either approve in whole, approve in part, approve with modifications, or reject the application for a permit.

(c) In reviewing an application for a permit, the commission shall cooperate with persons having direct interest in the channel alteration and be guided by the following general considerations:

- (1) Channel alterations that would adversely affect the quantity and quality of the stream water or the stream ecology should be minimized or not be allowed.
- (2) Where instream flow standards or interim instream flow standards have been established pursuant to subchapters 3 and 4, no permit shall be granted for any channel alteration which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.
- (3) The proposed channel alteration should not interfere substantially and materially with existing instream or non-instream uses or with channel alterations previously permitted.

(c) Notwithstanding subparagraph (b) above, the commission may approve a permit pursuant to subparagraph (a) above in those situations where it is clear that the best interest of the public will be served, as determined by the commission.

HAR §13-169-53 Term of permit. (a) Every permit approved and issued by the commission shall be for a specified period, not to exceed two years, unless otherwise specified in the permit.