



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES | KA 'OIHANA KUMUWAIWAI 'ĀINA
COMMISSION ON WATER RESOURCE MANAGEMENT | KE KAHUWAI PONO
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL
ADDENDUM

COMMISSION ON WATER RESOURCE MANAGEMENT

March 21, 2023
Honolulu, Hawaii'i

Find that Patrick and Naomi Guth (Guth Farms), Applicant
Violated Section 174C-93, HRS and Section 13-168-32, HAR
Construction of a Stream Diversion Works Without a Permit

Find that No Fine be Imposed on the Applicant

Approve the After-The-Fact Stream Diversion Works Permit (SDWP.5508.6) Application
Kahoma Stream, Lahaina, Maui, Tax Map Key (2) 4-5-016:888 and 4-5-017:888 (Stream) and
4-5-016:009, 4-5-017:005 and 007 (End Use)

SUMMARY OF REQUEST

Replaces Item 1), Summary of Request section, page 2.

- 1) Approve the After-the-Fact Stream Diversion Works Permit (SDWP.5508.6) Application for 9,000 gpd for two (2) acres of dry land taro and one (1) acre of diversified agriculture from one diversion, consisting of one (1) 1.5-inch hose connected to a 110-gallon per minute (gpm) solar water pump.

BACKGROUND

Insert at end of Background section, page 5.

On November 15, 2022, SHPD sent a letter to the Commission stating that the applicant has foreclosed SHPD's opportunity to comment on the permitted activity due to the fact that the SWDP application is an after the fact permit application. "SHPD has no objections to the ongoing use of the project area for agricultural purposes, however SHPD recommends the property owner hire an archaeological consultant to develop a plan for the continued preservation of the Haia Terrace System (SIHP # 50-50-03-01776) including appropriate cultural use." See **Exhibit 8**

On November 30, 2022, Commission staff conducted a site visit to Kahoma Valley, including the Applicant's property. The Applicant informed Commission staff that the Applicant has

purchased one 110-gpm solar powered electric pump to replace the pumps referenced in their application. Commission staff also verified that the diversion stated in the informal complaint email from August 12, 2022, does not provide water the Applicant's property. Subsequently, staff confirmed that the Applicant has transitioned to solely using one (1) 1.5-inch hose connected to the 110-gpm solar water pump. The original gas-powered water pumps (1-inch hose connected to a 32-gpm pump and 2-inch hose connected to a 152-gpm pump) will be used only for backup on cloudy days when sunlight is insufficient to power the solar water pump.

PROJECT DESCRIPTION

Replace first paragraph and insert at beginning of Project Description section, page 6.

The Applicant originally applied for two diversions consisting of: 1) One 1-inch hose connected to a 32-gpm pump on TMK (2) 4-5-016:888 (stream channel); and 2) One 2-inch hose connected to a 152-gpm pump on TMK (2) 4-5-017:888 (stream channel).

At the November 30, 2022 site visit, the Applicant notified Commission staff that they were in the process of upgrading their system to a single 1.5-inch hose connected to a 110-gpm pump. Commission staff subsequently confirmed that they have transitioned to solely using the 110-gpm solar pump and only use the gas pumps occasionally on cloudy days when the solar pump is not able to perform adequately.

Replace last sentence in second paragraph on page 6.

Since the site visit on April 7, 2021, Applicant has cleared the land and installed a prefabricated bridge over Kahoma Stream to start cultivating taro on TMK (2) 4-5-016-009.

AGENCY REVIEW COMMENTS

Replace "DLNR, State Historic Preservation Division (SHPD): No determination letter received." in Agency Review Comments section, page 12.

DLNR, State Historic Preservation Division (SHPD): As the project was undertaken prior to obtaining the required CWRM permit, it was impossible for CWRM to satisfy the statutory requirement that the activity subject to permit requirements be reviewed and commented upon by the SHPD prior to issuance of the permit by the County. Consequently, the applicant has foreclosed the SHPD's opportunity to comment on the permitted activity. It is impossible for the SHPD to provide meaningful comments under these circumstances.

In accordance with HAR §13-284-13, SHPD recommends that CWRM decline to issue the permit for this project. The issuance of the permit is at the County's discretion. **SHPD requests** the property be flagged and our office have the opportunity to review future permits involving ground disturbing activities. Further, SHPD has no objections to the ongoing use of the project area for agricultural purposes, however **SHPD recommends** the property owner hire an archaeological consultant to develop a plan for the continued preservation of the Haia Terrace System (SIHP # 50-50-03-01776) including appropriate cultural use.

CWRM Staff Response: Because SHPD has no objections to the ongoing use of the project area for agricultural purposes, Commission staff recommends approval of the Applicant's SDWP with the attached condition that before the Applicant starts cultivation

on the TMK (2) 4-5-016:009, the Applicant shall have a plan, including appropriate cultural use, for the continued preservation of the Haia Terrace System (SIHP # 50-50-03-01776) developed by an archaeological consultant. If the Applicant does not have the above-mentioned plan in place by August 5, 2023, this plan will become a condition of a water use permit for water uses on TMK (2) 4-5-016:009.

KA PA'AKAI ANALYSIS

Replace table (added TMK parcel (2) 4-5-016:009) under Item 1 of the Ka Pa'akai Analysis section, page 14.

- 1) The identity and scope of cultural, historical, or natural resources in which traditional and customary native Hawaiian rights are exercised in the area.

TMK	Historic Sites
(2) 4-5-016:888; (2) 4-5-016:009 and (2) 4-5-017:888	50-50-03-01776-Haia Terrace System
(2) 4-5-017:005 and (2) 4-5-017:007	50-50-03-01203-Kahoma Complex

RECOMMENDATIONS

Replace and add Items 3, 4, and 5 of the Recommendations section, page 18.

3. Approve Stream Diversion Works Permit (SDWP.5508.6) Application to divert approximately 9,000 gpd two (2) acres dryland karo and one (1) acre of diversified agriculture from the Kahoma Stream subject to the standard conditions in **Exhibit 7** and the special conditions below:
 - a. If the landowners for the diversion intake sites (TMKs 4-5-016:888 and 4-5-017:888) are identified in the future, that the Applicant shall follow all current rules and regulations with the new landowner which may include revisiting this permit with the Commission.
 - b. Before the Applicant starts cultivation on the TMK 4-5-016:009, the Applicant shall have a plan, including appropriate cultural use, for the continued preservation of the Haia Terrace System (SIHP # 50-50-03-01776) developed by an archaeological consultant. If the Applicant does not have the above-mentioned plan in place by August 5, 2023, this plan will become a condition of a water use permit for water uses on TMK 4-5-016:009.
4. Issue a written warning to the Applicants indicating any future violations involving stream diversions without the necessary stream diversion works permit and petition to amend the instream flow standard may be considered repeat violations with fines up to \$5,000 for each day of violation.
5. Provide notice to the Applicant that an application for a water use permit must be made no later than August 5, 2023, to continue using surface water.

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD., STE 555
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

November 15, 2022

M. Kaleo Manuel, Deputy Director
State of Hawaii
Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96809
c/o Dean Uyeno
Email: dean.d.uyeno@hawaii.gov

IN REPLY REFER TO:
Project No.: 2022PR00754
Doc. No.: 2211AM05
Archaeology

Dear M. Kaleo Manuel:

SUBJECT: **Chapter 6E-42 Historic Preservation Review –
After-The-Fact Stream Diversion Works Permit Application (SDWP.5508.6)
Guth Farms Taro and Diversified Agriculture Project
Paunau Ahupua'a, Lāhainā District, Island of Maui
TMK: (2) 4-5-016:009, (2) 4-5-017:002, 005, and 888, (2) 4-5-018:011 and 888 (Kahoma Stream)**

This letter provides the State Historic Preservation Division's (SHPD's) review of the After-The-Fact Stream Diversion Works Permit Application for the Guth Farms taro and diversified agriculture project. SHPD received the current submission on June 17, 2022, which included a copy of the permit application, an HRS 6E Submittal Form, a map of the project area, and a letter from the Commission on Water Resource Management (CWRM) requesting our review of the project.

Naomi and Patrick Guth constructed a water diversion within the Kahoma Stream to irrigate a taro and diversified agriculture farm lot. A search of our records indicates the subject property includes the Haia Terrace System SIHP # 50-50-03-01776 consisting of an extensive terrace system for agriculture and habitation. Photographs of the project area appear to show that the water diverted from the stream is feeding into the Haia Terrace System for local subsistence farming.

As stated in Hawaii Administrative Rules (HAR) §13-284-1, this chapter is to promote the use and conservation of historic properties by articulating a historic preservation review process for projects requiring the approval of a state or county agency for a permit, license, certificate, land use change, subdivision, or other entitlement to use. Section 6E-42(a), Hawaii Revised Statutes states that:

Before any agency or officer of the State or its political subdivisions approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places.

As the project referred to above was undertaken prior to obtaining the required CWRM permit, it was impossible for CWRM to satisfy the statutory requirement that the activity subject to permit requirements be reviewed and

M. Kaleo Manuel
11/15/2022
Page 2

commented upon by the SHPD prior to issuance of the permit by the County. Consequently, the applicant has **foreclosed the SHPD's opportunity to comment on the permitted activity. It is impossible** for the SHPD to provide meaningful comments under these circumstances.

In accordance with HAR §13-284-13, SHPD recommends that CWRM decline to issue the permit for this project. The issuance of the permit is at the County's discretion. **SHPD requests** the property be flagged and our office have the opportunity to review future permits involving ground disturbing activities. Further, SHPD has no objections to the ongoing use of the project area for agricultural purposes, however **SHPD recommends** the property owner hire an archaeological consultant to develop a plan for the continued preservation of the Haia Terrace System (SIHP # 50-50-03-01776) including appropriate cultural use.

A list of permitted archaeological consultants can be found on SHPD's website below:

<https://dlnr.hawaii.gov/shpd/about/branches/archaeology/>

Please contact Andrew McCallister, Maui Archaeologist IV, at andrew.mccallister@hawaii.gov for matters regarding archaeological resources in this letter.

Aloha,

Alan Downer

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

cc: Patrick Guth, property owner, guthfarms@gmail.com