



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

March 18, 2025
Honolulu, Hawai'i

Approval of Stream Channel Alteration Permit (SCAP.6306.8) Application and
Special Conditions, 'Ōuli Land Company, LLC
Crossing No. 6 Bridge Construction
Wai'ula'ula Stream, Kamuela, Hawai'i, Tax Map Key(s): (3) 6-2-001:051

APPLICANT

'Ōuli Land Company, LLC
P.O. Box 1059
Kamuela, HI 96743

LANDOWNER

Same

SUMMARY OF REQUEST

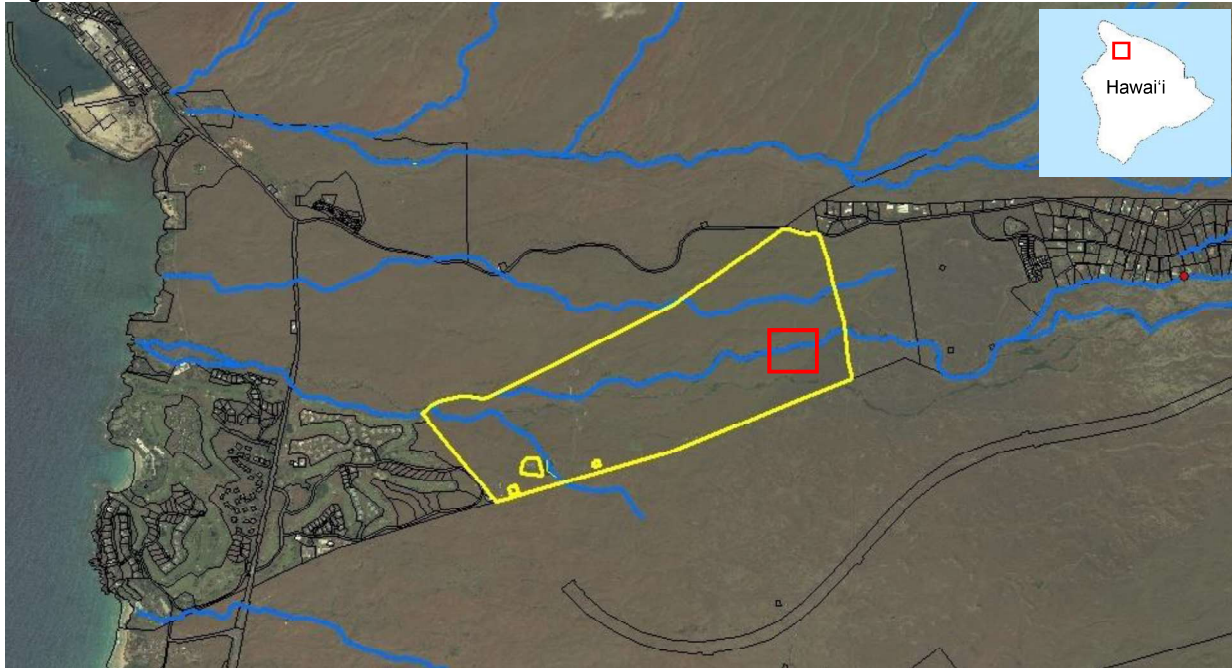
Approve Stream Channel Alteration Permit (SCAP.6306.8) by the 'Ōuli Land Company, LLC. The project proposes to construct a bridge over the Wai'ula'ula Stream for the Phase I 'Ōuli Farms Subdivision.

BACKGROUND

On January 7, 2025, the 'Ōuli Land Company, LLC filed a complete stream channel alteration permit application that is available online at https://files.hawaii.gov/dlnr/cwrm/swreview/SCAP_6306_8.pdf.

LOCATION: Wai'ula'ula Stream, Kamuela, Hawai'i. See **Figure 1**.

Figure 1: Location, Wai‘ula‘ula Stream, Kamuela, Hawai‘i.



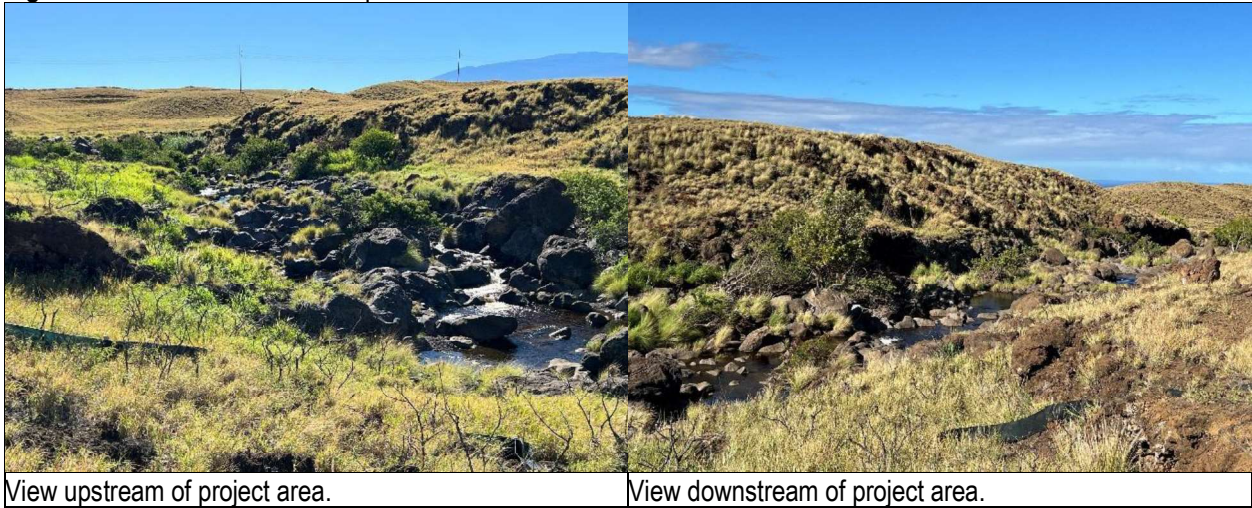
STREAM DESCRIPTION

Both the National Hydrography Dataset and the Division of Aquatic Resources classified the Wai‘ula‘ula Stream as perennial. The total drainage area is 71 square miles with a maximum basin elevation of 13,635 feet. The mean annual precipitation is 36 inches and the longest flow path is approximately 34 miles.

PROJECT DESCRIPTION

The project proposes to construct a bridge (crossing number 6) over the Wai‘ula‘ula Stream for the Phase I ‘Ōuli Farms Subdivision. The approximate project dimensions are 106-feet wide, 12-foot high, and 24-feet long across the entire stream channel. The bridge, including wingwalls and abutments, have been designed to minimize impacts to the stream channel and allow the passage of the 100-year flood. The project construction is estimated to take nine months to one year. See **Figure 2** Site Photos and **Figure 3** Bridge Plans.

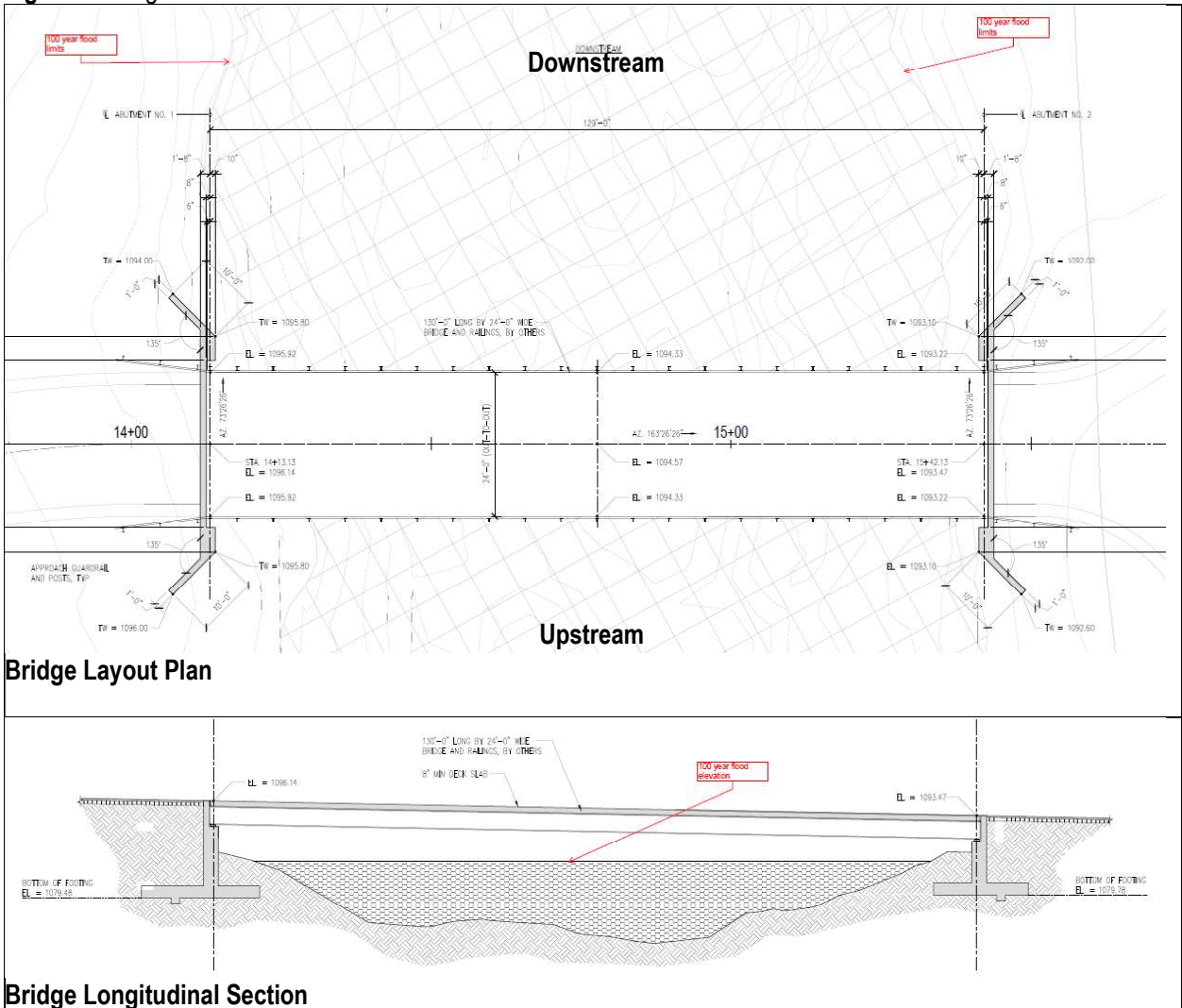
Figure 2: Wai'ula'ula Stream site photos.



View upstream of project area.

View downstream of project area.

Figure 3: Bridge Plans.



AGENCY REVIEW COMMENTS

County of Hawai'i, Planning Department: Review of our records and the SCAP application seem to indicate that the new bridge construction is intended to provide bridge stream crossing for a future road lot that is part of the proposed Phase 1 Ouli Farms Subdivision project, that has been granted Amended Revised Tentative (Conditional) Approval on October 24, 2024. Our comments in this regard are as follows:

1. The subject parcel, consisting of 293.684 acres, is zoned A-5a by the County (Agricultural-minimum 5 acre building site area) and has a State Land Use (SLU) designation of Urban. The entire parcel, including the project area, is not located within the Special Management Area. The subject parcel, as it currently exists, is identified as Lot A, on Ouli Farms Bulk Lot Subdivision No. PL-SUB-2023-000223, approved 05/08/2024.
2. The bridge construction and future connecting roadways are subject to compliance with applicable conditions of approval stated within the proposed Subdivision Application (PL-SUB-2023-000162) Tentative Approval letters referenced below, and Variance Permit (PL-SV AR-2023-000038) approval letter also referenced below. Copies are attached for your review.

Our records indicate that proposed Subdivision Application No. PL-SUB-2023-000162 has been received by our office to further subdivide parcel 051/Lot A into "Lots 1 to 45, Inclusive, Water Tank Lot 1, Roads A, A-3, B, B-1, B-2, B-3, And Designation of Easements A-1 to A-12, Inclusive, & Easement WM-1". Revised Tentative Approval was granted on October 22, 2024, and further amended on October 24, 2024. Furthermore, Variance Permit No. PL-SV AR-2023-000038 was approved on August 23, 2023, that grants relief for proposed Subdivision, PL-SUB-2023-000162, from "constructing minimum County dedicable water supply system and roadway improvements for the forty-seven (47) lots as required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions). The Variance indicates that the proposed roads are intended to be private and will be under future ownership and maintenance of the homeowner' s association.

3. Comments regarding proposed Subdivision, PL-SUB-2023-000162 were received by our office from the Hawaii Island Na Ala Hele Trail and Access Program Manager relating to historic and stream-side trails on the subject parcel. Therefore, we recommend that the applicant consult with the Na Ala Hele Trail and Access Program Manager, DOFAW, DLNR, regarding the proposed bridge construction over the Wai'ula'ula Stream.
4. The project site is located within the South Kohala Community Development Plan (CDP) planning area, which was adopted in November 2008. Table 4.1 of this plan summarizes current and future development in the Waimea area and references the Wai'ula'ula Watershed and the intention of the Mauna Kea Soil and Water Conservation District (MKSWCD), in collaboration with the USDA Natural Resources Conservation Service (NRCS), to preserve and increase water quality in the Wai'ula'ula Watershed. As such, we recommend that the applicant consult with the MDSWCD and NRCS prior to proceeding with the bridge construction. See **Exhibit 1**.

CWRM staff response: Added as a special condition by reference.

County of Hawaii, Department of Public Works: No comments received.

Department of Hawaiian Home Lands (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 for researching the Flood Hazard Zone designation for the project. Flood zones subject to NFIP requirements are identified on FEMA's Flood Insurance Rate Maps (FIRM). The official FIRMs can be accessed through FEMA's Map Service Center (msc.fema.gov). Our Flood Hazard Assessment Tool (FHAT) (fbat.hawaii.gov) could also be used to research flood hazard information. See **Exhibit 2**.

CWRM staff response: The project site is in Zone X, or areas of minimal flood hazard that is determined to be outside the Special Flood Hazard Area and higher than the elevation of the 0.2-percent-annual-chance (or 500-year) flood.

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

DLNR, Historic Preservation (SHPD): SHPD Project No. 2025PR00043 concurrence letter not received.

CWRM Staff Response: Approval of the application is subject to SHPD Project No. 2025PR00043 concurrence. If SHPD requires certain actions, authority shall be delegated to the Deputy Director to add any follow-on actions as a special condition of this permit. In a letter, dated March 5, 2024 (See **Exhibit 3**), SHPD responded to the County of Hawai‘i, Planning Department, regarding the County of Hawai‘i Preliminary Plat Map Application (PL-SUB-2023-000162) by Ō‘uli Land Company Phase I of ‘Ōuli Farms Subdivision, having reviewed and accepted an archaeological inventory survey (AIS) (Barna et al. 2023) for mass-grading for the proposed ‘Ōuli Farms roadways in a letter dated June 26, 2023 (Project No. 2023PR0029). SHPD concurred with a determination of “No historic properties affected” for the grading of the roadways and the grading permit was issued.

A second AIS was requested in response to the County of Hawai‘i’s submittal of a preliminary plat map associated with the Subdivision Application (PL-SUB-2023-000162) for the proposed development of Phase I of ‘Ōuli Farms. ASM Affiliates (Clark et al., January 2024) conducted the second AIS which included a 100% surface survey of the project area. Based on the accepted AIS, SHPD’s determination was “Effect, with

agreed upon mitigation commitments.” SHPD requested, for review and acceptance, an archaeological preservation plan and an archaeological monitoring plan.

DLNR, Land Division: No comments received.

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: **Archaeological Resource.** The proposed action includes construction of a bridge over Waiulaula Stream and an Archaeological Inventory Survey (AIS) was completed by ASM Affiliates, then accepted by the State Historic Preservation Department (SHPD) on March 25, 2024. At this time, OHA requests a copy of the full AIS for further review, as well as a copy of the SHPD determination letter accepting the AIS. Considering the historic sites identified in the AIS that are designated for preservation, a Preservation Plan should be prepared per Hawaii Revised Statutes (HAR) § 13-277. OHA requests an opportunity to review and comment on a Preservation Plan upon its completion. **Cultural Resources.** In review of the SCAP, there appears to be no dedicated analysis of impacts to cultural resources and practices. An archaeological inventory survey report is solely referenced within the “cultural impacts” section of the application. While cultural practices can often occur on historic properties and historic properties can in fact be considered cultural resources, this is not always the case. The process for documenting cultural practices involves a greater degree of consultation and outreach, whereas archaeological studies or reports may not always require consultation and often solely relies on material findings. Furthermore, assessment of cultural impacts should involve an attempt to consult with community folks and cultural practitioners to ascertain ethnographic information on cultural resources and practices that occur on the site or in the broader area. As the application fails to mention any type of outreach specific to cultural related consultation, it is unclear if the project will effect cultural practices occurring nearby. Further, the application states that historic trails were recommended for preservation, and that the applicant is preparing a access system. We thus encourage the applicant to complete some level of cultural outreach for this particular project and to document their findings on possible impacts to cultural resources or practices. OHA would like to remind the applicant that the lack of any formal methodology or explanation specifically targeted at traditional and customary practices could prevent the approving agency from assessing the identity and scope of valued cultural and

natural resources in the area. Articles IX and XII of the State of Hawai‘i Constitution requires that government agencies must “promote and preserve cultural beliefs, practices, and resources of Native Hawaiians and other ethnic groups.” Article XII Section 7 of the State of Hawai‘i Constitution states: “the State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778...” In *Ka Pa‘akai O Ka ‘Aina v. Land Use Commission*, 94 Haw. 31 (2000), hereinafter *Ka Pa‘akai*, the Hawai‘i Supreme Court, reiterated the importance of Section 7 and reaffirmed that the State and its agencies are obligated to reasonably protect the traditional and customary rights of Hawaiians. The Supreme Court ruling States that agencies are obligated to make the assessment of cultural practices, independent of a developer or applicant. Typically, information gathered during a cultural impact assessment (CIA) or cultural assessment study during HRS 343 can help to inform the approving agency during the Ka Pa‘akai process. However, as HRS 343 is currently not triggered, no CIA is being done specifically for this project and its respective parcel. The Ka Pa‘akai court decision set forth that a proper analysis of cultural impacts shall include: 1) the identity and scope of valued cultural, historical, or natural resources in the subject area, including the extent to which traditional and customary native Hawaiian rights are exercised; 2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and, 3) the feasible action, if any, to be taken by the (agency) to reasonably protect native Hawaiian rights if they are found to exist. Generally, the “subject area” is not restricted to the project area as areas adjacent to the project area could be indirectly or directly impacted by actions within the project area. **Closing Remarks.** Mahalo for the opportunity to comment. We look forward to receiving the requested information and continuing consultation. See **Exhibit 4**.

CWRM Staff Response: On March 5, 2025, ‘Ōuli Farms sent a letter to OHA (See **Exhibit 5**), forwarding the following: 1) An Archaeological Inventory Survey of Phase 1 of ‘Ōuli Farms (Clark et al., April 2024); 2) SHPD letter, dated March 25, 2024; and 3) Ka Pa‘akai O Ka ‘Aina Analysis for ‘Ōuli Farms (Jacques et al., February 2025). ‘Ōuli Farms indicated that preparation of a Preservation Plan is underway and will be forwarded to OHA upon its submission to SHPD for review and action. Transmission of the ‘Ōuli Farms Preservation Plan to OHA added as a special condition.

US Army Corps of Engineers: No comments received.

U.S. Fish and Wildlife Service (FWS): Your IPaC-generated Official Species List included all federally listed species, critical habitat, migratory birds, and wetland habitat that occurs, or may transit through, the project vicinity. For projects in Hawai‘i, each species on your Official Species List page (links directly below it) provides the Service’s recommended avoidance and minimization measures for that species. Our general avoidance and minimization measures for both animals and plants are provided at our website here: <https://www.fws.gov/office/pacific-islands-fish-and-wildlife/library>, please refer to them in the preliminary stages of project design. These "General project design guidelines" are our avoidance and minimization measures intended to avoid or minimize adverse effects to federally protected species. The endangered ‘ōpe‘ape‘a or Hawaiian hoary bat may occur or transit the project area; therefore, we recommend incorporating the following applicable measures into your project to avoid and minimize impacts

to ‘ōpe‘ape‘a. **Endangered ‘ōpe‘ape‘a (Hawaiian hoary bat, *Lasiurus cinereus semotus*):**

The Hawaiian hoary bat roosts in woody vegetation across all islands and will leave their young unattended in trees and shrubs when they forage. If trees or shrubs 15 feet or taller are cleared during the pupping season, June 1 through September 15, there is a risk that young bats could inadvertently be harmed or killed, since they are too young to fly or move away from disturbance. Hawaiian hoary bats forage for insects from as low as 3 feet to higher than 500 feet above the ground and can become entangled in barbed wire used for fencing. To avoid and minimize impacts to the endangered Hawaiian hoary bat we recommend you incorporate the following applicable measures into your project description:

- Do not disturb, remove, or trim woody plants greater than 15 feet tall during the bat birthing and pup rearing season (June 1 through September 15).
- Do not use barbed wire for fencing.

We also recommend incorporating the Best Management Practices for Work In and Around Aquatic Environments (BMPs) in to your project design. Link here and also attached <https://www.fws.gov/media/best-management-practices-work-or-around-aquatic-environments-bmps>. We appreciate your efforts to conserve federally protected species. See **Exhibit 6**.

CWRM staff response: Added as a special condition by reference.

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 “ASM Affiliates completed an Archaeological Inventory Survey (“AIS”) for TMK: (3) 6-2-001:051 (“Parcel 51”). SHPD accepted the AIS on March 25, 2024. Sites 22842, 28705, 28708, and 31427 were identified as pre-contact/early historic trails recommended for preservation, based on its traditional cultural value to Native Hawaiians. The Applicant is preparing a mauka-makai public access trail system within Parcel 51 and the remaining Ouli lands, which generally follows the alignment of these historic trails; one trail alignment following the north side of Waiulaula Stream, and another trail alignment along the southern boundary of Parcel 51. The applicant will designate mauka-makai public access trail easements over the final trail alignments determined by the applicant and County Planning Director, and record a Grant of Public Access Easements against the affected properties. The Applicant is unaware of any traditional and customary native Hawaiian practices occurring within Parcel 51, or additional practices in the vicinity of the project area. There are no historical sites listed on the Federal and State Register of Historic Sites, nor are there any historical sites listed in the County of Hawaii General Plan Historical Element or the South Kohala Community Development Plan.”

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, “Based upon the applicant’s commitment to preserve the historic sites and 4 trail remnants identified in the AIS, along with the commitment to record mauka-makai public access easements as noted herein, there are no known impacts to traditional and customary Native Hawaiian rights that would be affected or impaired from the proposed improvements discussed in this application.”

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, “We understand that the CWRM is evaluating instream flow of surface water from existing streams upstream of Keanu‘i‘omanō and Wai‘ula‘ula streams to address the needs from Native Hawaiian farms identified in the mauka lands above this subject property for a consistent flow of water for cultural practices. Since this work is occurring mauka of Parcel 51, the applicant does not anticipate that the proposed improvements will have an impact on CWRM’s project. There are no feasible actions to be taken by the CWRM other than to require that if in the future, any valued, cultural, historical, natural resources and/or traditional and customary native Hawaiian rights are discovered in Parcel 51, the applicant will report the discovery to the State of Hawaii, Department of Land and Natural Resources, Historic Preservation Division for review and assessment.”

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

HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT (EA) COMPLIANCE

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

- (1) use of state land or county lands, or the use of state or county funds;
- (2) use within any land classified as a conservation district;
- (3) use within a shoreline area;
- (4) use within any historic site as designated in the National Register or Hawaii Register;
- (5) use within the Waikiki area of O‘ahu;
- (6) any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation;
- (7) any reclassification of any land classified as a conservation district;

- (8) construction of new or the expansion or modification of existing helicopter facilities within the State, that may affect: (A) any land classified as a conservation district; (B) a shoreline area; or (C) any historic site as designated in the National Register or Hawaii Register;
- (9) any (A) wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent; (B) Waste-to-energy facility; (C) Landfill; (D) Oil refinery; or (E) Power-generating facility.

CWRM Staff Response: The project 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 §13-169-52(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 project is not anticipated to impact the status quo interim instream flow standard which was established on June 15, 1988, pursuant to HAR §13-169-46.

- (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 no active diversions located downstream of the project area. No adverse impacts are anticipated.

RECOMMENDATION

That the Commission:

1. Approve Stream Channel Alteration Permit (SCAP.6306.8) Application that proposes to construct a bridge approximately 106-feet wide, 12-feet high, and 24-feet long across the entire stream channel. The bridge, including wingwalls and abutments, have been designed to minimize impacts to the stream channel and allow the passage of the 100-year flood. The project construction is estimated to take nine months to one year. subject to the standard conditions in **Exhibit 7** and the special conditions below.
 - a. In conformance with the County of Hawai‘i, Planning Department recommendations, incorporated by reference as **Exhibit 1**, that the applicant consult with the Mauna Kea Soil and Water Conservation District and Natural Resources Conservation Service prior to proceeding with the bridge construction.
 - b. Approval of the application is subject to SHPD Project No. 2025PR00043 concurrence. If SHPD requires certain actions, authority shall be delegated to the Deputy Director to add any follow-on actions as a special condition for issuance of this permit.
 - c. In conformance with the Office of Hawaiian Affairs’ request and further review, incorporated by reference as **Exhibit 4**, a copy of the ‘Ouli Farms Preservation Plan shall be forwarded to OHA upon ‘Ouli Farms’ submission of the Plan to SHPD.
 - d. In conformance with the U.S. Fish and Wildlife’s recommendations, incorporated by reference as **Exhibit 6**, the FWS recommends best management practices be employed to support native species and minimize the introduction of pests to the area and general avoidance and minimization measures for both animals and plants.

Ola i ka wai,



CIARA W.K. KAHAHANE
Deputy Director

Exhibits:

1. County of Hawai‘i, Planning Department, letter dated January 24, 2025.
2. DLNR, Engineering Division, letter dated January 31, 2025.
3. SHPD, letter dated March 25, 2024.
4. Office of Hawaiian Affairs, email dated January 27, 2025.
5. ‘Ouli Farms, letter dated March 5, 2025.
6. US Fish and Wildlife, letter dated February 5, 2025.
7. Standard Stream Channel Alteration Permit Conditions.
8. Legal Authorities.

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to be 'Dawn N.S. Chang', written in a cursive style.

DAWN N.S. CHANG
Chairperson

C. Kimo Akumeda, Ph.D.
Mayor

William V. Brilhante, Jr.
Managing Director

West Hawai'i Office
74-5044 Ane Keohokūkole Hwy
Kailua-Kona, Hawai'i 96740
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Fax (808) 327-3563



County of Hawai'i
PLANNING DEPARTMENT

Jeffrey W. Darrow
Director

Michelle S. Ahn
Deputy Director

East Hawai'i Office
101 Paasahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

January 24, 2025

Ciara W.K. Kahahane, Deputy Director
Department of Land and Natural Resources
Commission on Water Resource Management
VIA Email: rebecca.r.alakai@hawaii.gov

Dear Ms. Kahahane:

SUBJECT: Review and Comments - Stream Channel Alteration Permit (SCAP.6306.8)
Project: Ouli Land Co. LLC, Bridge Construction
Wai'ula'ula Stream, Kamuela, Hawai'i
Tax Map Key (TMK): (3) 6-2-001:051 (PL-INT-2025-009573)

Thank you for your email received January 9, 2025, requesting comments from this office regarding the subject Stream Channel Alteration Permit for the bridge construction project across a portion of the Wai'ula'ula Stream that traverses the subject TMK parcel.

Review of our records and the SCAP application seem to indicate that the new bridge construction is intended to provide bridge stream crossing for a future road lot that is part of the proposed Phase 1 Ouli Farms Subdivision project, that has been granted Amended Revised Tentative (Conditional) Approval on October 24, 2024. Our comments in this regard are as follows:

1. The subject parcel, consisting of 293.684 acres, is zoned A-5a by the County (Agricultural-minimum 5 acre building site area) and has a State Land Use (SLU) designation of Urban. The entire parcel, including the project area, is not located within the Special Management Area. The subject parcel, as it currently exists, is identified as Lot A, on Ouli Farms Bulk Lot Subdivision No. PL-SUB-2023-000223, approved 05/08/2024.
2. The bridge construction and future connecting roadways are subject to compliance with applicable conditions of approval stated within the proposed Subdivision Application (PL-SUB-2023-000162) Tentative Approval letters referenced below, and Variance Permit (PL-SVAR-2023-000038) approval letter also referenced below. Copies are attached for your review.

Our records indicate that proposed Subdivision Application No. PL-SUB-2023-000162 has been received by our office to further subdivide parcel 051/Lot A into "Lots 1 to 45, Inclusive, Water Tank Lot 1, Roads A, A-3, B, B-1, B-2, B-3, And Designation of Easements A-1 to A-

Ciara W.K. Kahahane, Deputy Director
(PL-INT-2025-009573)
January 24, 2025
Page 2 of 2

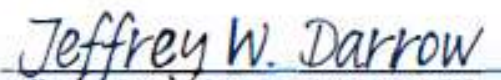
12, Inclusive, & Easement WM-1". Revised Tentative Approval was granted on October 22, 2024, and further amended on October 24, 2024.

Furthermore, Variance Permit No. PL-SVAR-2023-000038 was approved on August 23, 2023, that grants relief for proposed Subdivision, PL-SUB-2023-000162, from "constructing minimum County dedicable water supply system and roadway improvements for the forty-seven (47) lots as required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions). The Variance indicates that the proposed roads are intended to be private and will be under future ownership and maintenance of the homeowner's association.

3. Comments regarding proposed Subdivision, PL-SUB-2023-000162 were received by our office from the Hawaii Island Nā Ala Hele Trail and Access Program Manager relating to historic and stream-side trails on the subject parcel. Therefore, we recommend that the applicant consult with the Nā Ala Hele Trail and Access Program Manager, DOFAW, DLNR, regarding the proposed bridge construction over the Wai'ula'ula Stream.
4. The project site is located within the South Kohala Community Development Plan (CDP) planning area, which was adopted in November 2008. Table 4.1 of this plan summarizes current and future development in the Waimea area and references the Wai'ula'ula Watershed and the intention of the Mauna Kea Soil and Water Conservation District (MKSWCD), in collaboration with the USDA Natural Resources Conservation Service (NRCS), to preserve and increase water quality in the Wai'ula'ula Watershed. As such, we recommend that the applicant consult with the MDSWCD and NRCS prior to proceeding with the bridge construction.

We have no further comments to offer at this time. If you have any questions or need further assistance, please contact Marie Hong of the West Hawai'i office at (808) 323-4770.

Sincerely,



Jeffrey W. Darrow (Jan 25, 2025 06:44 HST)

JEFFREY W. DARROW
Planning Director

MH:mh

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Attachments: 10/22/2024 Revised Tentative Approval (PL-SUB-2023-00162)
10/24/2024 Amend Revised Tentative Approval (PL-SUB-2023-00162)
8/23/2023 Variance Approval Letter (PL-SVAR-2023-000038)

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

CWRM/Ciara W.K. Kahahane

**Ref: Request for Comments, Stream Channel Alteration Permit (SCAP.6306.8)
Application, Ouli Land Co., LLC, Bridge Construction
Location: Wai'ula'ula Stream, Kamuela, Hawaii
TMK(s): (3) 6-2-001:051
Applicant: Ouli Land Company, LLC**

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 for researching the Flood Hazard Zone designation for the project. Flood zones subject to NFIP requirements are identified on FEMA's Flood Insurance Rate Maps (FIRM). The official FIRMs can be accessed through FEMA's Map Service Center (msc.fema.gov). Our Flood Hazard Assessment Tool (FHAT) (fhat.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) 241-4849.

Signed: 
DINA U. LAU, ACTING CHIEF ENGINEER

Date: Jan 31, 2025

EXHIBIT 2

GOVERNOR | KE KIA‘ĀINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA‘ĀINA



STATE OF HAWAII | KA MOKU‘ĀINA ‘O HAWAI‘I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA ‘OIHANA KUMUWAIWAI ‘ĀINA

STATE HISTORIC PRESERVATION DIVISION
KAKUIHHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

March 25, 2024

Zendo Kern, Director
County of Hawaii, Planning Department
101 Pauahi Street, Suite 3
Hilo, HI 96720
planning@hawaiiicounty.gov

IN REPLY REFER TO:
Project No. 2023PR00807
Doc. No. 2403SN10
Archaeology

Dear Zendo Kern:

SUBJECT: **Hawaii Revised Statutes Chapter 6E-42 Historic Preservation Review –
County of Hawai‘i Preliminary Plat Map Application (PL-SUB-2023-000162)
Applicant: Ō‘uli Land Company Phase I of ‘Ōuli Farms Subdivision
Archaeological Inventory Survey
‘Ōuli Ahupua‘a, South Kohala District, Island of Hawai‘i
TMK: (3) 6-2-001:051**

This letter provides the State Historic Preservation Division’s (SHPD’s) review of the subject County of Hawai‘i preliminary plat map application and a supporting revised document titled, *An Archaeological Inventory Survey of Phase I of ‘Ōuli Farms TMK: (3) 6-2-001:051 (por.) ‘Ōuli Ahupua‘a, South Kohala, Island of Hawai‘i* (Clark et al., revised January 2024). Our office received the initial project submission on June 30, 2023, which included a Permit application (PL-SUB-2023-000162), construction plans, a satellite overview of the proposed project area and a letter dated June 23, 2023 from the County of Hawaii to the landowner referencing the proposed preliminary plat map information. SHPD requested an archaeological inventory survey (AIS) be conducted for the project in a letter dated August 9, 2023 (Doc. No. 2308SN06). Our office received the initial draft AIS report on October 27, 2023 and the current revised AIS report (Clark et al., January 2024) on January 31, 2024.

The applicant, ‘Ōuli Land Company (landowner), is seeking a County of Hawaii approval to develop Phase I of the ‘Ōuli Farms Subdivision that includes the 350-acre project area that will consist of Lots 1–42 and Lots 44–47 of the subdivision and includes a lot for a water tank, an irrigation pond in their entirety and ~7-acres of Lot 43. The current AIS is for Phase I, the remaining area will be retained by the landowners for the future development of Phase II. The overall development area for Phase I and Phase II totals 837.75 acres.

SHPD reviewed and accepted an AIS (Barna et al. 2023) of an approximately 76.82-acre portion of the current project area for mass-grading for the proposed ‘Ōuli Farms roadways in a letter dated June 26, 2023 (Project No. 2023PR00291, Doc. No. 2305SN08). This earlier study further documented 20 historic properties previously identified by Trout et al. (2011). SHPD concurred with a determination of “No historic properties affected” for the grading of the roadways and the grading permit was issued. The current AIS was requested in response to the County of Hawaii’s submittal of a preliminary plat map associated with the Subdivision Application (PL-SUB-2023-000162) for the proposed development of Phase I of ‘Ōuli Farms.

ASM Affiliates (Clark et al., January, 2024) conducted the AIS which included a 100% surface survey of the project area. No subsurface testing was done as the Trout et al. (2011) study was assessed as having adequately documented age and function of the historic properties present in the project area. The ASM Affiliates AIS documented 31 historic properties with 59 features within the current project area. These included (1) one site (SIHP 50-10-05-09012) recorded by Welsh (1983); (2) 16 sites (Sites 50-10-05-22781, 50-10-05- 22783, 50-10-05-22815, 50-10-05-22816,

Zendo Kern
March 25, 2024
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50-10-05-22819, 50-10-05-22820, 50-10-05-22823, 50-10-05-22824, 50-10-05-22826, 50-10-05-22828, 50-10-05-22831, 50-10-05-22832, 50-10-05-22833, 50-10-05-22837, 50-10-05-22842, and 50-10-05-22855) were recorded by Robins et al. (2001); (3) 13 sites (Sites 50-10-05-28688, 50-10-05-28697, 50-10-05-28699, 50-10-05-28700, 50-10-05-28703, 50-10-05-28705, 50-10-05-28708, 50-10-05-28709, 50-10-05-28713, 50-10-05-28716, 50-10-05-28719, 50-10-05-28759, and 50-10-05-28765) documented by Trout et al. (2011); and (4) one site (Site 50-10-05-31427) newly documented during the current AIS. Additionally, several sites previously identified within the current project area (Robins et al. 2001; Trout et al. 2011) were not found during the current survey and are believed to have been destroyed by land disturbing activities (Sites 50-10-05-22817, 50-10-05-22821, 50-10-05-22835, 50-10-05-22859). Five additional sites documented in Barna (2023), Sites 50-10-05-22782, 50-10-05-22822, 50-10-05-28689, 50-10-05-28704, and 50-10-05-30875 have already been adequately documented, requiring no further work.

All 31 historic properties were assessed as significant per HAR 13-284-6 under Criterion d and all adequate integrity of location, setting, materials, feeling, and association. Eighteen sites (Sites 22815, 22816, 22819, 22823, 22824, 22826, 22828, 22832, 22837, 22855, 28688, 28699, 28700, 28703, 28713, 28716, 28759, and 28765), determined to be associated with World War II-era training activities in the Waikoloa Maneuvering Area (WMA). Two sites (Site 9012 and 22783) provide information related to pre-World War II ranching activities within the project area. Site 9012, was previously determined to be significant under Criterion a for its association with Parker Ranch and the broad pattern of ranching in Hawai‘i. Sites 22842, 28705, 28708, and 31427 were assessed as significant Criterion e due to the traditional cultural value that trails have to the Native Hawaiians. All the sites associated with military activities within the project area have been assessed as having been adequately documented and recommended for no further work. The remaining 12 sites (Sites 9012, 22781, 22783, 22820, 22831, 22842, 28697, 28705, 28708, 28709, 28719 and 31427) have been recommended for preservation.

SHPD agrees with the assessments of significance and integrity and the recommended treatments for the 31 documented sites. Based on the information provided, SHPD’s determination is “**Effect, with agreed upon mitigation commitments**” for the current project pursuant to HAR §13-284-7(a)(2). As stipulated in HAR §13-284-7, when SHPD comments that a project will result in “Effect, with agreed upon mitigation commitments,” then detailed mitigation plans shall be developed for SHPD review and acceptance prior to project initiation.

The AIS (Clark et al. January 2024) meets the requirements of HAR §13-276-5. **It is accepted.** Please send one hard copy of the document, clearly labeled Final, along with a text-searchable PDF copy of the document and a copy of this letter to the SHPD Kapolei office, Attn. SHPD Library and one hard copy of the document, clearly marked Final, and a copy of this acceptance letter to the Hilo SHPD office, attention Sean Nāleimaile. Additionally, please upload a text-searchable PDF copy of the report to HICRIS Project 2023PR00807 in the response to the request, and a PDF copy of the report to lehua.k.soares@hawaii.gov

SHPD looks forward to receiving for review and acceptance an archaeological preservation plan that meets the requirements of HAR §13-277, and an archaeological monitoring plan that meets the requirements of HAR §13-279-4.

SHPD will notify the County of Hawaii Planning Department when the required mitigation plans have been accepted and the permit issuance process may continue.

Contact Sean Naleimaile at sean.p.naleimaile@hawaii.gov for any questions regarding this letter.

Aloha,

Alan Downer

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

cc. Catherine Nelson, catherine.nelson@hawaiicounty.gov
Jaslyn Nathaniel, jaslyn.nathaniel@hawaiicounty.gov
Matt Clark, mclark@asmaffiliates.com
Jackson Bauer, Jackson.m.bauer@hawaii.gov
Jason Knable, jknable@carlsmith.com
Hans Santiago, hans.santiago@hawaiicounty.gov

From: [Kaweni Ibarra](#)
To: [Alakai, Rebecca R](#)
Cc: [Kamakana Ferreira; aangelo@oullifarms.com; winstonino@samhira.com; scott@icckona.com](#)
Subject: [EXTERNAL] OHA Comment Re: Ouli Land Company LLC, SCAP for Kamuela, Hawaii
Date: Monday, January 27, 2025 8:05:07 AM
Attachments: [Outlook-stuff100v.png](#)

Aloha e Ms. Alakai,

The Office of Hawaiian Affairs (OHA) is in receipt of your notice of Stream Channel Alteration Permit (SCAP) dated January 7, 2025 regarding the Ouli Land Company LLC Bridge Construction at Waiulaula Stream in Kamuela on Hawaii Island [TMK (3)6-2-001: 051]. This SCAP application is being done per the requirements of the Hawaii Code of Rules § 13-169-51.

Archaeological Resource

The proposed action includes construction of a bridge over Waiulaula Stream and an Archaeological Inventory Survey (AIS) was completed by ASM Affiliates, then accepted by the State Historic Preservation Department (SHPD) on March 25, 2024.

At this time, OHA requests a copy of the full AIS for further review, as well as a copy of the SHPD determination letter accepting the AIS.

Considering the historic sites identified in the AIS that are designated for preservation, a Preservation Plan should be prepared per Hawaii Revised Statutes (HAR) § 13-277. OHA requests an opportunity to review and comment on a Preservation Plan upon its completion.

Cultural Resources

In review of the SCAP, there appears to be no dedicated analysis of impacts to cultural resources and practices. An archaeological inventory survey report is solely referenced within the “cultural impacts” section of the application. While cultural practices can often occur on historic properties and historic properties can in fact be considered cultural resources, this is not always the case. The process for documenting cultural practices involves a greater degree of consultation and outreach, whereas archaeological studies or reports may not always require consultation and often solely relies on material findings.

Furthermore, assessment of cultural impacts should involve an attempt to consult with community folks and cultural practitioners to ascertain ethnographic information on cultural resources and practices that occur on the site or in the broader area. As the application fails to mention any type of outreach specific to cultural related consultation, it is unclear if the project will effect cultural practices occurring nearby. Further, the application states that historic trails were recommended for preservation, and that the applicant is preparing a access system. We thus encourage the applicant to complete some level of cultural outreach for this particular project and to document their findings on possible impacts to cultural resources or practices.

OHA would like to remind the applicant that the lack of any formal methodology or explanation specifically targeted at traditional and customary practices could prevent the approving agency from assessing the identity and scope of valued cultural and natural resources in the area. Articles IX and XII of the State of Hawai‘i Constitution requires that government agencies must “promote and preserve cultural beliefs, practices, and resources of Native Hawaiians and other ethnic groups.” Article XII Section 7 of the State of Hawai‘i Constitution states:

“the State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778...”

In *Ka Pa‘akai O Ka ‘Aina v. Land Use Commission*, 94 Haw. 31 (2000), hereinafter *Ka Pa‘akai*, the Hawai‘i Supreme Court, reiterated the importance of Section 7 and reaffirmed that the State and its agencies are obligated to reasonably protect the traditional and customary rights of Hawaiians. The Supreme Court ruling States that agencies are obligated to make the assessment of cultural practices, independent of a developer or applicant. Typically, information gathered during a cultural impact assessment (CIA) or cultural assessment study during HRS 343 can help to inform the approving agency during the *Ka Pa‘akai* process. However, as HRS 343 is currently not triggered, no CIA is being done specifically for this project and its respective parcel.

The *Ka Pa‘akai* court decision set forth that a proper analysis of cultural impacts shall include: 1) the identity and scope of valued cultural, historical, or natural resources in the subject area, including the extent to which traditional and customary native Hawaiian rights are exercised; 2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and, 3) the feasible action, if any, to be taken by the (agency) to reasonably protect native Hawaiian rights if they are found to exist. Generally, the “subject area” is not restricted to the project area as areas adjacent to the project area could be indirectly or directly impacted by actions within the project area.

Closing Remarks

Mahalo for the opportunity to comment. We look forward to receiving the requested information and continuing consultation. Please feel free to contact me should you have any questions.

Mahalo,

Kaweni Ibarra

Kaweni Ibarra



March 5, 2025

Via email to: kawenii@oha.org

Kaweni Ibarra
Compliance Advocate
Office of Hawaiian Affairs
2100 Kanoielehua Avenue, Unit 9 & 10
Hilo, Hawai‘i 96720

Re: **Stream Channel Alteration Permit Application - Request for Determination (RFD.6251.8)**

Applicant's Response to January 27, 2025 comments filed by the Office of Hawaiian Affairs ("OHA")

Applicant: Ouli Land Company, LLC

Tax Map Key No.: (3) 6-2-001:051 (the "Property")

Dear Mr. Ibarra:

Thank you for providing OHA's comments responding to Ouli Land Company, LLC's ("Ouli") pending Stream Channel Alteration Permit Application - Request for Determination (RFD.6251.8), which addresses Bridge Crossing No. 6 associated with Ouli's proposed 45-lot subdivision located at TMK: (3) 6-2-001:051. Ouli Farms is located on lands that were originally a part of the overall Mauna Kea Resort master plan, located mauka of the Queen Ka‘ahumanu Highway in the Ouli Ahupua‘a, South Kohala District, Hawai‘i Island.

We appreciate OHA's involvement in the process and we look forward to continuing the dialog with OHA on our project. As requested by OHA, we are providing the following for your review and consideration:

1. *"An Archaeological Inventory Survey of Phase I of Ouli Farms"* (Final Version) dated April 2024, prepared by Matthew R. Clark, M.A., Colson Balai, B.A., and Amy Ketner, B.A. (ASM Affiliates);
2. Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) acceptance letter dated March 25, 2024 (Project No. 2023PR00807; Doc. No. 2403SN10);
3. *"Ka Pa‘akai O Ka Aina Analysis for Ouli Farms"* (Final Version) dated February 2025, prepared by Steele Jaques, M.A., Candace Gonzales, B.A., and Matthew R. Clark, M.A.

OHA also requested the opportunity to review and comment on the Preservation Plan once it is completed. We would like to assure OHA that the preparation of the Preservation Plan is underway and as soon as it is completed, Ouli will provide OHA with a copy of this plan upon its submission to DLNR-SHPD for review and action.

P. O. BOX 1059, KAMUELA, HI 96743

March 5, 2025
Page 2

Analysis for ‘Ōuli Farms will serve to address some of the concerns OHA raised on our Stream Channel Alteration Permit Application.

We'd also like to note that not only is Bridge Crossing No. 6 necessary for the safe passage by the residents and guests of ‘Ōuli's development over Wai‘ula‘ula Stream, but this bridge crossing also serves to facilitate a safe crossing over Wai‘ula‘ula Stream for all users of the designated public access trail easement system, which spans the Property and the adjoining lands.

Should you require any additional information or if you have any questions regarding our responses, either before or after the upcoming Commission on Water Resource Management public hearing on March 18, 2025, please do not hesitate to contact us at any time. Thank you for your consideration.

Sincerely,



Joe Root
President

cc: Rebecca Alakai - Regulatory Section, CWRM (rebecca.r.alakai@hawaii.gov)
Ciara W.K. Kahahane, Deputy Director, CWRM (ciara.wk.kahahane@hawaii.gov)

From: [Gary, Deena T](#)
To: [Alakai, Rebecca R](#)
Cc: [Javier-Salas, Chelsie](#); [Polhemus, Dan](#)
Subject: [EXTERNAL] Comments for the Ouli Land Co., Wai'ula'ula Stream Project Ref: SCAP.6306.8
Date: Wednesday, February 5, 2025 2:20:42 PM
Attachments: [Best Management Practices For Work In or Around Aquatic Environment-April 2022.pdf](#)
[2024-01-48838 SCAP.6306.8 Ouli Land Co. Waiulaula USFWS_slomed.pdf](#)

Hello Rebecca,

Our office has received your correspondence requesting technical assistance for the SCAP.6306.8 Stream Channel Alteration, Wai'ula'ula Stream, Kamuela, Hawai'i.

Your IPaC-generated Official Species List included all federally listed species, critical habitat, migratory birds, and wetland habitat that occurs, or may transit through, the project vicinity. For projects in Hawai'i, each species on your Official Species List page (links directly below it) provides the Service's recommended avoidance and minimization measures for that species. Our general avoidance and minimization measures for both animals and plants are provided at our website here: <https://www.fws.gov/office/pacific-islands-fish-and-wildlife/library>, please refer to them in the preliminary stages of project design. These "General project design guidelines" are our avoidance and minimization measures intended to avoid or minimize adverse effects to federally protected species.

The endangered 'ope'ape'a or Hawaiian hoary bat may occur or transit the project area; therefore, we recommend incorporating the following applicable measures into your project to avoid and minimize impacts to 'ope'ape'a.

Endangered 'ope'ape'a (Hawaiian hoary bat, *Lasiurus cinereus semotus*): The Hawaiian hoary bat roosts in woody vegetation across all islands and will leave their young unattended in trees and shrubs when they forage. If trees or shrubs 15 feet or taller are cleared during the pupping season, June 1 through September 15, there is a risk that young bats could inadvertently be harmed or killed, since they are too young to fly or move away from disturbance. Hawaiian hoary bats forage for insects from as low as 3 feet to higher than 500 feet above the ground and can become entangled in barbed wire used for fencing.

To avoid and minimize impacts to the endangered Hawaiian hoary bat we recommend you incorporate the following applicable measures into your project description:

- Do not disturb, remove, or trim woody plants greater than 15 feet tall during the bat birthing and pup rearing season (June 1 through September 15).
- Do not use barbed wire for fencing.

We also recommend incorporating the Best Management Practices for Work In and Around Aquatic Environments (BMPs) in to your project design. Link here and also attached <https://www.fws.gov/media/best-management-practices-work-or-around-aquatic-environments-bmps>.

We appreciate your efforts to conserve federally protected species. Please contact me for additional assistance.

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

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

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

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

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

LEGAL AUTHORITIES

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

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

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

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

- (2) Establish interim instream flow standards;
 - (D) In considering a petition to adopt an interim instream flow standard, the commission shall weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for non-instream purposes, including the economic impact of restricting such uses;
- (3) Protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses;
 - (A) The commission shall require persons to obtain a permit from the commission prior to undertaking a stream channel alteration; provided that routine streambed and drainage way 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 §13-169-46 Interim instream flow standard for Hawaii. The Interim Instream Flow Standard for all streams on Hawaii, 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.