



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

COMMISSION ON WATER RESOURCE MANAGEMENT

June 20, 2023  
Honolulu, Hawai'i

Approval of Stream Channel Alteration Permit (SCAP.5974.3) Application and  
Special Conditions, Castle & Cooke Homes Hawaii, Inc.,  
Koa Ridge Offsite Drain Line 2;  
Kīpapa Stream, Waipi'o, O'ahu, TMK: (1) 9-4-005:008

APPLICANT

Castle & Cooke Homes Hawaii, Inc.  
680 Iwilei Road, Suite 510  
Honolulu, HI 96817

LANDOWNER

United States of America

SUMMARY OF REQUEST

Approve Stream Channel Alteration Permit (SCAP.5974.3) by Castle & Cooke Homes Hawaii, Inc. (Castle & Cooke). The project proposes to convey and discharge on-site stormwater runoff into Kīpapa Stream that has been consolidated and treated in the Koa Ridge storm water treatment facilities. The proposed Drain Line (DL 2) is designed to accommodate the peak runoff from the second phase (northern portion) of the Koa Ridge development. The drain line will be approximately 1,600 feet in length and will consist of two (2) box culverts that discharge into a 12-ft. wide trapezoidal channel with articulated concrete blocks that terminates in a riprap channel lining and concrete rubble masonry (CRM) streambank protection at Kīpapa Stream. A 10-ft. x 8-ft. box culvert will be constructed in Road "G" to connect to the upstream portion of DL 2.

BACKGROUND

On November 23, 2022, Castle & Cooke filed a complete stream channel alteration permit application that is available online at [https://files.hawaii.gov/dlnr/cwrm/swreview/SCAP\\_5974\\_3.pdf](https://files.hawaii.gov/dlnr/cwrm/swreview/SCAP_5974_3.pdf).

LOCATION: Kīpapa Stream, Waipi'o, O'ahu. See **Figure 1**.

Figure 1: Location, Kīpapa Stream, Waipi‘o, O‘ahu.



### STREAM DESCRIPTION

Both the National Hydrography Dataset and the Division of Aquatic Resources (DAR) classify Kīpapa Stream as a perennial stream. The total drainage area is over 13 square miles with a maximum basin elevation of 2,780 feet. The mean annual precipitation is 111 inches and the longest flow path is over 13 miles. The stream is unlined in the project vicinity.

### PROJECT DESCRIPTION

The project proposes to convey and discharge on-site stormwater runoff into Kīpapa Stream that has been consolidated and treated in the Koa Ridge storm water treatment facilities. The proposed DL 2 is designed to accommodate the peak runoff from the second phase (northern portion) of the Koa Ridge development. The drain line will be approximately 1,600 feet in length and will consist of two (2) box culverts that discharge into a 12-ft. wide trapezoidal channel with articulated concrete blocks that terminates in a riprap channel lining and CRM streambank protection at Kīpapa Stream. A 10-ft. x 8-ft. box culvert will be constructed in Road “G” to connect to the upstream portion of Drain Line 2.

Approximately 120 cubic yards (CY) of riprap wrapped in woven geotextile fabric along the invert of the stream and drainage channel will be used. Heavy equipment, such as a backhoe, will be used for the placement of riprap, CRM, temporary cofferdams, and placement and compaction of fill. Construction will take approximately 1 year. Due to high flow velocities, riprap was considered the least intrusive measure within the ordinary high water mark (OHWM) and still provide bank stabilization. On April 28, 2022, the project received a Blanket Section 401 Water Quality Certification from the Department of Health.



**Figure 2:** Project site near the proposed outlet.



Looking upstream at approximate location of DL No. 2 outlet and stream stabilization.



Looking upstream at approximate location of DL No. 2 outlet and stream stabilization.



Looking downstream at location of DL 2 outlet. Old Govt. Road Bridge in background.



Looking downstream at location of DL 2 outlet and under Old Govt. Road Bridge.

### AGENCY REVIEW COMMENTS

City and County of Honolulu, Department of Planning and Permitting: No comments.

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 proposed project is not expected to have adverse impacts on the aquatic environment, but may have short-term impacts during the excavation, grading, and construction of the drain line and culverts. Best Management Practices (BMPs) outlined in the SCAP should help to minimize some of the impacts on the water quality parameters in the aquatic environment and most importantly, allow unimpeded stream flow around the instream

work area to allow for aquatic animal migration and to prevent work site and downstream flooding situations. DAR requests that the following BMPs or mitigative measures should be implemented during the excavation, grading, and construction activities to minimize the potential for erosion, siltation, pollution, and degradation of the aquatic environment.

- 1) Minimize stream bank disturbance and areas denuded of vegetation should be planted or covered as quickly as possible to prevent further erosion;
- 2) Scheduling work activities during periods of minimal rainfall and instream work during low or no flow stream flow conditions; and
- 3) Prevent construction materials, petroleum products, debris and landscaping products from falling, blowing or leaching into the aquatic environment. See **Exhibit 1**.

*CWRM Staff Response:* Per the applicant, the contractor should not disturb the stream banks that are highlighted in yellow. See construction plan in **Exhibit 2**. The near vertical stream bank slopes will be very difficult to plant and stabilize. Scheduling work activities during periods of minimal rainfall and instream work during low or no stream flow is a temporary BMP mentioned in the Erosion and Sediment Plan Control notes. Preventing construction materials, petroleum products, debris and landscaping products from entering into the aquatic environment is a temporary BMP and good housekeeping measure and also a condition of the DA Section 404 Nationwide Permit and Blanket 401 WQC. Staff believes DAR concerns are met.

DLNR, Engineering: The rules and regulations of the National Flood Insurance Program (NFIP), Title 44 of the Code of Federal Regulations (44CFR), are in effect when development falls within a Special Flood Hazard Area (high-risk Areas). Be advised that 44CFR, Chapter 1, Subchapter B, Part 60 reflects the minimum standards as set forth by the NFIP. Local community flood ordinances may stipulate higher standards that can be more restrictive and would take precedence over the minimum NFIP standards. The owner of the project property and/or their representative is responsible to research the Flood Hazard Zone designation for the project. Flood Hazard Zones are designated on FEMA’s Flood Insurance Rate Maps (FIRM). The official FIRMs can be accessed through FEMA’s Map Service Center ([msc.fema.gov](http://msc.fema.gov)). Our Flood Hazard Assessment Tool (FHAT) (<http://gis.hawaiiinfip.org/fhat/>) could also be used to research flood hazard information.

*CWRM staff response:* The project area is in Zone D, Unstudied areas where flood hazards are undetermined, but flooding is possible. No mandatory flood insurance purchase apply, but coverage is available in participating communities.

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

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

*CWRM Staff Response:* Approval of the application is subject to SHPD concurrence. If SHPD requires conditions, delegation authority to Deputy Director will be added as a special condition.

DLNR, Land Division: No comments.

DLNR, State Parks: No comments received.

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.

Office of Hawaiian Affairs: No comments received.

US Army Corps of Engineers: No comments received.

US Fish and Wildlife Service (FWS): No comments received.

Public Comments: No comments 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 “Three cultural resources were located in the vicinity of DL 2. A remnant asphalt pad is located to the north of DL 2 and is a portion of cultural resource SIHP<sup>1</sup>: 50-80-09-7052. The feature is military-related and associated with the Upper Kīpapa Ammunition Storage Site. This structure is assessed as significant under Criterion A & D of the National and Hawai‘i Registers of Historic Places evaluation criteria. The second cultural resource (SIHP: 50-80-09-7053) are historic roadbed and associated features (concrete bridge crossing Kīpapa Stream). The road is the original alignment of Kamehameha Highway, know as the “Old Kamehameha Highway”. This structure is assessed as significant under Criterion A & D of the National and Hawai‘i Registers of Historic Places evaluation criteria. The third cultural resource (SIHP: 50-80-09-9530) consists of plantation-era irrigation and transportation related structures located north of DL 2. Features include irrigation ditches, a railroad berm, and railroad/road bridge foundations. A portion of Kīpapa Ditch, a dressed stone and mortar irrigation ditch (SIHP: 50-80-09:7053A), will be impacted by the construction of DL 2. This

---

<sup>1</sup> SIHP refers to the State Inventory of Historic Places identifier.

structure is assessed as significant under Criterion A, C & D of the National and Hawai‘i Registers of Historic Places evaluation criteria.

“For SIHP: 50-80-09-7053, preservation, in the form of avoidance and protection is recommended for the historic roadbed and associated features. The construction of DL 2 will not impact SIHP: 50-80-09-7053C and the construction plans specify the protection of the existing concrete bridge wingwalls. For SIHP: 50-80-09-7053A, preservation, in the form of avoidance and protection is recommended for the historic irrigation ditch. A portion of Kīpapa Ditch (SIHP: 50-80-09:7053A), located near Station 12+10 DL 2, will be removed, reconstructed and restored upon completion of the 10’ x 8’ box drain in accordance with the mitigation plan. Concluded under the AIS, sufficient information has been generated by the current inventory survey investigation to mitigate any adverse effect caused by proposed development activities, therefore no further work is recommended for the cultural resources (SIHP: 50-80-09 7052 and remaining features of SIHP: 50-80-09-9530) found in the vicinity of DL 2.

“The Cultural Impact Assessment conducted for the EIS [Environmental Impact Statement] acknowledged that portions of Kīpapa Gulch were historically used for traditional Native Hawaiian practices such as gathering plants and medicinal purposes. Also caves in the gulch may possibly contain remains or burials which may be disturbed during construction of off-site infrastructure improvements. However, the report concluded that impacts to these resources would have minimal impact on Hawaiian culture, its practices and traditions.”

*CWRM Staff Response:* The Draft Archaeological Inventory Survey (2009) was submitted to the State Historical Preservation Division (SHPD) of the Department of Land and Natural Resources, regarding the supplemental project EIS. Their response indicates that the report is accepted and meets the minimum requirements for compliance with HRS 6E-42 and they were awaiting the final report. No comments were received by DLNR ‘Aha Moku. No comments were received from the public. No impacts to traditional and customary native Hawaiian rights which may be exercised in the area are anticipated.

- 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, “Same as above”

*CWRM Staff Response:* There are no anticipated impacts to traditional and customary practices or upstream/downstream movement of native macrofauna.

- 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, “Same as above”



*CWRM Staff Response:* The project BMPs are feasible actions that will be employed during the project period to ensure water and stream resources mauka and makai of the project area are not impacted to the detriment of traditional and customary practices of Native Hawaiians.

### 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. A Final Environmental Impact Statement (FEIS) was published on June 23, 2009. The FEIS is online on the Office of Planning and Sustainable Development, website at:

[https://files.hawaii.gov/dbedt/erp/EA\\_EIS\\_Library/2009-06-23-OA-FEIS-Acceptance-Koa-Ridge-Waiawa.pdf](https://files.hawaii.gov/dbedt/erp/EA_EIS_Library/2009-06-23-OA-FEIS-Acceptance-Koa-Ridge-Waiawa.pdf)

### STAFF REVIEW

Review of the permit application by Commission staff is subject to the consideration of the legal authorities cited in **Exhibit 4**.

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. The Department of Health issued a Section 401 Water Quality Certification on April 28, 2022 and was included in the SCAP application. A stream assessment report, prepared by AECOS for this project, states that the development will require storm water drainage systems and that detention basins will be designed to maintain the flow of runoff into area streams at predevelopment peak flows. “Storm water treatment facilities”, described as smaller detention basins or structures designed to detain runoff from typical storms for an extended period of time will be constructed for each of the project drainage areas in accordance with standard requirements imposed by the City & County of Honolulu. Furthermore, AECOS notes that “these basins are designed to retain water from small storms, effecting minimal flood protection but enhancing removal of some particulates and debris from street runoff by detaining runoff for up to several days,” thereby preventing downstream flooding by detaining peak flows. AECOS concludes that “the project will not have any adverse impacts on aquatic species protected by state or federal statutes.”

- (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 fish habitat and streamflow contribution to the nearshore waters, among others. The project is not anticipated to impact the status quo interim instream flow standard which was established on December 10, 1988, pursuant to HAR §13-169-49.

- (3) The proposed channel alteration should not interfere substantially and materially with existing instream or non-instream uses or with channel alterations previously permitted.

*CWRM Staff Response:* The proposed work plan is limited to the project area and should not interfere with instream or non-instream uses, including existing diversions. Commission records indicate that there are seven (7) registered diversions located upstream and two (2) registered diversions located downstream. Their status is unknown.



RECOMMENDATION

That the Commission:

1. Approve Stream Channel Alteration Permit (SCAP.5974.3) Application that proposes to convey and discharge on-site stormwater runoff into Kīpapa Stream that has been consolidated and treated in the Koa Ridge storm water treatment facilities subject to the standard conditions in **Exhibit 3** 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.

Ola i ka wai,



M. KALEO MANUEL  
Deputy Director

Exhibits:

1. DLNR, Division of Aquatic Resources comment letter dated May 15, 2023.
2. Applicant response email regarding DAR comments dated May 17, 2023.
3. Standard Stream Channel Alteration Permit Conditions.
4. Legal Authorities.

APPROVED FOR SUBMITTAL:



DAWN N. S. CHANG  
Chairperson

JOSH GREEN, M.D.  
GOVERNOR | KE KA‘ĀINA  
SYLVA LUKE  
LEUTENANT GOVERNOR | KA HOPE KA‘ĀINA



STATE OF HAWAII | KA MOKU‘ĀINA ‘O HAWAII  
DEPARTMENT OF LAND AND NATURAL  
RESOURCES DIVISION OF AQUATIC RESOURCES  
1151 PUNCHBOWL STREET, ROOM 330  
HONOLULU, HAWAII 96813

Date: May 15, 2023  
DAR # AR6385

DAVIN S.L. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
LAURA H.E. KAUKUA  
FIRST DEPUTY  
M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

MEMORANDUM

TO: Brian J. Neilson  
DAR Administrator

FROM: Glenn Higashi *GH*, Aquatic Biologist

SUBJECT: Request for Comments, Stream Channel Alteration Permit Application  
(SCAP.5974.3), Castle & Cooke Homes Hawaii, Inc., Koa Ridge Offsite Drain Line  
2, Kipapa Stream, Waipio, Oahu

Request Submitted by: M. Kaleo Manuel, Deputy Director

Location of Project: Kipapa Stream, Waipio, Oahu, TMK: (1) 9-4-005:008

Brief Description of Project:

The project proposes to convey and discharge on-site stormwater runoff into Kipapa Stream that has been consolidated and treated in the Koa Ridge storm water treatment facilities. The proposed Drain Line (DL 2) is designed to accommodate the peak runoff from the second phase (northern portion) of the Koa Ridge development. The drain line will be approximately 1,600 feet in length and will consist of two (2) box culverts that discharge into a 12-ft. wide trapezoidal channel with articulated concrete blocks that terminates in a riprap channel lining and CRM streambank protection at Kipapa Stream. A 10-ft. x 8-ft. box culvert will be constructed in Road "G" to connect to the upstream portion of Drain Line 2.

Comments:

No Comments     Comments Attached

Thank you for providing DAR the opportunity to review and comment on the proposed project. Should there be any changes to the project plan, DAR requests the opportunity to review and comment on those changes.

Comments Approved: *Brian J. Neilson* Date: May 15, 2023  
Brian J. Neilson  
DAR Administrator

DAR# AR6385

Brief Description of Project

The proposed action consists of placed riprap downstream of the proposed Koa Ridge Offsite Drain Line No. 2 (DL 2). The placed riprap will be used for bank stabilization and at the invert of Kipapa Stream to mitigate any erosion caused by the discharge of DL 2. DL 2 will convey the stormwater runoff from the northern portion (second phase) of the Koa Ridge development to Kipapa Stream.

The development of Koa Ridge is consistent with the City and County of Honolulu General Plan and the Central Oahu Sustainable Communities Plan.

Placed riprap was considered the least intrusive measure within the OHWM and still provide bank stabilization and mitigate the potential for erosion. There are no other desirable alternative to the proposed action since the drain line alignment is the shortest distance from the proposed Koa Ridge development to Kipapa Stream. Environmentally sensitive bank stabilization practices were considered during the planning and design of DL 2. Vegetated slopes with high performance turf reinforcement matting and vegetated gabions were considered to stabilize the proposed drainage channel and stream bank along Kipapa Stream. However, due to the anticipated high flow velocities within the drainage channel and along Kipapa Stream during the 100-year design flow event, these bank stabilization techniques were determined to be not practicable. Concerns regarding the potential impacts to water quality and the integrity of the gabions due to damage and/or failure caused by the anticipated high flow velocities, heavy debris load and transport of large cobbles and boulders within Kipapa Stream lead to their dismissal. As a result, Class VII placed riprap for the stream invert and channel lining and CRM streambank protection is proposed for the stream banks along Kipapa Stream.

DAR# AR6385

Comments

The proposed project is not expected to have adverse impacts on the aquatic environment, but may have short-term impacts during the excavation, grading, and construction of the drain line and culverts.

Best Management Practices (BMPs) outlined in the SCAP should help to minimize some of the impacts on the water quality parameters in the aquatic environment and most importantly, allow unimpeded stream flow around the instream work area to allow for aquatic animal migration and to prevent work site and downstream flooding situations.

DAR requests that the following Best Management Practices (BMPs) or mitigative measures should be implemented during the excavation, grading, and construction activities to minimize the potential for erosion, siltation, pollution, and degradation of the aquatic environment.

- 1) Minimize stream bank disturbance and areas denuded of vegetation should be planted or covered as quickly as possible to prevent further erosion;
- 2) Scheduling work activities during periods of minimal rainfall and instream work during low or no flow stream flow conditions; and
- 3) Prevent construction materials, petroleum products, debris and landscaping products from falling, blowing or leaching into the aquatic environment.



**From:** [Russell Arakaki](#)  
**To:** [Doraine Young; "Kapiolani Street"](#)  
**Cc:** ["Gorgonio, Kara"; "Kira-lyn Kow"; "Jed Miyazaki"](#)  
**Subject:** RE: Koa Ridge Offsite Drain Line No. 2: Comments from Division of Aquatic Resources  
**Date:** Wednesday, May 17, 2023 9:32:18 AM  
**Attachments:** [2023-05-15 Comments from Div of Aquatic Resources.pdf](#)  
[19.pdf](#)

---

Doraine,

Thank you for the good news. The construction plans include provisions that address DLNR DAR's comments as follows:

1. See attached pdf file of construction plan sheet 19. The contractor should not disturb the stream banks that are highlighted in yellow. The near vertical stream bank slopes will be very difficult to plant and stabilize.
2. Scheduling work activities during periods of minimal rainfall and instream work during low or no stream flow is a temporary BMP mentioned in the ESCP notes.
3. Preventing construction materials, petroleum products, debris and landscaping products from entering into the aquatic environment is a temporary BMP and good housekeeping measure and also a condition of the DA Section 404 Nationwide Permit and Blanket 401 WQC.

Russell

---

**From:** Doraine Young [mailto:[dyoung@ecihawaii.com](mailto:dyoung@ecihawaii.com)]  
**Sent:** Tuesday, May 16, 2023 4:08 PM  
**To:** Kapiolani Street <[KStreet@castlecooke.com](mailto:KStreet@castlecooke.com)>; Russell Arakaki <[russell@pareninc.com](mailto:russell@pareninc.com)>  
**Cc:** Gorgonio, Kara <[kgorgonio@castlecooke.com](mailto:kgorgonio@castlecooke.com)>; 'Kira-lyn Kow' <[kiralyn@pareninc.com](mailto:kiralyn@pareninc.com)>  
**Subject:** Koa Ridge Offsite Drain Line No. 2: Comments from Division of Aquatic Resources

All,

I received the attached comments from Rebecca Alakai and forwarding for your information/use.

Thank you,

Doraine Young  
Engineering Concepts, Inc.  
1150 South King Street, Suite 700  
Honolulu, Hawaii 96814  
Ph: (808) 591-8820 FAX: (808) 591-9010



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

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

## LEGAL AUTHORITIES

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

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

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

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

- (2) Establish interim instream flow standards;
  - (D) In considering a petition to adopt an interim instream flow standard, the commission shall weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for non-instream purposes, including the economic impact of restricting such uses;
- (3) Protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses;
  - (A) The commission shall require persons to obtain a permit from the commission prior to undertaking a stream channel alteration; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit;
  - (C) The commission shall establish guidelines for processing and considering applications for stream channel alterations consistent with section 174C-93;

HAR §13-169-2 Definitions.

“Channel alteration” means to obstruct, diminish, destroy, modify, or relocate a stream channel; to change the direction of flow of water in a stream channel; to place any material or structures in a stream channel; or to remove any material or structures from a stream channel.

“Stream channel” means a natural or artificial watercourse with a definite bed and banks which periodically or continuously contains flowing water.

HAR §13-169-49 Interim instream flow standard for Leeward Oahu. The Interim Instream Flow Standard for all streams on Leeward Oahu, as adopted by the commission on water resource management on October 19, 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.



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.