



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

November 19, 2024
Honolulu, Hawai'i

Approval of Stream Diversion Works Permit Application (SDWP.5290.6)
Spirit of Aloha Temple
Installation of a Two-Inch Pipe to Divert 72,000 gpd for Kalo and Diversified Agriculture,
With Special Conditions, and
Find that a Petition to Amend the Interim Instream Flow Standard is Not Required
Keali'i Stream, Maui, Tax Map Key(s): (2) 2-8-004:032

APPLICANT
Spirit of Aloha Temple
800 Haumana Rd
Haiku, HI 96708

LANDOWNER
Fredrick R. Honig Trust
800 Haumana Rd
Haiku, HI 96708

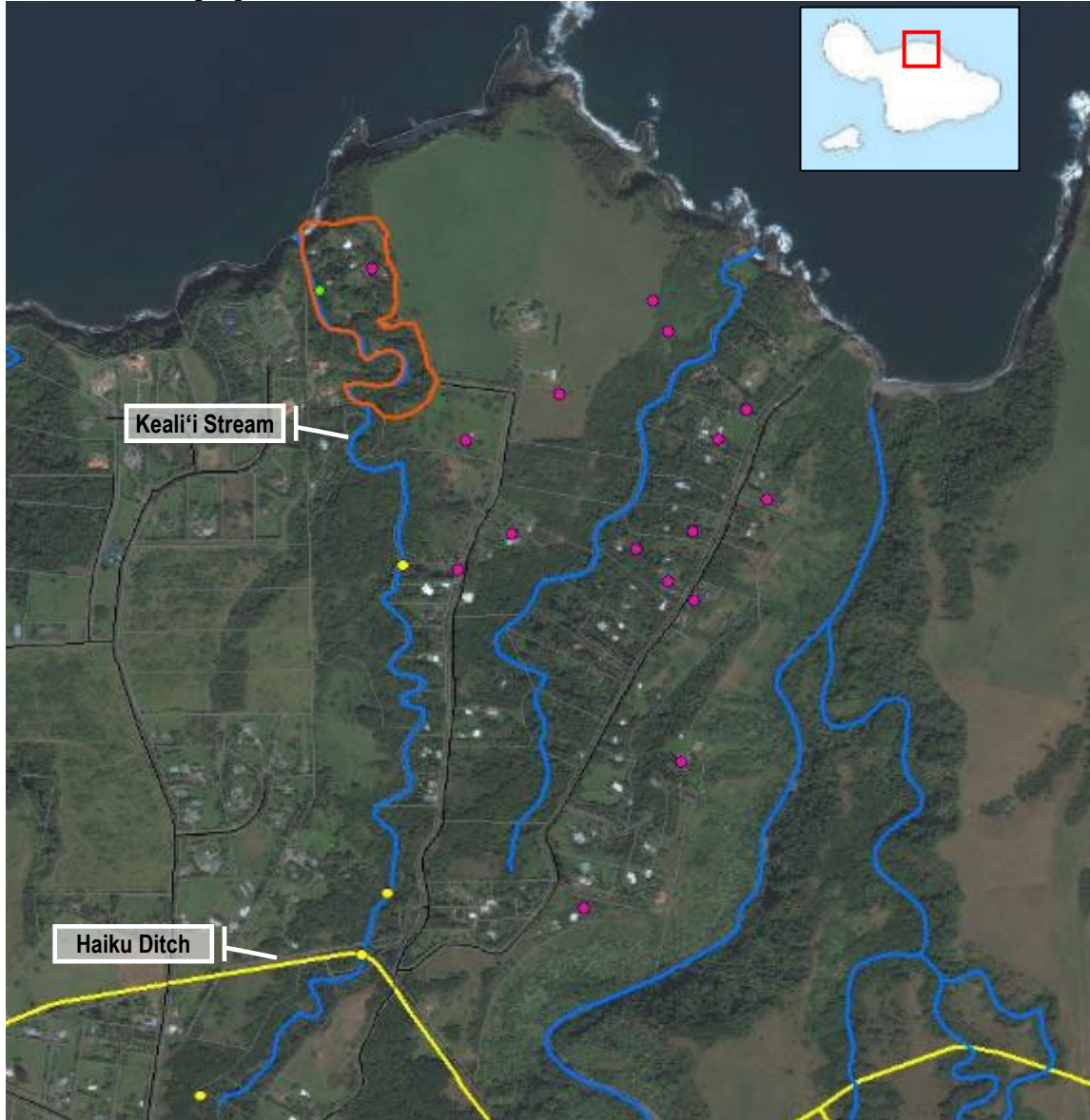
SUMMARY OF REQUEST

Approve Stream Diversion Works Permit Application (SDWP.5290.6) submitted by the Spirit of Aloha Temple for the installation of a two-inch pipe to divert approximately 72,000 gallons per day (gpd) for one-half (1/2) acre of kalo and diversified agriculture. Excess flow, if any, returns to the stream.

Find that a petition to amend the Interim Instream Flow Standard (IIFS) is not required under HRS 174C-71 and HAR 13-169-36. The IIFS for Keali'i Stream is currently defined as "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..." Per HAR §13-169-44 Interim instream flow standard for East Maui was set in 1988. The stream is non-perennial/intermittent, and no gage readings are available. Because it often runs dry during the summer, it is not considered good fish habitat and not on the Commission's priority list to set an IIFS. The Hawaii Stream Assessment, published in 1990, did not identify or assess Keali'i Stream.

LOCATION: Keali'i Stream, Maui. See **Figure 1**.

Figure 1: Keali'i Stream, Maui. The subject TMK parcel is bounded in orange, with the green dot indicating the location of the proposed diversion. Purple dots are the locations of the existing wells, while yellow dots are the locations of existing registered diversions.



BACKGROUND

On June 24, 2024, the Spirit of Aloha Temple filed a complete SDWP.5290.6 application for the installation of a two-inch pipe to divert 72,000 gpd for one-half (1/2) acre of kalo and diversified agriculture. Excess flow, if any, returns to the stream. The application can be viewed online at https://files.hawaii.gov/dlnr/cwrw/swreview/SDWP_5290_6.pdf.

STREAM DESCRIPTION

Keali‘i Stream. The National Hydrography Dataset classified the Keali‘i Stream as intermittent and the Division of Aquatic Resources classified it as non-perennial. The total drainage area is 0.43 square miles with a maximum basin elevation of 791 feet. The longest flow path is 2.3 miles long and the mean annual precipitation is 78.5 inches.

PROJECT DESCRIPTION

The applicant proposes to use a two-inch PVC pipe to irrigate eight lo‘i. See **Figure 2** and **Figure 3**. Total size is approximately one-half acre. The primary crop is taro, but also includes red peppers, pineapples, and edible hibiscus. In the past, the ‘auwai was regulated by placing rocks to divert the stream flow. However, the applicant proposes to siphon water from the stream to irrigate the lo‘i. The flow will be controlled with a valve. Expected time of construction is two days. Work will be done with hand tools. The trench is approximately 3-inches wide x 3-inches deep.

In the near future, the applicant proposes to install two additional two-inch pipes (one for each of these newly restored lo‘i, approximately 1/4 of an acre each). The applicant is requesting the same amount of water as for the current proposed project and has asked that his kuleana water rights be conserved for these additional lo‘i with this application.

The applicant further stated, “When stream ceases to flow during drought, we can irrigate lo‘i with our approved well water. Using water from the stream is more ecological as it requires no electricity, is traditional, and creates no wear or tear on the pump. Stream bed from side to side is approximately 15-20 feet wide. The Keali‘i Stream is springfed. Its origin is springs located on the makai side of Hana Hwy, in a banana field near the top of Haumana Rd. At least 3 or 4 other springs are located within the stream channel along the 1 mile of its flow. During rainy season in the winter months the stream is usually flowing well, and the median we would estimate to be approximately 600 gallons per minute. In the summer and fall months during drought periods the stream at times dries up. We plan to employ dryland method of growing when the stream flow is limited or stopped. When the stream flow is heavy, we will grow wetland taro. Therefore, our stream use will vary from as little as 500 gallons to as much as 72,000 gallons per day. (As referred to in #47, we are requesting to reserve our water rights for 2 additional lo‘i which will be restored in the near future.)”

CWRM Staff Response: The stream is considered intermittent and non-perennial and is dry during the summer, fall, and other periods of little rainfall. The applicant proposes to supplement water from State Well No. 6-5616-004. The approved pump capacity for the well is 25 gallons per minute or 36,000 gpd. According to reporting data, the applicant currently uses about 4,000 gpd for existing needs leaving about 32,000 gpd for new uses.

Figure 2: Site photos.



Aerial view of the subject property. The yellow dot indicates the proposed stream diversion location, with the existing well indicated by the red dot.



Proposed stream diversion location. Note the dry streambed on the right of the photo.



Any excess water will be returned to the stream which flows to this pond, which then overflows into the ocean.

Figure 3: Map from SMA Assessment/Exemption Form dated October 20, 2023.

SIHP 50-50-06-5757 Historic Taro Lo'i Current Condition Map

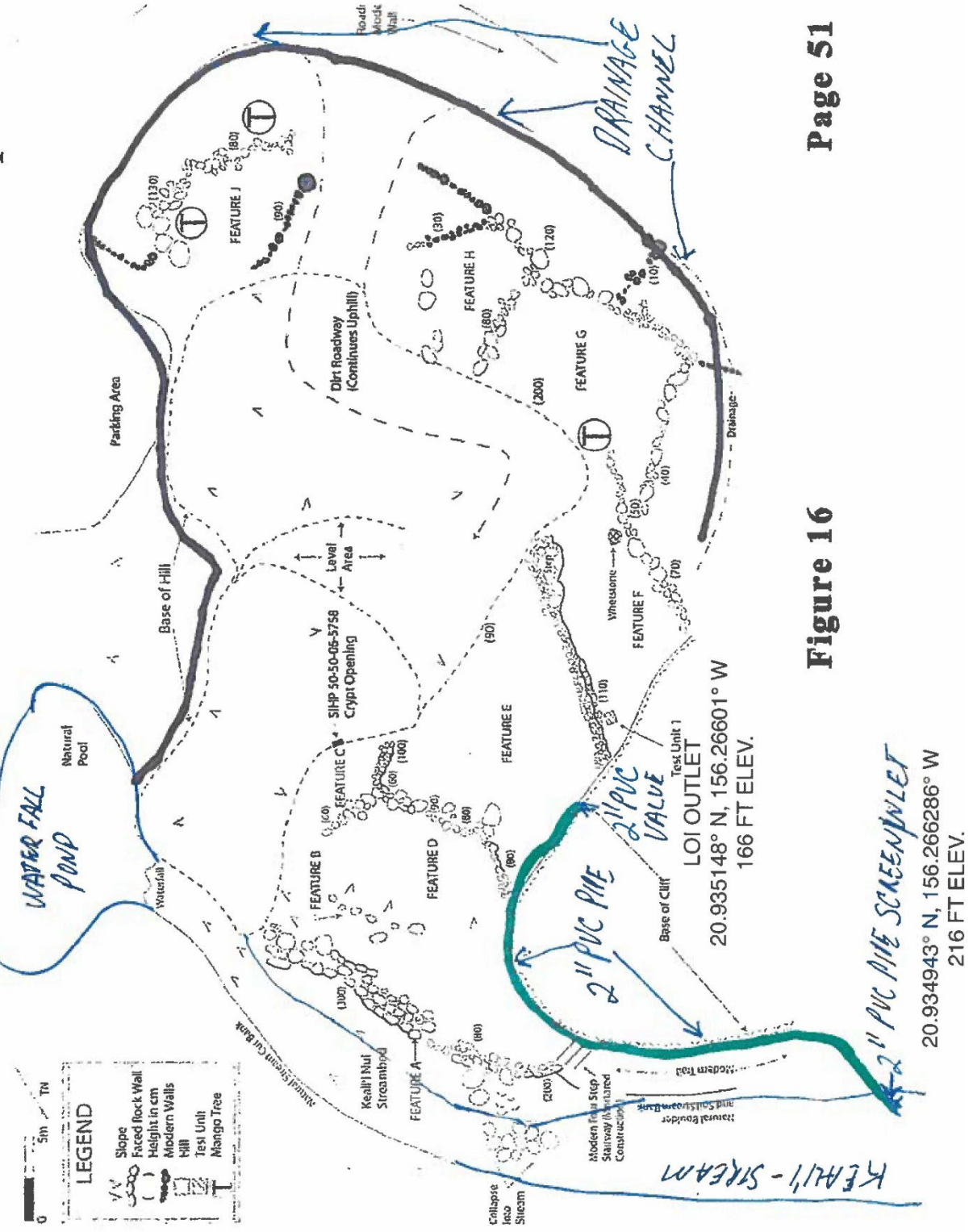


Figure 16

AGENCY REVIEW COMMENTS

Maui County, Planning Department: No comments received.

CWRM Staff Response: On October 20, 2023, the applicant received approval of their Special Management Area (SMA) Plan. See **Exhibit 1**. It stated that “An SMA Exemption is granted for the proposed installation of a 2-inch PVC pipe for irrigation of a Loi filed as described in your SMA Assessment application and as shown in your site plan dated 10/16/2020. The proposed project is not located inside of the shoreline setback area and the application is not subject to the Shoreline Rules for the Maui Planning Commission. The project area is not in the flood hazard zone and a Flood Development Permit is not required.

Department of Hawaiian Home Lands (DHHL): No comments. See **Exhibit 2**.

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

DLNR, Aquatic Resources: No comments received.

DLNR, Engineering: No comments. See **Exhibit 3**.

CWRM Staff Response: The parcel appears to be in Flood Zone X, which are areas determined to be outside the 0.2% annual chance floodplain.

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 in any construction as bats can become ensnared and killed by such fencing material during flight. See **Exhibit 4**.

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/>. 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>.

State-listed waterbirds such as ae'o or Hawaiian stilt (*Himantopus mexicanus knudseni*), 'alae ke'oke'o or Hawaiian coot (*Fulica alai*), and nēnē or Hawaiian Goose (*Branta sandvicensis*) could potentially occur at or in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any of these species 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 Maui Branch DOFAW Office at (808) 984-8100 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. Pueo nest on the ground and active nests have been found year-round. 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 project area is within the range of the State-listed Blackburn's Sphinx Moth (*Manduca blackburni*) or BSM. Larvae of BSM feed on many nonnative host plants, which includes tree tobacco (*Nicotiana glauca*), that grow in disturbed soil. We recommend contacting the Maui Branch DOFAW Office at (808) 984-8100 for further information about where BSM may be present and whether a vegetation survey should be conducted to determine the presence of plants preferred by BSM. DOFAW recommends removing plants less than one meter in height or during the dry season to avoid harm to BSM. If you intend to either remove tree tobacco over one meter in height or to disturb the ground around or within several meters of these plants, they must be thoroughly inspected by a qualified entomologist for the presence of BSM eggs and larvae.

The project work on or at Keali'i Stream could affect endangered native Hawaiian damselflies (*Megalagrion pacificum*) that may be present. DOFAW therefore recommends a survey be conducted by a qualified entomologist to determine if listed damselflies are present in the project area and to assess any potential impacts to those species. Please contact DOFAW, Hawai'i Invertebrate Program, Maui Nui Coordinator Keahi Bustamente at 808-268-3247 for assistance.

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 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), vertebrate and invertebrate pests (e.g., Coqui Frogs, Little Fire Ants, etc.), or invasive plant parts (e.g., Miconia, Mullein, etc.) that could harm our native species and ecosystems. We recommend consulting the Maui Invasive Species Committee (MISC) at (808) 573-6472 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>. The invasive Coconut Rhinoceros Beetle (CRB) or *Oryctes rhinoceros* are found on O'ahu, Hawai'i Island, Maui, and Kaua'i. On July 1, 2022, the Hawai'i Department of Agriculture (HDOA) approved Plant Quarantine Interim Rule 22-1. This rule restricts the movement of CRB-host material within or to and from the island of O'ahu, which is defined as the Quarantine Area. Regulated material (host material or host plants) is considered a risk for potential CRB infestation. Host material for the beetle specifically includes (a) entire dead trees, (b) mulch, compost, trimmings, fruit and vegetative scraps, and (c) decaying stumps. CRB host plants include the live palm plants in the following genera: *Washingtonia*, *Livistona*, and *Pritchardia* (all commonly known as fan palms), *Cocos* (coconut palms), *Phoenix* (date palms), and *Roystonea* (royal palms). When such material or these specific plants are moved there is a risk of spreading CRB because they may contain CRB in any life stage. For more information regarding CRB, please visit <https://dlnr.hawaii.gov/hisc/info/invasive-species-profiles/coconut-rhinoceros-beetle/>.

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.

DOFAW is concerned about impacts to vulnerable birds from nonnative predators such as cats, rodents, and mongooses. We recommend taking action to minimize predator presence; remove cats, place bait stations for rodents and mongoose, and provide covered trash receptacles.

Due to the arid climate and risk of wildfire to listed species, we recommend coordinating with the Hawai'i Wildlife Management Organization at (808) 850-0900 or admin@hawaiiwildfire.org, on how wildfire prevention can be addressed in the project area. When engaging in activities that have a high risk of starting a wildfire (i.e. welding in grass), it is recommended that you:

- Wet down the area before starting your task,
- Continuously wet down the area as needed,
- Have a fire extinguisher on hand, and
- In the event that your vision is impaired, (i.e. welding goggles) have a spotter to watch for fire starts.

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, contact Amanda Macias, Protected Species Habitat Conservation Planning Coordinator via email at fw.adm.kupu2.intern@hawaii.gov.

CWRM Staff Response: Concur. Added as a special condition by reference.

DLNR, Historic Preservation (SHPD): SHPD concurrence letter not received.

CWRM Staff Response: Approval of the application is subject to SHPD Project No. 2024PR00893 concurrence. If SHPD requires conditions, delegation of authority to Deputy Director will be added as a special condition.

DLNR, Land Division: No comments received.

DLNR, Office of Conservation and Coastal Lands: Not subject to our regulatory authority and permit. See **Exhibit 5**.

DLNR, State Parks: No comments received.

Dept. of Health (DOH), Clean Water Branch: The DOH standard comments can be reviewed on their website at: <https://health.hawaii.gov/cwb/files/2023/07/Memorandum-for-CWB-Standard-Project-Comments-07016CMHK.23-part-1-signed.pdf>.

CWRM Staff Response: The lead agency for the protection of water quality is the Department of Health, Clean Water Branch, which administers the Federal Clean Water Act (33 U.S.C. §1251 et seq.) and the State Water Pollution Act (HRS Ch. 342D; HAR Ch. 11-54 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control). HAR §11-54-1 through §11-54-8 defines Best Management Practices and water quality criteria applicable to inland and nearshore waters and are based on the Federal Clean Water Act. HAR Ch. 11-55 Appendix C defines discharges of storm water associated with construction activity. HRS 174C-66 states that the DOH oversees the State’s water quality control program.

Office of Hawaiian Affairs: No comments received.

US Army Corps of Engineers: No comments received.

US Fish and Wildlife Service (FWS): No objections. See **Exhibit 6**.

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, “The Gardens are a historic Hawaiian Heritage Site recognized by the State Historic Preservation Division (Enclosed is our confirmation letter from SHPD confirming the 4 historic sites present at The Gardens.) This stream diversion is a necessary part of restoring irrigation to these ancient lo‘i which are between 700-1000 years old. Also enclosed is our approved Preservation Plan that has been implemented.

The only item left to restoring the ‘auwai is channeling water from Keali‘i Stream for irrigation. Traditionally, the ‘auwai was accomplished with a channel and regulated by strategic placing of rocks to divert the stream flow. We are choosing to siphon water from the stream for irrigation of these lo‘i. The flow will be controlled with a 2” PVC valve.”

CWRM Staff Response: Cultural, historical, or natural resources which support traditional and customary native Hawaiian rights are generally protected on undeveloped land (PASH, 1993). The applicant provided an archaeological preservation and restoration plan prepared in cooperation with Cultural Surveys Hawai‘i, Inc., dated June 2015. While the applicant states that the “Gardens are a historic Hawaiian Heritage Site recognized by the State Historic Preservation Division”, it appears that the applicant is, in fact, referring to the four (4) historic sites identified on the property which are on the State Inventory of Historic Places (SIHP). This designation should not be confused with the Hawai‘i or National Register of Historic Places.

The four historic sites consisted of a historical burial crypt, agricultural terraces, and a pre-contact channel construction located in the stream. No comments were received from DLNR ‘Aha Moku or from the public. A SHPD concurrence letter is pending.

- 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, “By creating this irrigation system, the ancient lo‘i which are considered to be 700-1000 years old will be restored.”

CWRM Staff Response: Concur.

- 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, “Inform Mahi Pono that Keali‘i Stream may not be diverted or used for their commercial purposes.”

CWRM Staff Response: Instream uses located on Keali‘i Stream are limited due to its intermittent streamflow, thus limiting the feasible actions that could be taken related to water availability. The Commission is in the planning stages of assessing those East Maui streams diverted by East Maui Irrigation Co. and that are located outside of the East Maui License Area, west of Honopou. The four diversions located on Keali‘i Stream are described on page 12 of the submittal.

HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT (EA) COMPLIANCE

Under Hawaii Revised Statutes (HRS) §343-5(a), an EA shall be required for actions, as summarized in part below, that propose:

- (1) use of state land or county lands, or the use of state or county funds;
- (2) use within any land classified as a conservation district;
- (3) use within a shoreline area;
- (4) use within any historic site as designated in the National Register or Hawaii Register;
- (5) use within the Waikiki area of O‘ahu;
- (6) any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation;
- (7) any reclassification of any land classified as a conservation district;
- (8) construction of new or the expansion or modification of existing helicopter facilities within the State, that may affect: (A) any land classified as a conservation district; (B) a shoreline area; or (C) any historic site as designated in the National Register or Hawaii Register;
- (9) any (A) wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent; (B) Waste-to-energy facility; (C) Landfill; (D) Oil refinery; or (E) Power-generating facility.

CWRM Staff Response: The proposed action does not trigger an EA.

STAFF REVIEW

Review of the permit application by Commission staff is subject to the consideration of the legal authorities cited in **Exhibit 8**.

HAR §13-168-32(d) sets out the general criteria for ruling on Stream Diversion Works Permit applications.

- (1) The quantity and quality of the stream water or the stream ecology shall not be adversely affected.

CWRM Staff Response: The stream runs dry during the summer months and during times of little rainfall. As such, the stream is not considered good fish habitat. Staff estimates that both the quantity and quality of stream water or stream ecology is not adversely affected.

- (2) Where instream flow standards or interim instream flow standards have been established pursuant to HAR Chapter 13-169, no permit should be granted for any diversion works which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.

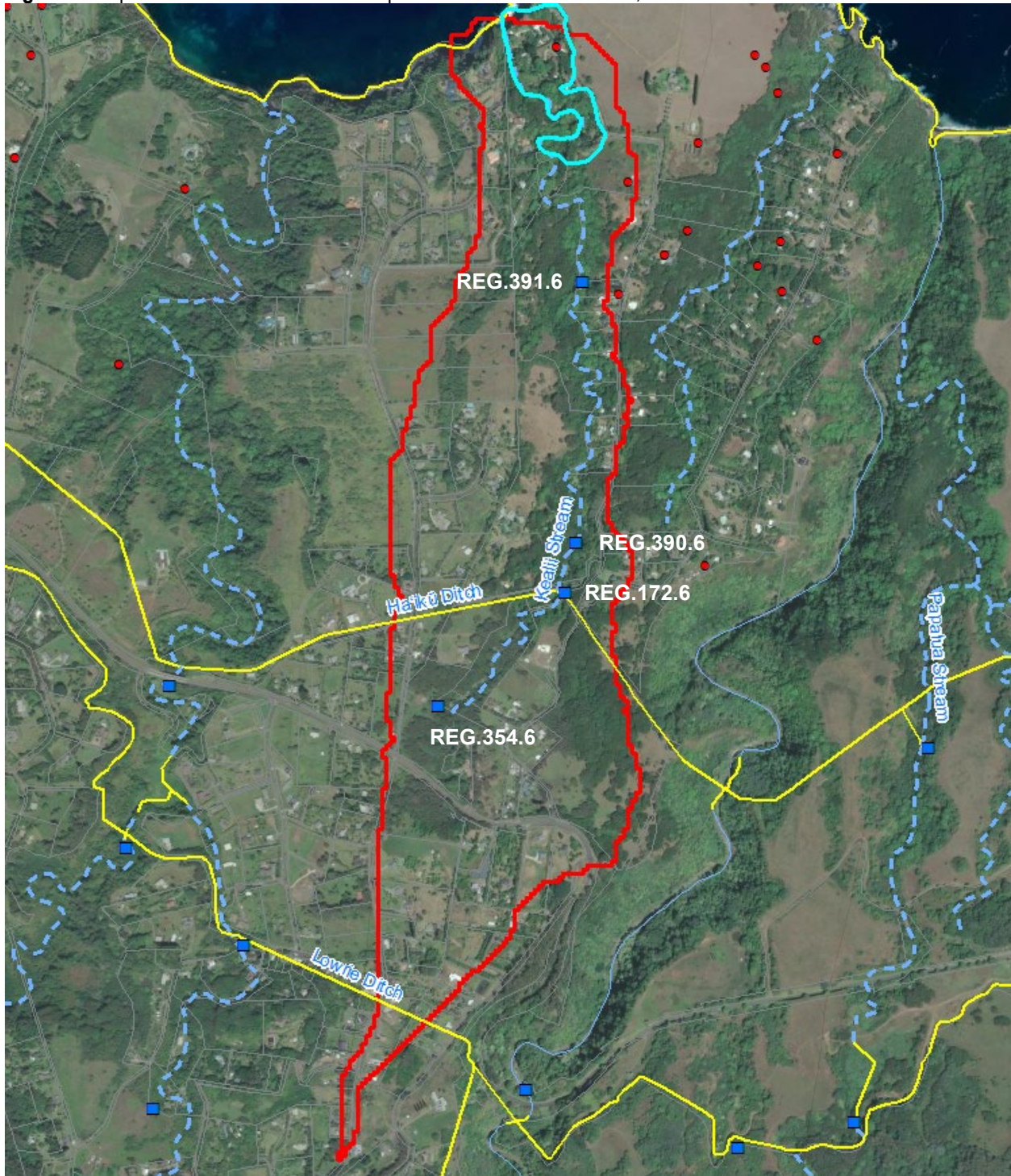
CWRM Staff Response: HRS §174C-71, requires the Commission to protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. The IIFS for Keali‘i Stream is currently defined as “that amount of water flowing 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...” Per HAR §13-169-44, the interim instream flow standard for East Maui was set in 1988. Keali‘i Stream, which is non-perennial/intermittent and often runs dry during the summer, is not considered good fish habitat and is not on the Commission’s priority list to set an IIFS. No streamflow measurements or stream gaging data is available. Little to no instream uses are known to exist. The Hawaii Stream Assessment, published in 1990, did not identify or assess Keali‘i Stream. Commission staff finds that a petition to amend the instream flow standard is not required under HRS 174C-71 and HAR 13-169-36.

- (3) The proposed diversion works shall not interfere substantially and materially with existing instream or non-instream uses or with diversion works previously permitted.

CWRM Staff Response: There are four registered stream diversion works located on Keali‘i Stream, upstream of the subject property (See **Figure 4**). The proposed diversion is not anticipated to affect these diversions, and there are no diversions located downstream of the applicant. Information for each diversion is provided in the table below.

DIV_ID	Owner/Operator	Description	Status
172.6	East Maui Irrigation Co.	Intake H-11 from Keali‘i Stream, Haiku Ditch (aka Rogers Intake). As of September 2024, the reported flow in Haiku Ditch was 0.0 mgd.	Active
354.6	Bernadette Frias	Water flows from a 75-foot long tunnel into Keali‘i Stream, then is diverted via a 2-inch PVC pipe. Water is used for livestock. However, land ownership changed in 1999.	Unknown
390.6	Rick Giese	0.5-inch HDPE pipe diversion for diversified agriculture, including kalo, and ornamentals. However, land ownership has changed since the diversion was registered.	Unknown
391.6	Rick Giese	1.0-inch HDPE pipe diversion for diversified agriculture, including kalo, and ornamentals. However, land ownership has changed since the diversion was registered.	Unknown

Figure 4: Map from SMA Assessment/Exemption Form dated October 20, 2023.



RECOMMENDATION

That the Commission:

1. Approve Stream Diversion Works Permit (SDWP.5290.6) to the Spirit of Aloha Temple in the amount of 72,000 gpd subject to the standard conditions in **Exhibit 7** and the special conditions below:
 - a. In conformance with the DLNR, Division of Forestry and Wildlife recommendations, incorporated by reference (**Exhibit 4**), Hawaiian hoary bats, waterbirds, owls, tree snails, native plant may reside in the area. Land based predators and invasive species may also be brought in during construction. DOFAW recommends best management practices be employed to support native species and minimize the introduction of pests to the area.
2. Approval of the application is subject to SHPD Project No. 2024PR00893 concurrence. If SHPD requires conditions, delegation of authority to the Deputy Director will be added as a special condition.
3. Find that a petition to amend the IIFS is not required under HRS 174C-71 and HAR 13-169-36.

Ola i ka wai,



CIARA W.K. KAHAHANE
Deputy Director

Exhibits:

1. Special Management Area Assessment/Exemption Form dated October 20, 2023.
2. DHHL comment memo dated July 10, 2024.
3. DLNR, Engineering Division comment memo dated June 27, 2024
4. State Division of Forestry and Wildlife memo dated August 6, 2024.
5. DLNR, Office of Conservation and Coastal Lands comment memo dated July 8, 2024.
6. USFWS comment letter dated July 16, 2024.
7. Standard Stream Diversion Works Permit Conditions.
8. Legal Authorities.

APPROVED FOR SUBMITTAL:

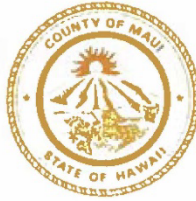


DAWN N.S. CHANG
Chairperson

RICHARD T. BISSEN, JR.
Mayor

KATHLEEN ROSS AOKI
Director

GARRETT E. SMITH
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

SPECIAL MANAGEMENT AREA ASSESSMENT/EXEMPTION FORM (SM5)

Project Name:	SPIRIT OF ALOHA BOTANICAL GARDENS LOI IRRIGATION PIPE
App. No.:	SMX20200361
Project Address:	800 Haumana Rd, Haiku, Hawaii 96708
Tax Map Key No:	(2) 2-8-004:032
Proposed Action:	Installation of a 2-inch PVC pipe for irrigation of a Lo'i field
Applicant / Owner:	Spirit of Aloha Botanical Gardens, Fredrick R. Honig Trust, 800 Haumana Road, Haiku, Hawaii 96708
Approved Plans:	Dated 10/16/2020
Project Valuation:	\$700.00

The proposed activity is determined to be:	
<input checked="" type="checkbox"/>	H. Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes, including all traditional fishpond and traditional agricultural practices.

Per Section 22, Chapter 205A of the Hawaii Revised Statutes as amended, the rules of the Planning Commission of Maui Island, and the Department of Planning's Special Management Area (SMA) Assessment; the proposed activity has been determined not to be a development and is exempt from the applicable requirements of Chapter 205A.

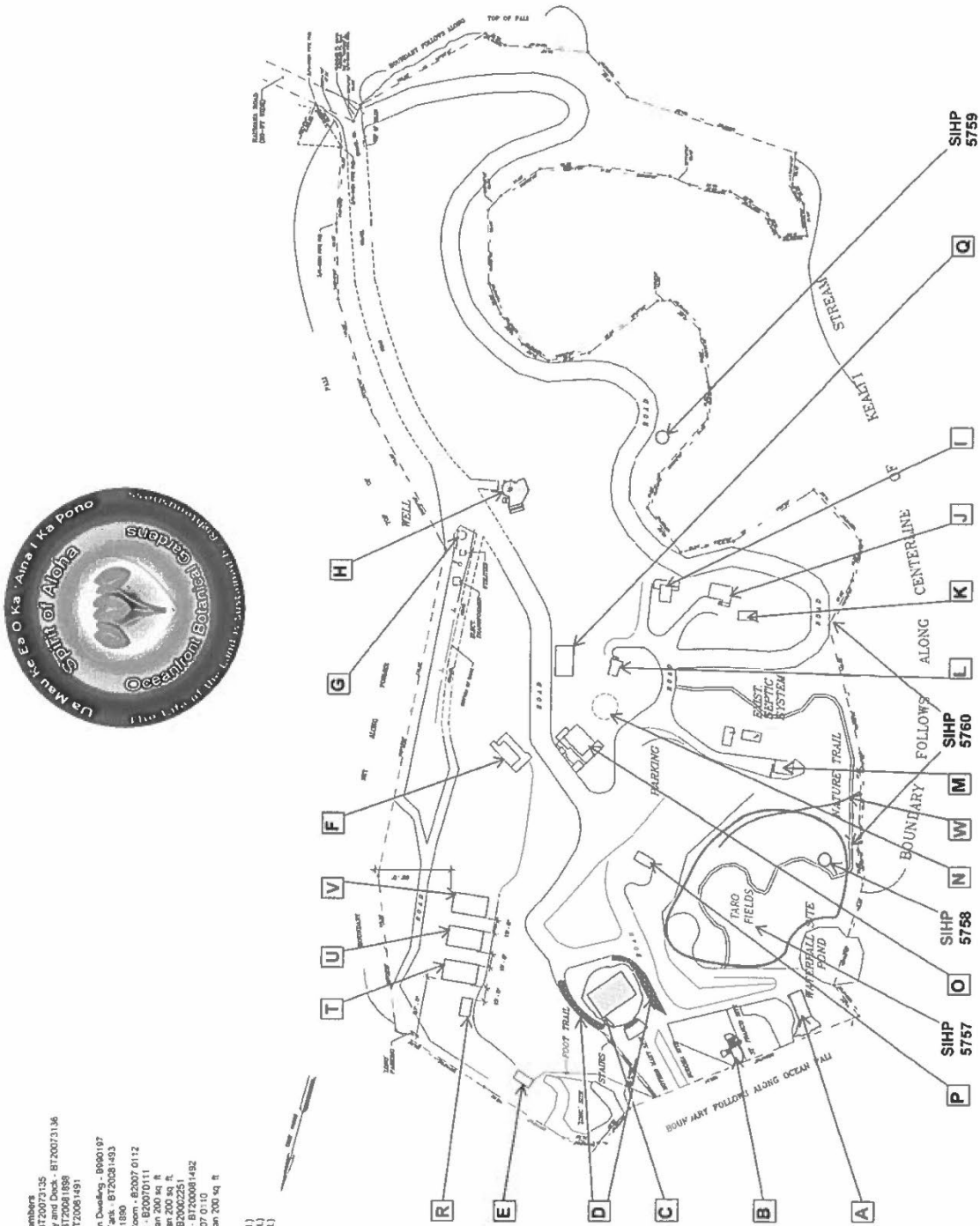
Comments/Remarks: An SMA Exemption is granted for the proposed installation of a 2-inch PVC pipe for irrigation of a Loi field as described in your SMA Assessment application and as shown in your site plan dated 10/16/2020. The proposed project is not located inside of the shoreline setback area and the application is not subject to the Shoreline Rules for the Maui Planning Commission. The project area is not in the flood hazard zone and a Flood Development Permit is not required.

Reviewed by: WCB Date: October 20, 2023 Permit No.: SM52023-000208

Approved by: Date: 10/20/23
for ANN T. CUA, Planning Program Administrator
KATHLEEN ROSS AOKI, Planning Director

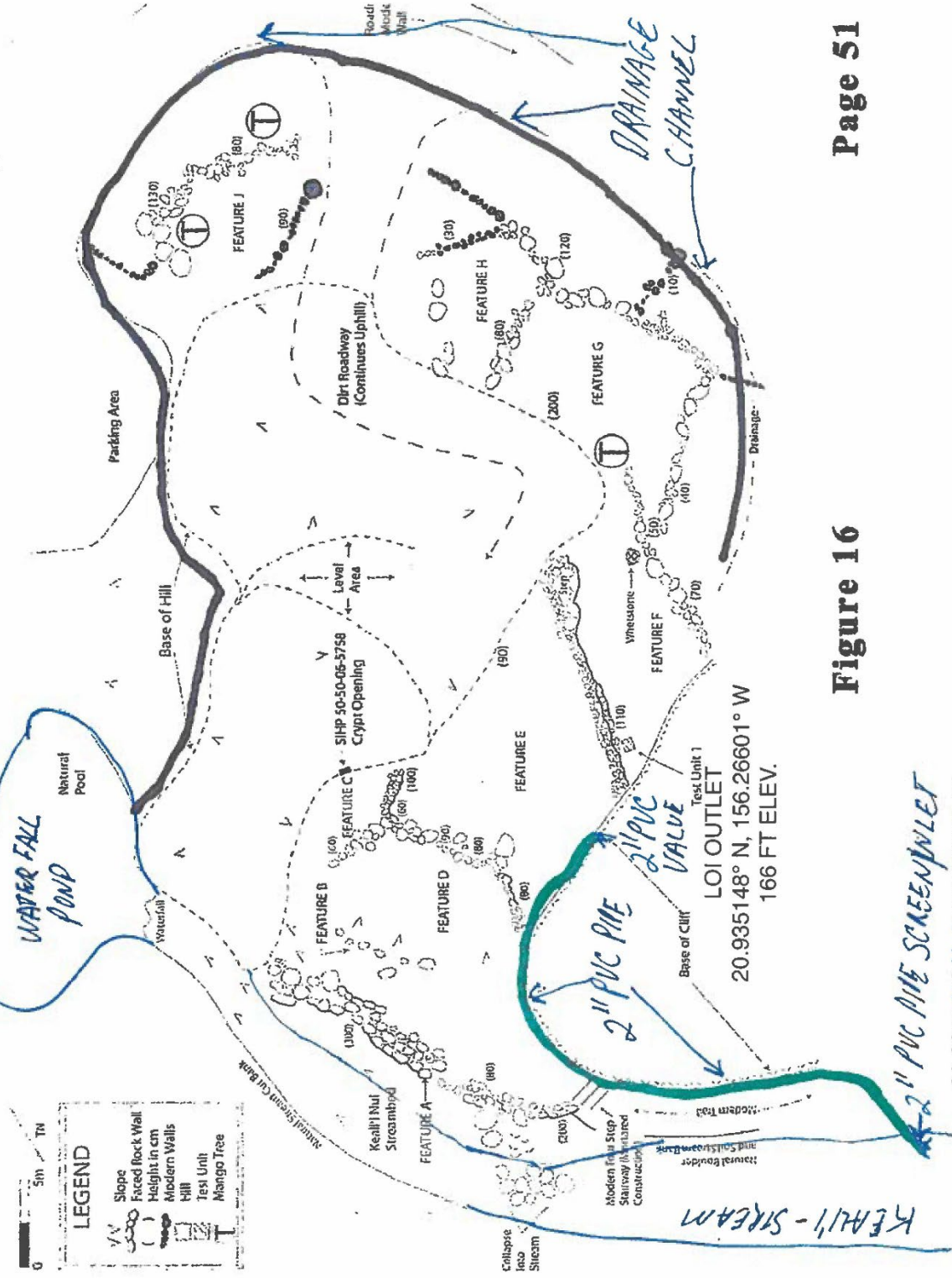
Attachments: Approved Plans
xc: Jordan E. Hart, Planning Program Administrator (PDF)
Wesley C. Bradshaw, Staff Planner (PDF)
Fredrick Honig, Applicant (PDF)
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Spirit of Aloha Nature Sanctuary - Site Map		800 Houmanga Road, Haiku, HI 96708 TMK: 28004032
Scale	5/8" = 1'-0"	
Drawn		
Checked		
Approved		
SP		



- Key to Site Maps Permit Numbers
- A) Waterfall casc. Provision - B72007135
 - B) 200' x 200' Concrete Pad - B72007136
 - C) Spirit of Aloha Terrace - B720081859
 - D) Rock Retaining Walls - B720081491
 - E) Paving Area
 - F) Existing Main House Farm Dwelling - B9901197
 - G) 200' x 200' Concrete Pad - B720081453
 - H) 200' x 200' Concrete Pad - B720081453
 - I) Employees Lounge/Leads Room - B2007 0112
 - J) Programs Hall/Classroom - B20070111
 - K) Storage Building - less than 200 sq. ft.
 - L) Storage Building - less than 200 sq. ft.
 - M) Storage Building - less than 200 sq. ft.
 - N) 24 Foot Dia. Water Tank - B7200091482
 - O) Reception Building - B2007 0110
 - P) Storage Building - less than 200 sq. ft.
 - Q) Aquaponics #2
 - R) Greenhouse #1 (650 sq ft.)
 - T) Greenhouse #3 (650 sq ft.)
 - U) Greenhouse #4 (650 sq ft.)
 - V) Greenhouse #5 (650 sq ft.)
 - W) 10' Irrigation 2" pipe

SIHP 50-50-06-5757 Historic Taro Lo'i Current Condition Map



Page 51

Figure 16

20.934943° N, 156.266286° W
216 FT ELEV.

20.935148° N, 156.26601° W
166 FT ELEV.

JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ke Kia'āina o ka Moku'āina 'o
Hawai'i*

SYLVIA J. LUKE
LT. GOVERNOR
STATE OF HAWAII
*Ka Hope Kia'āina o ka Moku'āina
'o Hawai'i*



KALI WATSON
CHAIRPERSON, HHC
Ka Luna Ho'okele

KATIE L. LAMBERT
DEPUTY TO THE CHAIR
Ka Hope Luna Ho'okele

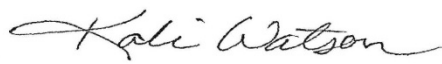
STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
Ka 'Oihana 'Āina Ho'opulapula Hawai'i
P. O. BOX 1879
HONOLULU, HAWAII 96805

July 10, 2024

MEMORANDUM

PO-24-091

TO: Dawn Chang, Chairperson
Commission on Water Resource Management

FROM: Kali Watson, Chairperson 
Hawaiian Homes Commission

SUBJECT: Stream Diversion Works Permit Application (SDWP) No. 5290.6
Spirit of Aloha Temple, Installation of a Two-Inch Pipe to Divert 72,000 gpd for
0.5 Acres of Kalo and Diversified Agriculture, Keali'i Stream, Maui

Mahalo for sending the above referenced Stream Diversion Works Permit (SDWP) to the Department of Hawaiian Home Lands (DHHL) for review and comments. We appreciate the opportunity to review this application. We understand this SDWP requests approximately 72,000 gallons per day for irrigation use. Upon reviewing this request, the Department has no comments at this time.

Mahalo for the opportunity to comment. If you have any questions or require additional information, please contact Cherie Kaanana, Water Program Specialist by email at: cherie-noelle.k.kaanana@hawaii.gov.

JOSH GREEN, M.D.
GOVERNOR | KE KA'ĀINA



DAWN N. S. CHANG
CHAIRPERSON

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

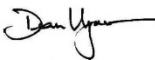
DEAN D. UYENO
ACTING DEPUTY DIRECTOR

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

June 24, 2024

Ref: SDWP.5290.6

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

TO: ~~FROM:~~ Dean D. Uyeno, Acting Deputy Director 
Commission on Water Resource Management

SUBJECT: Request for Comments, Stream Diversion Works Permit Application (SDWP.5290.6), Spirit of Aloha Temple, Installation of a Two-Inch Pipe to Divert 72,000 gpd for 0.5 Acres of Kalo and Diversified Agriculture, Keali'i Stream, Maui, Tax Map Key(s): (2) 2-8-004:032

We would appreciate your review and comment on the subject permit application. The project proposes to install a two (2) inch pipe to divert 72,000 gallons per day (gpd) for kalo and diversified agriculture on the Keali'i Stream. Please respond by returning this cover memo within 30 days from the date of this memo. Stream Diversion Works Permit Application (SDWP.5290.6) is online at <https://dlnr.hawaii.gov/cwrm/surfacewater/review/>. If you have any questions, contact Rebecca Alakai at rebecca.r.alakai@hawaii.gov or call (808) 587-0266.

Response:

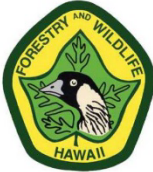
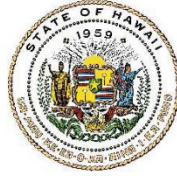
- We have no ~~objections~~ comments
- Not subject to our regulatory authority and permit
- Comments attached
- Additional information requested
- Extended review period requested
- EA / EIS is required

Contract Person: Carty S. Chang, Chief Engineer Phone: 808-587-0230

Signed:  Date: Jun 27, 2024

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

DEAN D. UYENO
ACTING 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

August 6, 2024

Log no. 4620
Reference no. SDWP.5290.6

MEMORANDUM

TO: DEAN D. UYENO, Acting Deputy Director
Commission on Water Resource Management

FROM: Lindsey Nietmann, Acting Wildlife Program Manager
Division of Forestry and Wildlife

SUBJECT: Request for Comments, Stream Diversion Works Permit (SDWP.5290.6) Spirit of Aloha Temple, Installation of a Two-Inch Pipe to Divert 72,000 gpd for 0.5 Acres of Kalo and Diversified Agriculture, Keali'i Stream, Island of Maui, Hawai'i.

The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has received your request for comments on the Stream Diversion Works Permit (SDWP.5290.6) Spirit of Aloha Temple, installation of a two-inch pipe to divert 72,000 gallons per day (gpd) for 0.5 acres of kalo and diversified agriculture. The proposed project occurs in Keali'i, Maui, TMK: (2) 2-8-004:032. The diverter would be 160 feet long and 2-inches in diameter. The stream diversion is a necessary part of restoring irrigation to the ancient lo'i which are between 700-1000 years old.

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 in any construction as 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 fledging 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/>

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>.

State-listed waterbirds such as ae'o or Hawaiian stilt (*Himantopus mexicanus knudseni*), 'alae ke'oke'o or Hawaiian coot (*Fulica alai*), and nēnē or Hawaiian Goose (*Branta sandvicensis*) could potentially occur at or in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any of these species 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 Maui Branch DOFAW Office at (808) 984-8100 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. Pueo nest on the ground and active nests have been found year-round. 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 project area is within the range of the State-listed Blackburn's Sphinx Moth (*Manduca blackburni*) or BSM. Larvae of BSM feed on many nonnative host plants, which includes tree tobacco (*Nicotiana glauca*), that grow in disturbed soil. We recommend contacting the Maui Branch DOFAW Office at (808) 984-8100 for further information about where BSM may be present and whether a vegetation survey should be conducted to determine the presence of plants preferred by BSM. DOFAW recommends removing plants less than one meter in height or during the dry season to avoid harm to BSM. If you intend to either remove tree tobacco over one meter in height or to disturb the ground around or within several meters of these plants, they must be thoroughly inspected by a qualified entomologist for the presence of BSM eggs and larvae.

The project work on or at Keali'i Stream could affect endangered native Hawaiian damselflies (*Megalagrion pacificum*) that may be present. DOFAW therefore recommends a survey be conducted by a qualified entomologist to determine if listed damselflies are present in the project area and to assess any potential impacts to those species. Please contact DOFAW, Hawai'i Invertebrate Program, Maui Nui Coordinator Keahi Bustamente at 808-268-3247 for assistance.

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 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), vertebrate and invertebrate pests (e.g., Coqui Frogs, Little Fire Ants, etc.), or invasive plant parts (e.g., Miconia, Mullein, etc.) that could harm our native species and ecosystems. We recommend consulting the Maui Invasive Species Committee (MISC) at (808) 573-6472 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>.

The invasive Coconut Rhinoceros Beetle (CRB) or *Oryctes rhinoceros* are found on O'ahu, Hawai'i Island, Maui, and Kaua'i. On July 1, 2022, the Hawai'i Department of Agriculture (HDOA) approved Plant Quarantine Interim Rule 22-1. This rule restricts the movement of CRB-host material within or to and from the island of O'ahu, which is defined as the Quarantine Area. Regulated material (host material or host plants) is considered a risk for potential CRB infestation. Host material for the beetle specifically includes (a) entire dead trees, (b) mulch, compost, trimmings, fruit and vegetative scraps, and (c) decaying stumps. CRB host plants include the live palm plants in the following genera: *Washingtonia*, *Livistona*, and *Pritchardia* (all commonly known as fan palms), *Cocos* (coconut palms), *Phoenix* (date palms), and *Roystonea* (royal palms). When such material or these specific plants are moved there is a risk of spreading CRB because they may contain CRB in any life stage. For more information regarding CRB, please visit <https://dlnr.hawaii.gov/hisc/info/invasive-species-profiles/coconut-rhinoceros-beetle/>.

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.

DOFAW is concerned about impacts to vulnerable birds from nonnative predators such as cats, rodents, and mongooses. We recommend taking action to minimize predator presence; remove cats, place bait stations for rodents and mongoose, and provide covered trash receptacles.

Due to the arid climate and risk of wildfire to listed species, we recommend coordinating with the Hawai'i Wildlife Management Organization at (808) 850-0900 or admin@hawaiiwildfire.org, on how wildfire prevention can be addressed in the project area. When engaging in activities that have a high risk of starting a wildfire (i.e. welding in grass), it is recommended that you:

- Wet down the area before starting your task,
- Continuously wet down the area as needed,
- Have a fire extinguisher on hand, and
- In the event that your vision is impaired, (i.e. welding goggles) have a spotter to watch for fire starts.

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 Amanda Macias, Protected Species Habitat Conservation Planning Coordinator via email at fw.adm.kupu2.intern@hawaii.gov.

Sincerely,

Lindsey Nietmann

Lindsey Nietmann
Acting Wildlife Program Manager

MA-24-202

JOSH GREEN, M.D.
GOVERNOR | KE KAA'AINA

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT

2024 JUL -8 PM 12: 17



DAWN N. S. CHANG
CHAIRPERSON

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
KENNETH S. FINK, M.D., MGA, MPH
NEIL J. HANNAHS
TIROA KAGAWA-VIVIANI, PH.D.
WAYNE K. KATAYAMA
PAUL J. MEYER
LAWRENCE H. MIIKE, M.D., J.D.

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

2024 JUL 25 PM 12: 35

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

June 24, 2024

Ref: SDWP.5290.6

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

FROM: Dean D. Uyeno, Acting Deputy Director *Dean Uyeno*
Commission on Water Resource Management

SUBJECT: Request for Comments, Stream Diversion Works Permit Application
(SDWP.5290.6), Spirit of Aloha Temple, Installation of a Two-Inch Pipe to
Divert 72,000 gpd for 0.5 Acres of Kalo and Diversified Agriculture, Keali'i
Stream, Maui, Tax Map Key(s): (2) 2-8-004:032

We would appreciate your review and comment on the subject permit application. The project proposes to install a two (2) inch pipe to divert 72,000 gallons per day (gpd) for kalo and diversified agriculture on the Keali'i Stream. Please respond by returning this cover memo within 30 days from the date of this memo. Stream Diversion Works Permit Application (SDWP.5290.6) is online at <https://dlnr.hawaii.gov/cwrmsurfacewater/review/>. If you have any questions, contact Rebecca Alakai at rebecca.r.alakai@hawaii.gov or call (808) 587-0266.

Response:

- We have no objections
- Not subject to our regulatory authority and permit
- Comments attached
- Additional information requested
- Extended review period requested
- EA / EIS is required

Contract Person: Michael Cain Phone: 798-6912

Signed: *S. Michael* Date: 7-8-24

JOSH GREEN, M.D.
GOVERNOR | KE KĀ'ĀINA



DAWN N. S. CHANG
CHAIRPERSON

KENNETH S. FINK, M.D., MGA, MPH
NEIL J. HANNAHS
AURORA KAGAWA-VIVIANI, PH.D.
WAYNE K. KATAYAMA
PAUL J. MEYER
LAWRENCE H. MIIKE, M.D., J.D.

DEAN D. UYENO
ACTING DEPUTY DIRECTOR

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

June 24, 2024

Ref: SDWP.5290.6

Earl Campbell, Field Supervisor
U. S. Fish and Wildlife Service
Pacific Islands Fish and Wildlife Office
300 Ala Moana Blvd., Room 3-122
Honolulu, HI 96850
Via email: pifwo_admin@fws.gov
Via email: lindsay_asman@fws.gov
Via email: dan_polhemus@fws.gov

Aloha Mr. Campbell:

Request for Comments
Stream Diversion Works Permit (SDWP.5290.6) Application
Spirit of Aloha Temple
Installation of a Two-Inch Pipe to Divert 72,000 gpd for 0.5 Acres of
Kalo and Diversified Agriculture
Keali'i Stream, Maui, Tax Map Key(s): (2) 2-8-004:032

We would appreciate your review and comment on the subject permit application. The project proposes to install a two (2) inch pipe to divert 72,000 gallons per day (gpd) for kalo and diversified agriculture on the Keali'i Stream. Please respond by returning this cover letter within 30 days from the date of this memo. Stream Diversion Works Permit Application (SDWP.5290.6) is online at <https://dlnr.hawaii.gov/cwrm/surfacewater/review/>. If you have any questions, contact Rebecca Alakai at rebecca.r.alakai@hawaii.gov or call (808) 587-0266.

Ola i ka wai,

DEAN D. UYENO
Acting Deputy Director

Response:

- (X) We have no objections () Additional information requested
 () Not subject to our regulatory authority and permit () Extended review period requested
 () Comments attached

Contract Person: Dan Polhemus

Phone: 808-779-4202

Signed: DAN POLHEMUS Digitally signed by DAN POLHEMUS
Date: 2024.07.16 10:58:51 -06'00'

Date: 16 July 2024

Enclosure

STANDARD STREAM DIVERSION WORKS PERMIT CONDITIONS
(Revised December 15, 2020)

1. The permit application and staff submittal approved by the Commission at its meeting on the above date shall be incorporated herein by reference.
2. The 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. The permittee, owner and/or operator of the stream diversion works shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage on a monthly (calendar or work schedule) basis to the Commission per HAR §13-168-7 Report of Water Use.
9. In the event that subsurface cultural remains such as artifacts, burials or deposits of shells or charcoal are encountered during excavation work, the permittee shall stop work in the area of the find and contact the Department’s Historic Preservation Division immediately. Work may commence only after written concurrence by the State Historic Preservation Division.

LEGAL AUTHORITIES

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

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

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

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

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

HRS §174C-93 Permits for construction or alteration. No person shall construct or alter a stream diversion works, other than in the course of normal maintenance, without first obtaining a permit from the commission.

HAR §13-168-2 Definitions.

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

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

- (1) Maintenance of aquatic life and wildlife habitats;
- (2) Outdoor recreational activities;

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

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

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

HAR §13-168-7 Report of water use. (a) The owner or operator of any well or stream diversion works from which water is being used shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage on a monthly (calendar or work schedule) basis.

HAR §13-168-32 Stream diversion permits. (a) No person shall construct or alter a stream diversion works, other than in the course of normal maintenance, without first obtaining a stream diversion permit from the commission...

(b) Each application for a stream diversion permit shall be made on forms provided by the commission and shall contain the following:

- (1) Name and address of the applicant;
- (2) Name and address of the owner or owners of the land upon which the works are to be constructed and a legal description of such land;
- (3) Location of the works;
- (4) Engineering drawings showing the detailed plans of construction;
- (5) Detailed specifications of construction;
- (6) Name and address of the person who prepared the plans and specifications for construction;
- (7) Name and address of the person who will construct the proposed work;
- (8) General purpose of the proposed works; and
- (9) Such other information as the commission may require.

(c) The commission may issue or cause to be issued a stream diversion permit if the proposed construction complies with all applicable laws, rules, and standards. The commission shall approve or disapprove an acceptably completed application within ninety calendar days of receipt by the commission. The commission may approve in whole, approve in part, approve with modifications, or disapprove an application for a stream diversion permit.

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

- (1) The quantity and quality of the stream water or the stream ecology shall not be adversely affected.

- (2) Where instream flow standards or interim instream flow standards have been established pursuant to chapter 13-169, no permit should be granted for any diversion works 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 diversion works shall not interfere substantially and materially with existing instream or non-instream uses or with diversion works previously permitted.

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