



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**  
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HONOLULU, HAWAII 96809

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

January 30, 2024  
Honolulu, Hawaii

Approval of Stream Channel Alteration Permit Application (SCAP.6002.2) and Special Conditions  
Kaua'i Island Utility Cooperative  
Kōke'e Ditch Diversion Modifications and Installation of Monitoring Stations at  
Waiakōali (Div. 620), Kauaikinana (Div. 607), and Kōke'e (Div. 622) Streams, in Accordance  
with the Mediation Agreement for the Waimea Watershed Area dated April 18, 2017  
Waiakōali, Kauaikinana, Kōke'e Streams, Waimea, Kaua'i TMK: (4) 1-4-001:003 and 013

APPLICANT

David Bissell, CEO  
Kaua'i Island Utility Cooperative  
4463 Pahee Street, Suite 1  
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LANDOWNER

State of Hawai'i  
Department of Land and Natural Resources  
  
Department of Business, Economic Development  
& Tourism  
Agribusiness Development Corporation

SUMMARY OF REQUEST

Approve the Stream Channel Alteration Permit (SCAP.6002.2) Application that proposes the following:

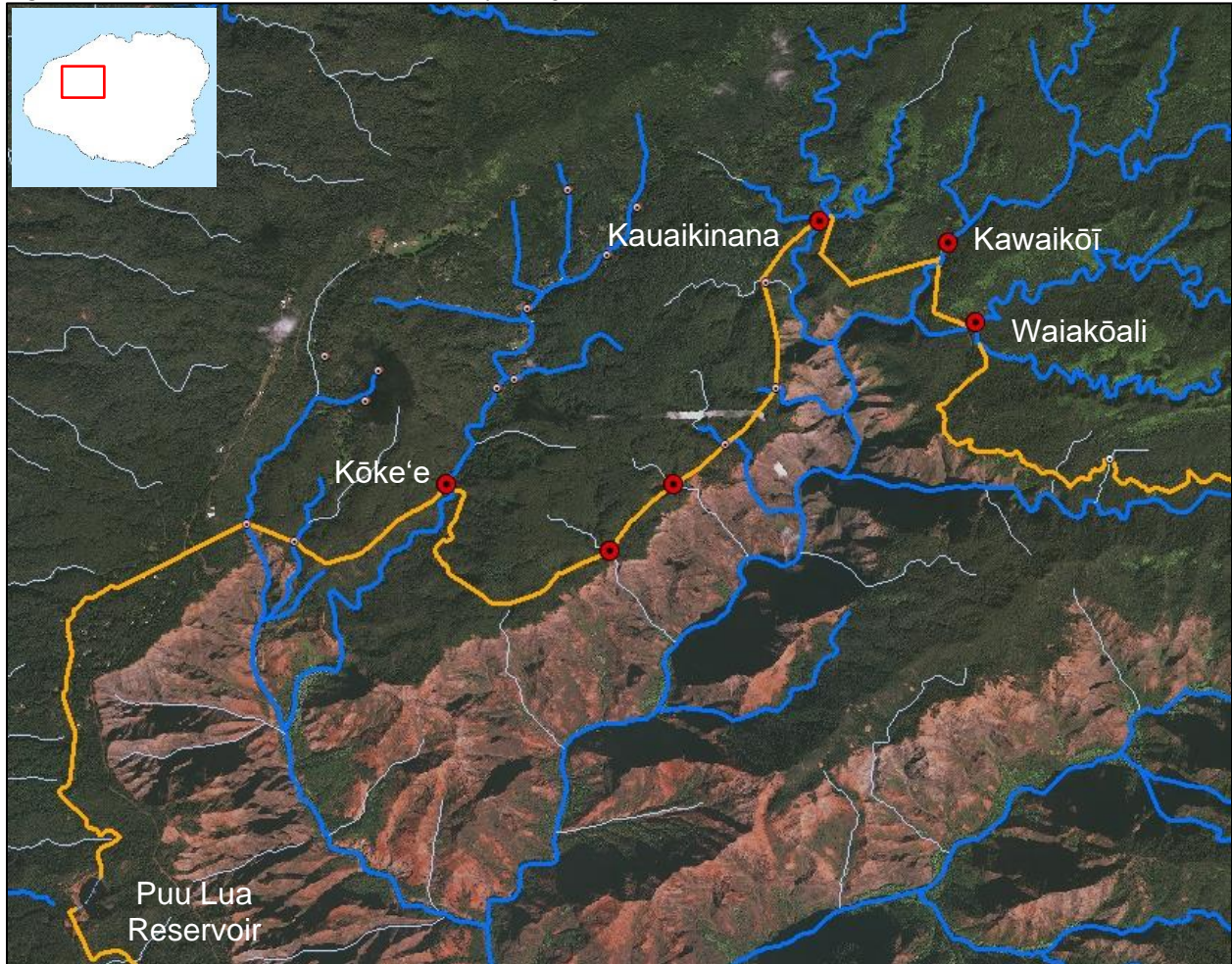
1. Waiakōali Stream: Construction of a stream gate, two pressure transducers and one staff gage, an equipment enclosure, and a gage weir;
2. Kauaikinana Stream: Installation of one pressure transducer and two staff gages, spillway insert, modified ditch gate leaf, and an electrical enclosure;
3. Kōke'e Stream: Installation of one pressure transducer and one staff gage, one acoustic Doppler, one HDPE ditch water flume pipe and control gate, one stoplog slot insert, one equipment enclosure.

The goals include gaining a better understanding of natural streamflow on the currently ungaged streams, measure what is diverted into the ditch, and measure flow in the stream

channel below each diversion. It is intended to address the requirements for Phase One Interim Instream Flow Standards (IIFS) outlined in the Mediation Agreement for the Waimea Watershed Area approved on April 18, 2017 by the Commission. This is a resubmission of a staff submittal that was approved by the Commission on September 15, 2020, but the permit expired in 2022 with no work being done. The project scope remains the same.

**LOCATION:** Waimea Surface Water Hydrologic Unit, Kauaʻi. **Figure 1.**

**Figure 1.** Location, Waimea Surface Water Hydrologic Unit, Kauaʻi.



## **BACKGROUND**

On July 24, 2013, Pōʻai Wai Ola and West Kauaʻi Watershed Alliance, through their attorneys Earthjustice, filed 1) a Complaint for Dispute Resolution; 2) a Petition to Amend Interim Instream flow Standard; and 3) a Complaint for Declaratory Order Against Waste in the Waimea River and its tributaries, Waimea, Hawaiʻi.

On April 18, 2017, the Commission approved a Mediation Agreement for the Waimea Watershed Area (Mediation Agreement). The parties consisted of the petitioners Pōʻai Wai

Ola/West Kauaʻi Watershed Alliance, represented by Earthjustice; the State of Hawaiʻi, Agribusiness Development Corporation and Department of Hawaiian Home Lands; Kauaʻi Island Utility Cooperative (KIUC); and the Kekaha Agriculture Association. The Mediation Agreement and chronology of events can be viewed on the Commission website at: <https://dlnr.hawaii.gov/cwrmsurfacewater/ifs/2060-waimea/>.

Since 2017, the Commission staff has continued to host regular meetings of the parties involved in the Mediation Agreement to work through specific details in the implementation of the approved IIFS. Phase One of the Mediation Agreement went into effect upon its approval by the Commission, whereby the parties agreed to take immediate steps to restore flows to the maximum extent possible while working on the structural modifications. KIUC submitted its Revised Kōkeʻe Ditch Diversion Phase One Flow Release Modification Plan in September 2017. A more detailed plan was submitted in March 2018 as KIUC continued to work through the permitting process with the U.S. Army Corps of Engineers, Department of Health, U.S. Fish and Wildlife Service, State Historic Preservation Division, Office of Conservation and Coastal Lands, and the State Land Division.

On May 31, 2018, KIUC filed a Request for Determination regarding a stream channel alteration permit application for the Kōkeʻe Ditch diversion modification project. Phase One of the mediated agreement required flow restoration and IIFS.

On September 27, 2019, upon further review, the Commission restated its response to KIUC's request for determination. It stated that KIUC needed: 1) a stream channel alteration permit for gage installations on the Waiakōali, Kauaikinana, and Kōkeʻe Streams; and 2) a stream diversion works permit for the headwall and spillway modifications at the Waiakōali Stream diversion; earthen cofferdam installation at the Kawaikōi Stream diversion; and HDPE pipe and ditch bulkhead and tunnel headgate rehabilitation at the Kōkeʻe Stream diversion.

On September 15, 2020, (SCAP.5150.2) was approved by the Commission but it expired in 2022 with no work being done.

On October 13, 2023, the Commission received the complete Application for a Stream Channel Alteration Permit (SCAP.6002.2) on the subject streams. The permit application can be viewed on the Commission website at [https://files.hawaii.gov/dlnr/cwrmswreview/SCAP\\_6002\\_2.pdf](https://files.hawaii.gov/dlnr/cwrmswreview/SCAP_6002_2.pdf). There have been no changes to the project design since the previous approval.

### STREAM DESCRIPTION

Both the National Hydrography Dataset and the Division of Aquatic Resources classified the Waiakōali, Kauaikinana, and Kōkeʻe Streams as perennial. The total drainage area is 86 square miles with a maximum basin elevation of 5,240 feet. The mean annual precipitation is 97 inches and the longest flow path is over 26 miles. The streams have a constant connection to the ocean.

## PROJECT DESCRIPTION

### **Waiakōali Stream**

The Waiakōali Stream diversion is the uppermost active diversion structure (See **Figure 2**). It consists of an existing concrete diversion dam about 35-feet wide, 10-feet high, at an elevation of 3,425 feet. The structure impounds a small pool and directs water through a trash rack and into an ungated open ditch 6-feet wide. The diversion currently does not have gates or a low-level outlet and is unregulated. The project consists of the following:

- a. Bubbler/Pressure Transducers (BPT) and Staff Gage. Installation of two Bubbler/Pressure Transducers (BPT). BPT-1 is on the upstream side of the diversion, and BPT-2 is in the ditch. This will provide information on streamflow, diverted flow, and flow remaining in the stream.

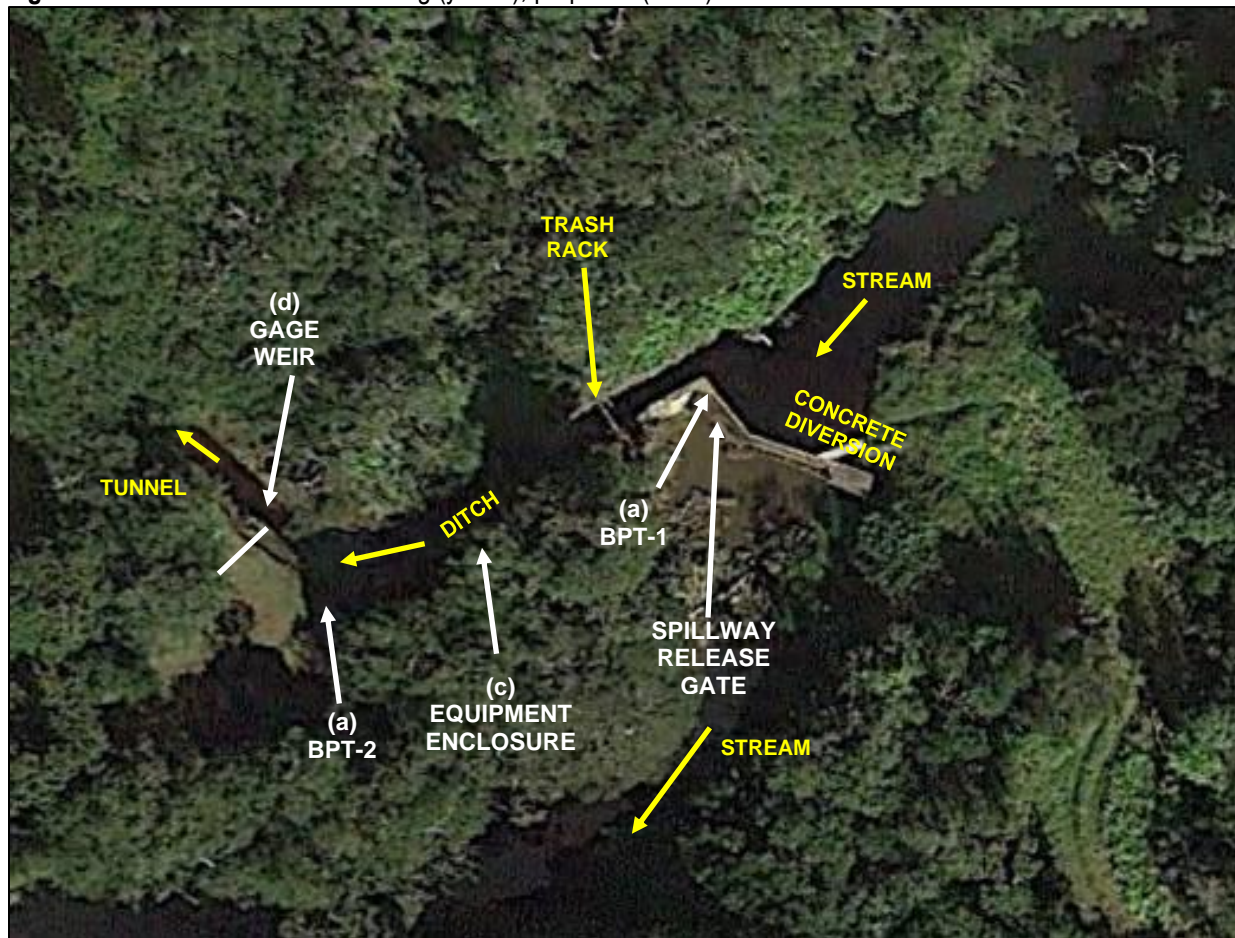
BPT-1 pipe and staff gage will reach down about 4 feet from the top of the diversion and will be about 6 feet from the streamside corner of the ditch entrance. It will be installed about 3 feet from the proposed stream gate cut into the concrete diversion dam. This notch and weir will provide a deeper narrow section that shows stage differences at low-flow volumes.

BPT-2, located in the ditch, will measure the difference between the spillway crest and the ditch water surface elevation at low to moderate ditch flows. The elevation difference will allow construction of a flow measurement weir about 20 feet upstream of the tunnel entrance. The ditch BPT outlet pipe will be about 3 feet tall and will be located in the ditch about 30 feet upstream from the new flow measurement weir.

A data logger/GOES transmitter will be located in the instrument shelter and will control each BPT. The data logger will collect stage measurements to the nearest 0.01 feet every 15 minutes. Each hour the recorded stage data will be transmitted via satellite.



**Figure 2.** Waiakōali diversion. Existing (yellow), proposed (white).



- b. Instrument Shelter. The shelter that will house the satellite communication equipment, batteries, and solar panel will be located about 30 feet downstream of the ditch inlet and 12 feet from the left wall of the ditch. The location was selected because it has less interference from trees for the satellite transmission and it allows wider access between the ditch and shelter site for future repairs on the diversion or ditch inlet. The shelter will be composed of a 30-inch x 24-inch x 10-inch weatherproof steel enclosure mounted on two 6-foot tall steel posts set in a 2-foot by 3-foot concrete pad. One of the posts will have an additional 8-foot tall mast where the antenna and solar panel will be mounted. The air line will be housed in steel conduit that will be buried under the soil where possible or attached to the wall of the ditch with clamps and small anchor bolts as appropriate.





Typical gage conduit to stream. (KIUC, 2020).



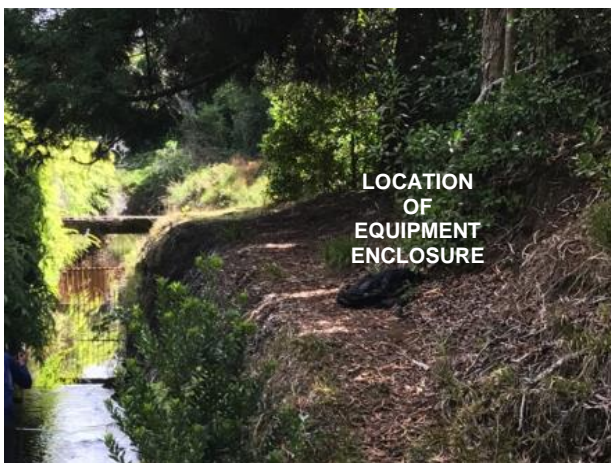
Typical gage station equipment enclosure. (KIUC, 2020).



Waiakōali diversion looking upstream (KIUC, 2020).



The diversion looking toward the ditch. (KIUC, 2020).



Location of equipment enclosure, looking upstream in the ditch (KIUC, 2020).



Ditch gage BPT-2 outlet pipe (KIUC, 2020).



### Kauaikinana Stream

The Kauaikinana Stream diversion is the third main diversion structure on the ditch and contributes additional water to the ditch flows supplied by the Waiakōali and Kawaikōi diversions.



Location of the gage will be in a pool about 40 feet upstream of the bridge crossing over the stream (KIUC, 2020).



Location of electrical enclosure at the bridge (KIUC, 2020).

**Figure 3.** Location of new streamflow gage and electrical enclosure upstream of the diversion.



- a. Bubbler/Pressure Transducer (BPT) and Staff Gage. The first of two new measurement points will be installed about 650 feet upstream of the diversion and will measure natural streamflow. The gage will be located in a medium-sized pool about 40 feet upstream of the road bridge crossing over Kauaikinana stream. A 3.5-foot long staff gage and BPT outlet pipe will be attached to the downstream side of a large boulder on the left bank of the stream with metal clamps. A bubbler air line, protected inside a metal conduit, will be buried under rocks and soil from the BPT outlet pipe for about 40 feet to the instrument shelter located near the bridge. See **Figure 3**.

A data logger/GOES transmitter will be located in the instrument shelter and will control the BPT. The data logger will collect stage measurements to the nearest 0.01 feet every 15 minutes. Each hour the recorded stage data will be transmitted via satellite.

- b. Instrument Shelter. The instrument shelter will be similar to the one used at Waiakōali and will house the instrumentation and batteries. The shelter will be a 30-inch x 24-inch x 10-inch weatherproof steel enclosure mounted on two 6-foot tall steel posts set in a 3-feet x 4-feet concrete pad. One of the posts will have an additional 12-foot tall post for mounting the satellite antenna and solar panel. The instrument shelter will be located near the northeastern road bridge abutment, about 600 feet upstream of the diversion and about 45 feet from the BPT outlet pipe.

The diversion consists of a concrete gravity structure with a large stop log bay and an overflow spillway (**Figure 4**). It differs from the previous two in that the ditch enters the Kauaikinana Stream upstream of the structure and the diversion captures streamflow plus recapturing the ditch discharge and routes it into a tunnel adjacent to the west abutment. The tunnel entrance is served by a trash rack and vertical slide gate with a manual hoist. Unlike the upstream diversions, the Kauaikinana structure is regulated by both a deep stop log section in the center of the spillway and the tunnel head gate. Although the flow release at Kauaikinana can be measured at a notch in the diversion, the natural flow in this small stream can't be readily separated from the, often larger, cumulative flow from the other diversions.



**Figure 4.** Kauaikinana Diversion. Proposed (white).



- c. Vented Pressure Transducer and Staff Gage. This is the second of two new measurement points. A 4-foot staff gage and a 2-inch diameter metal pipe containing the vented pressure transducer will be attached to the upstream side of the diversion about 4 feet towards the right bank (looking downstream) from the existing notch in the diversion. This will provide measurements of the combined natural streamflow and ditch inflow from the Waiakoali and Kawaikōi diversions. The data cable and vent tube will be encased in metal conduit, which will be attached on the upstream face of the diversion and extend towards the right bank for about 20 feet. The data recorder and computer interface for the pressure transducer will be housed in a 2-inch diameter metal pipe attached to the upstream side of the diversion at the higher elevation wing wall at the right bank. The staff gage, pressure transducer pipe and the horizontal conduit containing the data cord and transducer vent will be secured to the upstream face of the diversion with metal brackets and anchor bolts. See **Figure 5**.

**Figure 5.** Kauaikinana diversion showing the stream entering from the right, flowing through the stoplog slot and the ditch exiting to the top of the photo.



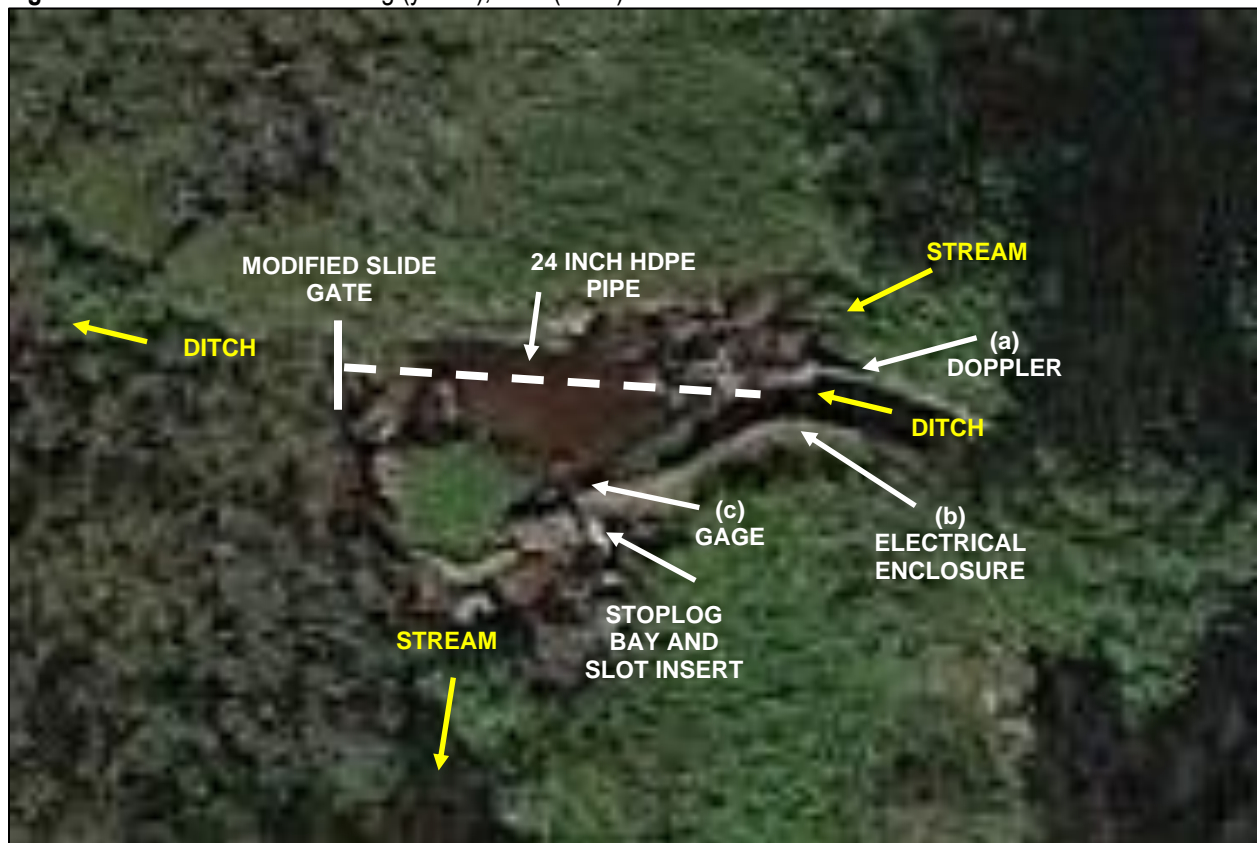


## Kōkeʻe Stream

The Kōkeʻe Stream diversion is the fourth main diversion structure. (**Figure 6**). The composite concrete and masonry gravity structure has an overall length of 80 feet, a height of 6 feet with a 24-inch wide stop log bay and two sections of overflow spillway totaling approximately 25 feet. The structure serves as a control point and release point before the accumulated ditch flow leaves the watershed and enters the tunnel towards the Puʻu Lua reservoir. The tunnel entrance is served by a trash rack and vertical slide gate with a manual hoist.

The proposed diversion modifications separate and isolate ditch water from the stream by installing an HDPE flume to bypass the stream. Kōkeʻe ditch water will be conveyed through the pipe to the downstream tunnel entrance. This reconfiguration of the current condition has several benefits that support accurate measurements being taken of both Kōkeʻe Stream flow and flow in the ditch. First, it separates the Kōkeʻe stream water from the ditch flow and allows for measuring the stream flow at the existing notch in the Kōkeʻe diversion. Second, the weir will increase the depth of water in the ditch, which will create advantageous conditions for an acoustic Doppler flow meter to measure flow in the ditch.

**Figure 6.** Kōkeʻe diversion. Existing (yellow), New (white).



At the intersection of the stream and ditch is a small pool created by the stream and cumulative ditch flow from the three upstream diversions. The combination of this mixing and a poorly defined stream channel entering the diversion area, makes accounting for the water from both

sources nearly impossible given the current configuration of the ditch and stream. Two new monitoring stations are proposed: one in the ditch upstream of the ditch outlet, and one at the spillway slot in the diversion dam.

**Figure 7.** Kōke'e Stream from right bank, looking towards Kōke'e Ditch dropping water into Kōke'e Stream, with spillway slot at right.



- a. Acoustic Doppler. In order to measure flow in the ditch, an acoustic Doppler will be installed in the bottom of the ditch about 70 feet upstream of the new pipe bulkhead near the end of the ditch. This is the first of two new measurement points related to Kōke'e Stream. The upward looking acoustic Doppler flow meter will be secured to the bottom of the ditch and will collect stage and multiple velocity measurements of the flow in the ditch, and compute total flow in the ditch. The instrument shelter will be located on the left bank of the ditch about 10 feet from the edge of the ditch and 50 feet upstream of the existing notch in the diversion. Location of the Doppler flow meter in the ditch (See **Figure 8**).



**Figure 8.** Location of Acoustic Doppler on Kōke'e Ditch.



- b. Bubbler/Pressure Transducer (BPT) and Staff Gage. The second of two new measurement points are proposed to measure flow in the stream. A new BPT pipe and staff gage will be attached to the upstream face of the diversion adjacent to the existing stoplog bay and extend down from the top of the diversion about 4 feet into the bottom of the diversion pool. Location of the BPT gage in the stream, see **Figure 9**.

**Figure 9.** Location of BPT and Staff Gage at spillway slot on Kōke'e Stream diversion dam.



- c. Instrument Shelter. A BPT and a data logger with satellite equipment will be located in an instrument shelter located on the left bank of the ditch approximately 10 feet from the edge of the ditch and 50 feet upstream of the spillway slot in the Kōke'e diversion dam. An upward looking acoustic Doppler flow meter will be installed to measure ditch flows. The data logger will control both the BPT and acoustic Doppler and program both to take measurements every 15 minutes and record the data from each measurement. Each hour the recorded data will be transmitted via satellite. Instrumentation will be housed in a metal, tamper resistant shelter and will include water sensing and recording instrumentation and an approved radio transmitter with external antenna.



Downstream view of the spillway slot in the diversion dam (KIUC, 2020).



Overhead close-up view of the spillway slot in the diversion dam (KIUC, 2020).



AGENCY REVIEW COMMENTS

County of Kauai, Planning Department: Not subject to our regulatory authority and permit.

County of Kaua'i, Department of Public Works: No objections.

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

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

DLNR, Aquatic Resources: No comments received.

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](https://msc.fema.gov)). Our Flood Hazard Assessment Tool (FHAT) ([fhathawaii.gov](https://fhathawaii.gov)) could also be used to research flood hazard information. If there are questions regarding the local flood ordinances, please contact the County of Kauai, Department of Public Works.

*CWRM staff response:* Noted. In addition, the project area is in Zone X, or areas determined to be outside the 0.2% annual chance floodplain. See **Exhibit 1**.

DLNR, Forestry and Wildlife (DOFAW): The State listed 'ōpe'ape'a or Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) could potentially occur at or in the vicinity of the project and may roost in nearby trees. Any required site clearing should be timed to avoid disturbance to bats during their birthing and pup rearing season (June 1 through September 15). During this period woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or trimmed. Barbed wire should also be avoided for any construction because bats can become ensnared and killed by such fencing material during flight.

Artificial lighting can adversely impact seabirds that may pass through the area at night by causing them to become disoriented. This disorientation can result in their collision with manmade structures or the grounding of birds. For nighttime work that might be required, DOFAW recommends that all lights used be fully shielded to minimize the attraction of seabirds. Nighttime work that requires outdoor lighting should be avoided during the seabird fledgling season, from September 15 through December 15, when young seabirds make their maiden voyage to sea.

If nighttime construction is required during the seabird fledgling season (September 15 to December 15), we recommend that a qualified biologist be present at the project site to monitor

and assess the risk of seabirds being attracted or grounded due to the lighting. If seabirds are seen circling around the area, lights should then be turned off. If a downed seabird is detected, please follow DOFAW's recommended response protocol by visiting <https://dlnr.hawaii.gov/wildlife/seabird-fallout-season/#response>.

Permanent lighting also poses a risk of seabird attraction, and as such should be minimized or eliminated to protect seabird flyways and preserve the night sky. For illustrations and guidance related to seabird-friendly light styles that also protect seabirds and the dark starry skies of Hawai'i please visit <https://dlnr.hawaii.gov/wildlife/files/2016/03/DOC439.pdf>.

The State listed nēnē or Hawaiian Goose (*Branta sandvicensis*) could potentially occur in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any are present during construction, all activities within 100 feet (30 meters) should cease and the bird or birds should not be approached. Work may continue after the bird or birds leave the area of their own accord. If a nest is discovered at any point, please contact the Kaua'i Branch DOFAW Office at (808) 274-3433 and establish a buffer zone around the nest.

The endemic pueo or Hawaiian Short-Eared Owl (*Asio flammeus sandwichensis*) could potentially nest in the project area. Before any potential vegetative alteration, especially ground-based disturbance, we recommend that line transect surveys are conducted during crepuscular hours through the project area. If a pueo nest is discovered, a minimum buffer distance of 100 meters from the nest should be established until chicks are capable of flight.

The proposed project is in proximity to designated Ecosystem Critical Habitat for threatened and endangered plant species. DOFAW recommends that a botanical survey be conducted by a qualified botanist in all proposed affected areas prior to commencing work to determine if any rare or endangered plants are present in the project area. We recommend that the survey consists of a complete species list and is conducted during the wettest time of year when plants are more likely to be visible, especially in drier areas. If any listed species are found, please notify DOFAW at (808) 587-0166.

In addition, DOFAW recommends heavy equipment work to be done greater than 100 m away from listed plants. For information on avoidance and minimization measures for plants, please refer to the following link: <https://www.fws.gov/media/plant-avoidance-and-minimization-measures-may-2023>.

DOFAW recommends using native plant species for landscaping that are appropriate for the area; i.e., plants for which climate conditions are suitable for them to thrive, plants that historically occurred there, etc. Please do not plant invasive species. DOFAW also recommends referring to [www.plantpono.org](http://www.plantpono.org) for guidance on the selection and evaluation of landscaping plants and to determine the potential invasiveness of plants proposed for use in the project.

DOFAW recommends minimizing the movement of plant or soil material between worksites. Soil and plant material may contain detrimental fungal pathogens (e.g., Rapid 'Ōhi'a Death, Coffee Leaf Rust), vertebrate and invertebrate pests (e.g., Coqui Frogs, Little Fire Ants, Coffee Berry Borer, etc.), or invasive plant parts (e.g., Barbados Gooseberry, False Kava, Giant Reed,



etc.) that could harm our native species and ecosystems. We recommend consulting the Kaua'i Invasive Species Committee (KISC) at (808) 821-1490 to help plan, design, and construct the project, learn of any high-risk invasive species in the area, and ways to mitigate their spread. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species.

To prevent the spread of Rapid 'Ōhi'a Death (ROD), DOFAW requests that the information and guidance at the following website be reviewed and followed if 'ōhi'a trees are present at the project site that will be removed, trimmed, or potentially injured:

<https://cms.ctahr.hawaii.edu/rod>.

We recommend that Best Management Practices are employed during and after construction to contain any soils and sediment with the purpose of preventing damage to near-shore waters and marine ecosystems.

We appreciate your efforts to work with our office for the conservation of our native species. These comments are general guidelines and should not be considered comprehensive for this site or project. It is the responsibility of the applicant to do their own due diligence to avoid any negative environmental impacts. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible. If you have any questions, please contact Myrna N. Girald Pérez, Protected Species Habitat Conservation Planning Coordinator at (808) 265-3276 or [myrna.girald-perez@hawaii.gov](mailto:myrna.girald-perez@hawaii.gov).

*CWRM Staff Response:* Added as a special condition by reference. See **Exhibit 2**.

DLNR, Historic Preservation (SHPD): On March 3, 2022, SHPD determined that no historic properties are affected and that project initiation may proceed.

*CWRM Staff Response:* Concur. See **Exhibit 3**.

DLNR, Land Division: No comments received.

DLNR, Office of Conservation and Coastal Lands (OCCL): On February 12, 2019, the DLNR Office of Conservation and Coastal Lands considered the direct, cumulative, and potential impacts and declared the actions stated above will have minimal or no significant impact on the environment and exempted it from the preparation of an EA in accordance with HAR, Section 11-200.1 and per its Comprehensive Exemption List for the DLNR reviewed and concurred upon by the Environmental Council on June 5, 2019.

*CWRM Staff Response:* Noted. See **Exhibit 4**.

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.

#### 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 "The proposed work is on the existing Kokee Ditch system, which is actively diverting water for irrigation, recreational fishing and other state facility uses. The proposed work is for the purpose of stream restoration consistent with the IIFS for each stream and flow data collection, and will result in less water being diverted into the ditch system and more water being retained in the stream. During our community and stakeholder outreach for this project, we have not identified any native Hawaiians who access this area for traditional and customary practices. Several people mentioned that due to difficulty of accessing the area, it isn't an ideal location for their purposes. Access is by a rough road, accessible by four wheel drive vehicles only, that terminates in a foot path. The footpath is approximately 1/4 mile in distance, steep and lightly maintained. However, it is possible there are native Hawaiians who do access the area for traditional plant gathering, fishing and ceremonial practices. Based on stream surveys conducted in 2018, no native aquatic species were found in Waiakoali, Kauaikinana and Kokee streams downstream of the diversion. Flora and fauna surveys in the area indicated the predominant vegetation coverage is alien forest with some scattered remnant native koa and ohia."

*CWRM Staff Response:* 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, “The proposed work will result in stream restoration per the IIFS adopted by CWRM as part of the Mediation Agreement for the Waimea Watershed, which was approved by CWRM in April 2017, and flow data collection. If any traditional and customary native Hawaiian practices occur in the area, the stream restoration will likely provide for improved aquatic and riparian habitats. The majority of the proposed work will be within the footprint of the existing ditch system and is not expected to negatively impact any traditional and customary Native Hawaiian rights.”

*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, “The proposed work will result in restored stream flows and flow data collection and has the sole purpose of satisfying the requirements of the Mediation Agreement for the Waimea Watershed, which was approved by the Commission in April 2017. DHHL was a party to the mediation and has approved the proposed work.”

*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 Oʻahu;
- (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.

The project triggers an EA because it proposes (1) the use of state or county lands or the use of state or county funds and (2) use within the conservation district. On February 12, 2019, the DLNR Office of Conservation and Coastal Lands considered the direct, cumulative, and potential impacts and declared the actions stated above will have minimal or no significant impact on the environment and exempted it from the preparation of an EA in accordance with HAR, Section 11-200.1 and per its Comprehensive Exemption List for the DLNR reviewed and concurred upon by the Environmental Council on June 5, 2019. See **Exhibit 4**.

### STAFF REVIEW

Review of the permit application by Commission staff is subject to the consideration of the legal authorities cited in **Exhibit 6**.

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.

- (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 IIFS for the Waimea Watershed Area was approved on April 18, 2017 by the Commission. Upon approval of the proposed work plan, it is anticipated that identified instream uses will be better supported.

- (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 numerous registered diversions located on the ditch and downstream of the project area. No adverse impacts are anticipated.



RECOMMENDATION

That the Commission:

1. Approve the Stream Channel Alteration Permit (SCAP.6002.2) Application that proposes construction of a stream gate, two pressure transducers and one staff gage, an equipment enclosure, and a gage weir on the Waiakōali Stream; installation of one pressure transducer and two staff gages, spillway insert, modified ditch gate leaf, and an electrical enclosure on the Kauaikinana Stream; and the installation of one pressure transducer and one staff gage, one acoustic Doppler, one HDPE ditch water flume pipe and control gate, one stoplog slot insert, one equipment enclosure on the Kōke'e Stream subject to the standard conditions in **Exhibit 5** and special condition below:
  - a. In conformance with the Division of Forestry and Wildlife recommendations, incorporated by reference as **Exhibit 2**, the permittee should employ best management practices when working in the area in order to protect native birds, bats and to minimize the transport of invasive species, pests, and pathogens.

Ola i ka wai,



DEAN D. UYENO  
Acting Deputy Director

Exhibits:

1. DLNR, Engineering Division letter, dated November 21, 2023.
2. DLNR, Division of Forestry and Wildlife letter, dated November 21, 2023.
3. DLNR, Historic Preservation letter, dated March 3, 2022.
4. DLNR, Office of Conservation and Coastal Lands letter, dated February 12, 2019.
5. Standard Stream Channel Alteration Permit.
6. Legal Authorities.

APPROVED FOR SUBMITTAL:



DAWN N. S. CHANG  
Chairperson

January 30, 2024

JOSH GREEN, M.D.  
GOVERNOR



DAWN N. S. CHANG  
CHANCELLOR

KENNETH S. FINK, M.D., MGA, MPH  
NEEL J. HANNAHS  
AURORA KAGANA-VIVIANI, PH.D.  
WAYNE K. KATAYAMA  
PAUL J. MEYER  
LAWRENCE H. MIKE, M.D., J.D.

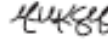
M. KALEO MANUEL  
DEPUTY DIRECTOR

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

October 20, 2023

Ref: SCAP.6002.2

FROM: ~~TO:~~ Aha Moku  
Aquatic Resources  
Engineering Division  
Forestry and Wildlife  
Land Division  
Office of Conservation and Coastal Lands  
State Parks

TO: ~~FROM:~~ M. Kaleo Manuel, Deputy Director   
Commission on Water Resource Management

SUBJECT: Request for Comments, Stream Channel Alteration Permit Application  
(SCAP.6002.2), Kaua'i Island Utility Cooperative, Kōke'e Ditch Diversion  
Modification and Monitoring, Waiakōali, Kauaikinana, Kōke'e Streams, Waimea,  
Kauai, Tax Map Key: (4) 1-4-001:003 and 013

We would appreciate your review and comment on the subject permit application within 30 days from the date of this memo. Previously, Stream Channel Alteration Permit (SCAP.5150.2) for this project was issued on September 15, 2020, but expired. There have been no changes to the project design since the previous approval. The proposed work includes the following:

1. Waiakōali Stream. Construction of a stream gate, two pressure transducers and one staff gage, an equipment enclosure, and a gage weir.
2. Kauaikinana Stream. Installation of one pressure transducer and two staff gages, spillway insert, modified ditch gate leaf, and an electrical enclosure.
3. Kōke'e Stream. Installation of one pressure transducer and one staff gage, one acoustic Doppler, one HDPE ditch water flume pipe and control gate, one stoplog slot insert, one equipment enclosure.

The application is available for review at: <http://dlnr.hawaii.gov/cwrm/surfacewater/review/>. If you have any questions, contact Rebecca Alakai at (808) 587-0266, or [rebecca.r.alakai@hawaii.gov](mailto:rebecca.r.alakai@hawaii.gov).

Response:

- |   |   |
|---|---|
| <input type="checkbox"/> We have no objections                              | <input type="checkbox"/> Additional information requested |
| <input type="checkbox"/> Not subject to our regulatory authority and permit | <input type="checkbox"/> Extended review period requested |
| <input checked="" type="checkbox"/> Comments attached                       | <input type="checkbox"/> EA / EIS is required             |

Contact Person:



Cary S. Chang, Chief Engineer

Date: Nov 21, 2023



**DEPARTMENT OF LAND AND NATURAL RESOURCES  
ENGINEERING DIVISION**

**CWRM/M. Kaleo Manuel**

**Ref:** Request for Comments, Stream Channel Alteration Permit Application  
(SCAP.6002.2), Kaua'i Island Utility Cooperative, Kōke'e Ditch Diversion  
Modification and Monitoring  
**Location:** Waiakōali, Kauaikinana, Kōke'e Streams, Waimea, Kaua'i  
**TMK(s):** (4) 1-4-001:003 and 013

**COMMENTS**

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](https://msc.fema.gov)). Our Flood Hazard Assessment Tool (FHAT) ([fhaw.hawaii.gov](https://fhaw.hawaii.gov)) could also be used to research flood hazard information.

If there are questions regarding the local flood ordinances, please contact the applicable County NFIP coordinating agency below:

- Oahu: City and County of Honolulu, Department of Planning and Permitting (808) 768-8098.
- Hawaii Island: County of Hawaii, Department of Public Works (808) 961-8327.
- Maui/Molokai/Lanai: County of Maui, Department of Planning (808) 270-7139.
- Kauai: County of Kauai, Department of Public Works (808) 241-4896.

Signed:



**CARTY S. CHANG, CHIEF ENGINEER**

Date: Nov 21, 2023

JOSH GREEN, M.D.  
GOVERNOR | KE KAUĀINA  
  
SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPIE KAUĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'ŌIHANA KUMUWAIWAI 'ĀINA

DIVISION OF FORESTRY AND WILDLIFE  
1151 PUNCHBOWL STREET, ROOM 325  
HONOLULU, HAWAII 96813

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
  
LAURA H.E. KAKAUA  
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

November 21, 2023

Log no. 4309/SCAP.6002.2

**MEMORANDUM**

**TO:** M. KALEO MANUEL, Deputy Director  
Commissions on Water Resource Management

**FROM:** JASON D. OMICK, Acting Wildlife Program Manager  
Division of Forestry and Wildlife

**SUBJECT:** Request for Comments on the Stream Channel Alteration Permit  
Application (SCAP.6002.2) Kaua'i Island Utility Cooperative, Kōke'e Ditch  
Diversion Modification and Monitoring, Waiakoali, Kauaikinana, Kōke'e  
Streams, Waimea, Kaua'i island

The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has received your request for comments on the Koke'e Ditch Diversion Modification and Monitoring permit application (SCAP.6002.2) located along the Waiakoali, Kauaikinana, and Kōke'e Streams, on the island of Kaua'i; TMK: (4)1-4-001:003 and 013. The proposed work is for the sole purpose of meeting the requirements of the Mediation Agreement for the Waimea Watershed that was approved by the Commissions on Water Resource Management in April 2017. The proposed work is on the existing Kōke'e Ditch system, which actively diverts water for irrigation, recreational fishing, and other state facility uses. The proposed work is for the purpose of stream restoration consistent with the IIFS for each stream and flow data collection and will result in less water being diverted into the ditch system and more water being retained in the stream. The proposed work includes the installation of flow monitoring equipment to measure stream and ditch flows. A previous Stream Channel Alteration Permit (SCAP.5150.2) was issued on September 15, 2020, but has expired. There have been no changes to the project design. The goals for the gauging station installations include gaining a better understanding of natural stream flow on the currently ungauged streams, measuring what is diverted into the ditch, and measuring flow in the stream channel below each diversion.

DOFAW provides the following comments regarding the potential for the proposed work to affect listed species in the vicinity of the project area.

The State listed 'ōpe'ape'a or Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) could potentially occur at or in the vicinity of the project and may roost in nearby trees. Any required site clearing should be timed to avoid disturbance to bats during their birthing and pup rearing season (June 1 through September 15). During this period woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or trimmed. Barbed wire should also be avoided for any construction because bats can become ensnared and killed by such fencing material during flight.

Artificial lighting can adversely impact seabirds that may pass through the area at night by causing them to become disoriented. This disorientation can result in their collision with manmade structures or the grounding of birds. For nighttime work that might be required, DOFAW recommends that all lights used be fully shielded to minimize the attraction of seabirds. Nighttime work that requires outdoor lighting should be avoided during the seabird fledging season, from September 15 through December 15, when young seabirds make their maiden voyage to sea.

If nighttime construction is required during the seabird fledgling season (September 15 to December 15), we recommend that a qualified biologist be present at the project site to monitor and assess the risk of seabirds being attracted or grounded due to the lighting. If seabirds are seen circling around the area, lights should then be turned off. If a downed seabird is detected, please follow DOFAW's recommended response protocol by visiting <https://dlnr.hawaii.gov/wildlife/seabird-fallout-season/#response>.

Permanent lighting also poses a risk of seabird attraction, and as such should be minimized or eliminated to protect seabird flyways and preserve the night sky. For illustrations and guidance related to seabird-friendly light styles that also protect seabirds and the dark starry skies of Hawai'i please visit <https://dlnr.hawaii.gov/wildlife/files/2016/03/DOC439.pdf>.

The State listed nēnē or Hawaiian Goose (*Branta sandvicensis*) could potentially occur in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any are present during construction, all activities within 100 feet (30 meters) should cease and the bird or birds should not be approached. Work may continue after the bird or birds leave the area of their own accord. If a nest is discovered at any point, please contact the Kaua'i Branch DOFAW Office at (808) 274-3433 and establish a buffer zone around the nest.

The endemic pueo or Hawaiian Short-Eared Owl (*Asio flammeus sandwichensis*) could potentially nest in the project area. Before any potential vegetative alteration, especially ground-based disturbance, we recommend that line transect surveys are conducted during crepuscular hours through the project area. If a pueo nest is discovered, a minimum buffer distance of 100 meters from the nest should be established until chicks are capable of flight.

The proposed project is in proximity to designated Ecosystem Critical Habitat for threatened and endangered plant species. DOFAW recommends that a botanical survey be conducted by a qualified botanist in all proposed affected areas prior to commencing work to determine if any rare or endangered plants are present in the project area. We recommend that the survey consists of a complete species list and is conducted during the wettest time of year when plants are more likely to be visible, especially in drier areas. If any listed species are found, please notify DOFAW at (808) 587-0166.



In addition, DOFAW recommends heavy equipment work to be done greater than 100 m away from listed plants. For information on avoidance and minimization measures for plants, please refer to the following link: <https://www.fws.gov/media/plant-avoidance-and-minimization-measures-may-2023>.

DOFAW recommends using native plant species for landscaping that are appropriate for the area; i.e., plants for which climate conditions are suitable for them to thrive, plants that historically occurred there, etc. Please do not plant invasive species. DOFAW also recommends referring to [www.plantpono.org](http://www.plantpono.org) for guidance on the selection and evaluation of landscaping plants and to determine the potential invasiveness of plants proposed for use in the project.

DOFAW recommends minimizing the movement of plant or soil material between worksites. Soil and plant material may contain detrimental fungal pathogens (e.g., Rapid 'Ōhi'a Death, Coffee Leaf Rust), vertebrate and invertebrate pests (e.g., Coqui Frogs, Little Fire Ants, Coffee Berry Borer, etc.), or invasive plant parts (e.g., Barbados Gooseberry, False Kava, Giant Reed, etc.) that could harm our native species and ecosystems. We recommend consulting the Kaua'i Invasive Species Committee (KISC) at (808) 821-1490 to help plan, design, and construct the project, learn of any high-risk invasive species in the area, and ways to mitigate their spread. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species.

To prevent the spread of Rapid 'Ōhi'a Death (ROD), DOFAW requests that the information and guidance at the following website be reviewed and followed if 'ōhi'a trees are present at the project site that will be removed, trimmed, or potentially injured: <https://cms.ctahr.hawaii.edu/rod>.

We recommend that Best Management Practices are employed during and after construction to contain any soils and sediment with the purpose of preventing damage to near-shore waters and marine ecosystems.

We appreciate your efforts to work with our office for the conservation of our native species. These comments are general guidelines and should not be considered comprehensive for this site or project. It is the responsibility of the applicant to do their own due diligence to avoid any negative environmental impacts. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible. If you have any questions, please contact Myrna N. Giraldo Pérez, Protected Species Habitat Conservation Planning Coordinator at (808) 265-3276 or [myrna.giraldo-perez@hawaii.gov](mailto:myrna.giraldo-perez@hawaii.gov).

Sincerely,



JASON D. OMICK  
Acting Wildlife Program Manager



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
STATE HISTORIC PRESERVATION DIVISION  
KAKUHIHEWA BUILDING  
601 KAMOKILA BLVD., STE 555  
KAPOLEI, HI 96707

SEZANNE D. CASE  
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ROBERT K. MASUDA  
FIRST DEPUTY  
  
M. KALEO MANTUEL  
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  
ENDANGERED  
FORESTS AND WILDLIFE  
HISTORIC PRESERVATION  
KAWOOLANE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

March 3, 2022

Michael Cain, Acting Administrator  
Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
1151 Punchbowl Street, Room 131  
Honolulu, Hawai'i 96813  
[michael.cain@hawaii.gov](mailto:michael.cain@hawaii.gov)

IN REPLY REFER TO:  
Project No. 2019PR30706  
Doc. No. 2203DB01  
Archaeology  
Architecture

Dear Mr. Cain:

**SUBJECT: HRS Chapter 6E-42 Historic Preservation Review –  
Kaua'i Island Utility Cooperative – Kōke'e Ditch Diversion Modification Project  
Flow Release and Monitoring Plans – OCCL – Site Plan Approval  
Kona and Waimea Ahupua'a, Kona District, Island of Kaua'i  
TMK: (4) 1-4-001, 002, 003, 013**

This letter provides the State Historic Preservation Division's (SHPD's) HRS §6E-42 updated review of the Kaua'i Island Utility Cooperative (KIUC) – Kōke'e Ditch Diversion Modification Project. The Kaua'i Island Utility Cooperative proposes the installation of gauging stations and to release water in the stream channel at each diversion. The project requires Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) site plan approval. In a letter dated May 17, 2021 (Project No. 2019PR30706, Doc. No. 2104DB08), SHPD requested additional information for the proposed project, including requesting an SIHP Site number for the Kōke'e Ditch System, providing assessment of integrity and site significance of the ditch and reservoir, providing a project effect determination (if necessary), and if warranted, providing potential mitigation commitments for potential impacts related to the current project.

The SHPD received the latest project submittals on November 11, 2021 (Submission No. 2019PR30706.002) that included cover letter for submittal of the revised LRFI report (Belluomini and Hammatt, October 2021), document titled *Archaeological Literature Review and Field Inspection Report for the Kōke'e Diversion Modification Project, Waimea Ahupua'a, Waimea District, Kaua'i, TMK: (4) 1-4-001* (Belluomini and Hammatt, October 2021), and on November 30, 2021 (Submission No. 2019PR30706.003) that included email correspondence for SIHP Site # request. The property acreage totals approximately 0.486 acres (21,160.813 sq. ft.).

The four primary Kōke'e Ditch diversion locations are Waiakoali, Kawaikoi, Kauaikinana, and Kōke'e streams. According to the Kōke'e Ditch System landowner (Agribusiness Development Corporation), the Waiakoali and Kawaikoi diversions are located in the Na Pali Kona Forest Reserve and the Kauaikinana and Kōke'e diversions are located in Kōke'e State Parks. DLNR Division of Forest and Wildlife (DOFAW) manages the land surrounding the Waiakoali and Kawaikoi diversions while DLNR Division of State Parks manages the land surrounding the Kauaikinana and Kōke'e diversions. Pua Moe Divide and Upper Pipeline are located within the Kōke'e State Parks and Pu'u Ka Pele Forest Reserve. Additionally, DOFAW and State Parks manage portions of the upper pipeline.

The proposed project scope of work is based upon a Mediation Agreement for the Waimea Watershed, which was approved by Commission on Water Resource Management (CWRM) in April 2017 and involves modifications to the existing ditch structure to install gauging stations and to release water in the stream channel at each diversion.

There are two types of minor ground disturbance involved with the project. The first involves the installation of 3 concrete pads measuring 3 ft. by 4 ft. at three diversion sites and less than a foot in depth. The second type of ground



Mr. Michael Cain  
March 3, 2022  
Page 2

disturbance is the widening of a 2-foot-wide footpath at Kawaikoi diversion between an access road and the ditch. Ground disturbance would be caused by removal of ginger and small gauva with an excavator. The path after clearing will be approximately 10 ft. wide. The ditch is currently in use and maintained on a regular basis.

The Kōke'e Ditch (SIHP Site #50-30-02-02417) was originally constructed between 1906-1907 by the Kekaha Sugar Company, and expanded between 1923 and 1926 into the Kōke'e Ditch system which includes the Waiakoali Diversion, Kawaikoi Diversion, Kauaikinana Diversion, Kōke'e Diversion (1924), and Pu'u Lua Reservoir (1927). The ditch system is defined as a historic property, per §6E-2, HAR. Each diversion structure is comprised of man-made tunnels, basalt and mortar constructed walls, and concrete masonry walls.

The proposed project is limited in spatial extent and will not adversely affect the character defining features of Kōke'e Ditch, and the minimal ground disturbance has low potential to impact intact subsurface historic properties. Within the revised LRFI, the Kōke'e Ditch System was assessed for integrity and significance per HAR §13-275-6. It was determined to sufficiently retain all seven elements of integrity for location, design, setting, materials, workmanship, feeling and association, although modern modifications, current lack of commercial agricultural use of the area and ditch, and abandonment of portions of the ditch has slightly diminished its integrity. The ditch system was also determined significant under criteria a, c, and d.

SHPD requests that the Belluomini and Hammatt (October 2021) LRFI be revised to indicate the project is subject only as a §6E-42 project, and pursuant to HAR §13-284. Once revised, please upload final document to HICRIS under Project No. 2019PR30706, as well as two hard copies and a text searchable pdf copy transmitted to the SHPD Kapolei office and to [Lehua.K.Soare@hawaii.gov](mailto:Lehua.K.Soare@hawaii.gov), respectively.

Based on the updated information provided by the applicant, SHPD's determination is **"No Historic Properties Affected"** for the current project. Pursuant to HAR §13-284-7(e), when the SHPD agrees that the action will not affect any significant historic properties, this is the SHPD's written concurrence and historic preservation review ends. The historic preservation review process is ended. The permitting and/or project initiation process may continue.

Please contact Julia Flauaus, Architectural Historian, at [Julia.Flauaus@hawaii.gov](mailto:Julia.Flauaus@hawaii.gov) for any concerns regarding architectural resources, and David Buckley, Kaua'i Lead Archaeologist, at (808) 462-3225 or at [David.Buckley@hawaii.gov](mailto:David.Buckley@hawaii.gov) for questions regarding this letter.

Mahalo,

*Alan Downer*

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

cc: Jason Hines, Joule Group, [jhines@joulegroup.com](mailto:jhines@joulegroup.com)  
Dawn Huff, Joule Group, [dhuff@joulegroup.com](mailto:dhuff@joulegroup.com)  
David Bissell, President and CEO KIUC, [dbissell@kiuc.coop](mailto:dbissell@kiuc.coop)  
Hal Hammatt, CSH, [hhammatt@culturalsurveys.com](mailto:hhammatt@culturalsurveys.com)  
Scott Belluomini, CSH, [sbelluomini@culturalsurveys.com](mailto:sbelluomini@culturalsurveys.com)



January 30, 2024

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
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SUZANNE D. CASE  
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FIRST DEPUTY

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DEPUTY DIRECTOR - WATER

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BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
(ENFORCEMENT)  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIHOLAWA ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:TM

Correspondence: KA 19-117

Galen Nakamura  
Shiramiu Loo & Nakamura  
4357 Rice St., Suite 102  
Lihue, HI 96766

FEB 12 2019

SUBJECT: Kōke'e Ditch Diversion Modification and Monitoring Proposal Located at Napali-Kona Forest Reserve, Kaua'i, Vicinity of TMKs: (4) 1-4-001:003 & 013

Dear Mr. Nakamura:

The Office of Conservation and Coastal Lands (OCCL) has reviewed your information regarding the subject matter. According to your information the Waimea Watershed Area Mediation Agreement approved by the Commission on Water Resource Management calls for modifications to several existing diversion structures on the Ditch system and the installation of flow measurement equipment on the ditch and on diverted streams.

For this particular request, Kaua'i Island Utility Cooperative (KIUC) is proposing to: 1) Modify four diversions on the Ditch system to increase the natural flows of Waiakoali, Kawaikōi, Kauaikinana, and Kōke'e streams to satisfy interim instream flow standards adopted by CWRM and 2) install flow measurement equipment in the noted streams and/or associated ditch.

In addition, KIUC is requesting a determination as to what type of authorization would be required for the proposed project and also if the proposed project could be exempt from HRS, Chapter 343.

The OCCL notes the subject area lies within the Resource subzone of the Conservation District. The Kōke'e Ditch system is a nonconforming land use as it was created [1926] prior to the advent of the Conservation District.

What is being proposed are identified land uses in the Conservation District pursuant to the Hawai'i Administrative Rules, Chapter 13-5, §13-5-22 P-1 DATA COLLECTION (B-1) Basic data collection, research, education, and resource evaluation that results in a minor disturbance to natural resources or land; P-8 STRUCTURES AND LAND USES, EXISTING (B-1) Demolition, removal, or minor alteration of existing structures, facilities, land, and equipment. Any historic property shall be evaluated by the department for historical significance; and P-9 STRUCTURES, ACCESSORY (B-1) Construction or placement of structures accessory to existing facilities or uses.

The proposed land uses would require the filing of a Site Plan Approval (SPA) that can be authorized administratively by the OCCL. The SPA application should focus on describing the proposed land uses in detailed layman terms, the construction methodology, best management practices and any proposed mitigation. The SPA application can be found on our website at [dlnr.hawaii.gov/occl](http://dlnr.hawaii.gov/occl) under applications.

January 30, 2024

Galen Nakamura  
Shiramiu Loo & Nakamura

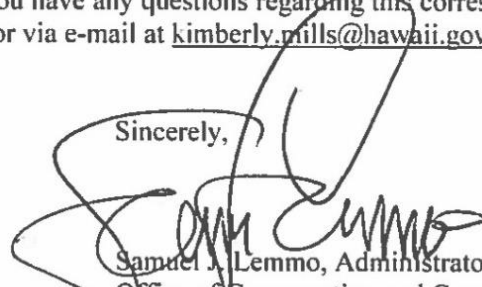
Correspondence: KA 19-117

At this time, the OCCL believes that the proposed modifications and monitoring improvements may be considered an exempt action pursuant to Hawaii Revised Statutes (HRS), Chapter 343 as amended, HAR, Chapter 11-200, and pursuant to the Exemption List for the Department, specifically exemption class 1- Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing; DLNR exemption 1-22) Repair and maintenance of existing water diversions and intake structures, including valves, gates, intake boxes, and lines, in order to collect or improve the collection at the location of the existing water source diversion works; 1-42) Actions that are intended to maintain or support the sustainability of those natural resources under the jurisdiction of the Department, including law enforcement, regulation compliance, resources and environmental monitoring, debris or property removal, and other administrative and management measures; Exemption Class 3 Construction and location of single new, small facilities or structures and the alteration and modification of same and installation of new, small, equipment and facilities and the alteration and modification of same; DLNR exemptions 3-13) Installation of new, small groundwater, surface water, or climatological monitoring and data collection equipment, structures that house or protect this equipment, and installation of electrical, telemetry, or communications systems to service this equipment; Exemption Class 4 Minor alteration in the conditions of land, water, or vegetation; Exemption Class 5 Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource; DLNR exemption 5-5) Installation of climatological stations and equipment and streamflow gaging stations and equipment, and other similar equipment necessary to measure environmental factors and collect data; and Exemption Class 6 Construction or placement of minor structures accessory to existing facilities. When processing the SPA application, the OCCL shall seek concurrence with another State agency to hopefully exempt the proposed improvements from HRS, Chapter 343.

In addition, as the Koke'e Ditch Irrigation System is considered a historic feature, the State agency that has oversight of the entire system should submit the HRS 6E Submittal Form on behalf of KIUC in regards to historic properties. This form can be found on the State Historic Preservation Division website under FORMS.

The OCCL notes the plans for Documentations and Modifications of Four Koke'e Diversions has the wrong tax map key. OCCL staff has deduced the subject location's TMKs. Please include the proper location, preferably a TMK. Should you have any questions regarding this correspondence, contact Tiger Mills of our Office at (808) 587-0382 or via e-mail at [kimberly.mills@hawaii.gov](mailto:kimberly.mills@hawaii.gov).

Sincerely,



Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

C: CWRM/HP/KDLO  
DOA  
County of Kaua'i  
-Planning

**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 §13-169-45 Interim instream flow standard for Kauai. The Interim Instream Flow Standard for all streams on Kauai, 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.

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.