

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii 96813

October 28, 2022

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

**REQUEST AUTHORIZATION FOR THE CHAIRPERSON TO ISSUE A RIGHT
OF ENTRY PERMIT TO ALLOW ACCESS TO AN EXISTING WELL FOR
ASSESSMENT, TEST PUMPING, AND WATER QUALITY ANALYSIS
(TMK: (1) 4-5-023-002), KANEOHE, OAHU, HAWAII**

BACKGROUND:

The Department of Land and Natural Resources (“DLNR”) received a letter of intent from the City and County of Honolulu, Board of Water Supply (“BWS”), EXHIBIT 1, to acquire and develop a DLNR owned well (State Well No. 3-2449-02) (“WELL”). As such, BWS will need access to the WELL in order to perform a well condition assessment, test pumping, and water quality analysis. The WELL is located on the State Department of Health (“DOH”) property (EXHIBIT 2). The results of the assessment and tests will allow BWS to substantiate acquiring the WELL from DLNR subject to future agreement(s) and related approvals.

The attached draft right of entry permit (“ROE”), EXHIBIT 3, allows BWS permission to access the WELL to perform their due diligence. Since the WELL is located on land under executive order to DOH, BWS is concurrently seeking a separate ROE from DOH to access their property.

RECOMMENDATION:

That the Board of Land and Natural Resources authorize the Chairperson to issue the ROE to BWS to access the WELL subject to the following:

Item L-1

Board of Land and Natural Resources
October 28, 2022, Item L-1

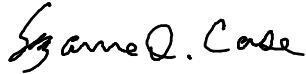
1. Review and approval by the Department of the Attorney General;
2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



CARTY S. CHANG
Chief Engineer

Approved for Submittal:



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

EXHIBIT 1 – BWS Letter to DLNR
EXHIBIT 2 – Location Map
EXHIBIT 3 – Draft Right of Entry Permit

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7BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843
www.boardofwatersupply.com



June 8, 2022

RICK BLANGIARDI, MAYOR

BRYAN P. ANDAYA, Chair
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ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.
Deputy Manager and Chief Engineer *me*

Ms. Suzanne D. Case, Chairperson
Board of Land and Natural Resources
State of Hawaii
Department of Land and Natural Resources
1151 Punchbowl Street, Board Room 132
Honolulu, Hawaii 96813

Dear Chairperson Case:

Subject: Letter of Intent for Board of Water Supply to Acquire and Develop the Hawaii State Hospital Well, Well No. 3-2449-02, TMK: 4-5-023: 02, Oahu

In response to the Department of Land and Natural Resources (DLNR) letter of inquiry dated January 6, 2015 asking if the Board of Water Supply (BWS) was interested in acquiring State-owned exploratory wells, we express our intent to acquire and develop the subject well, subject to the approval, terms and conditions of DLNR, the well owner, and the Department of Health, who has control and management over the parcel – Tax Map Key 4-5-023:002, that the subject well is located on, per Governor's Executive Order 3504.

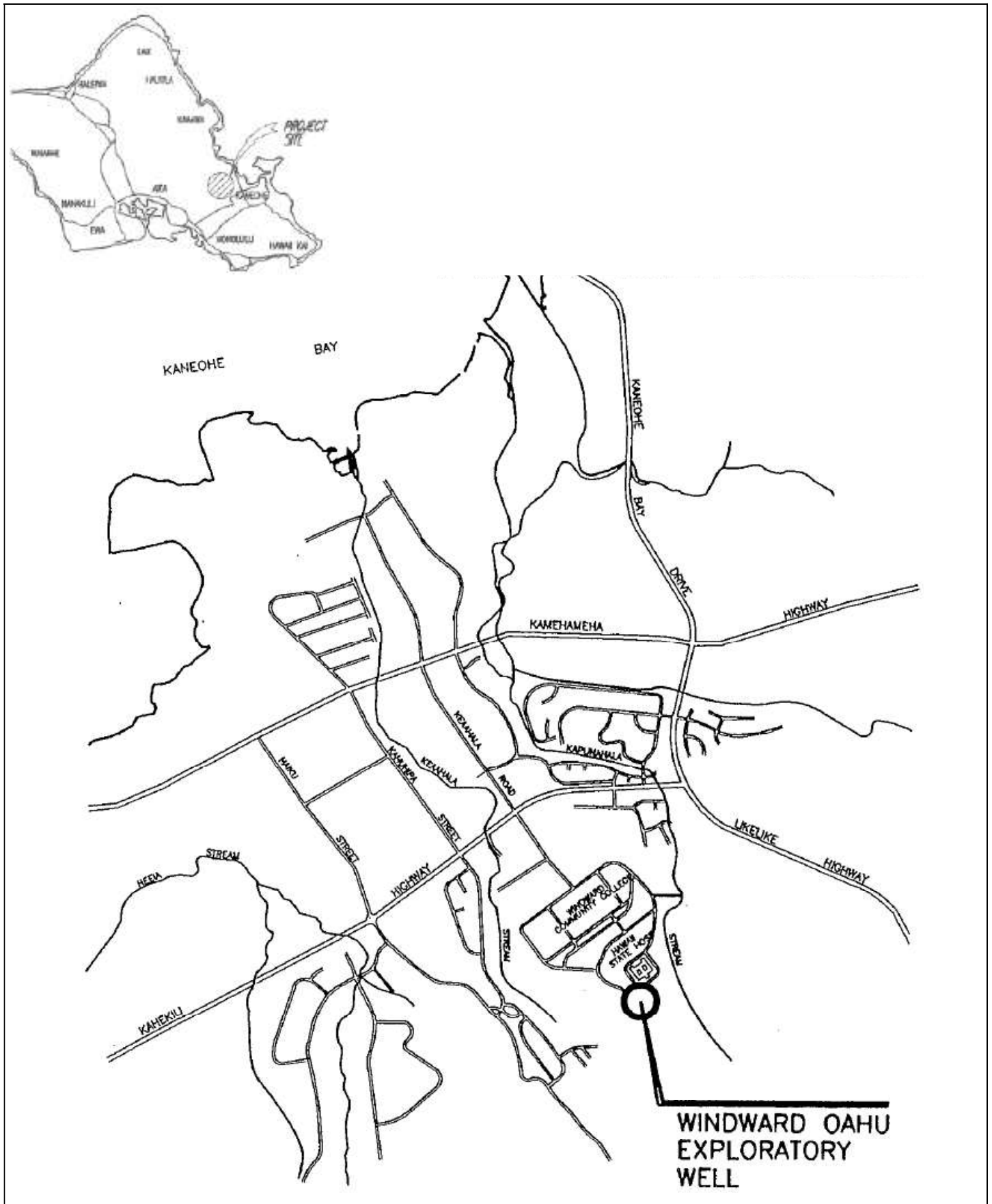
Upon further review, BWS finds that it would be advantageous to develop the subject well to compensate for the Commission on Water Resource Management's order of June 18, 2021, to reduce Haiku Tunnel production and provide potable water for the Hawaii State Hospital's expansion. We have, therefore budgeted funding for a well condition assessment, test pumping and water quality analysis in our Fiscal Year 2023 Capital Improvement Program.

If you have any questions, please contact me at (808) 748-5061.

Very truly yours,

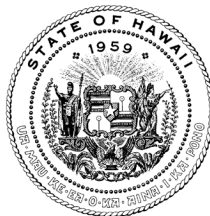
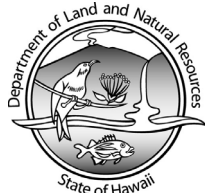
ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

cc: ~~Elizabeth~~ Elizabeth Char, M.D., Department of Health



Location Map: Windward Oahu Well No. 3-2449-02

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

DRAFT

Mr. Ernest Y. W. Lau, Manager and Chief Engineer
Board of Water Supply
City and County of Honolulu
630 South Beretania Street
Honolulu, Hawaii 96843

RIGHT OF ENTRY PERMIT TO UTILIZE STATE WELL NO. 3-2449-02
KANEHOE, OAHU, HAWAII
TMK: (1) 4-5-023:002

Dear Mr. Lau:

This letter is in response to your letter of intent dated June 8, 2022 (EXHIBIT A) for Board of Water Supply ("BWS") to acquire and develop a DLNR owned well, State Well No. 3-2449-02 ("WELL"). As such, BWS is seeking access to the WELL to perform a well condition assessment, test pumping, and water quality analysis.

The Department of Land and Natural Resources (Department) grants BWS a right-of-entry (ROE) to utilize the WELL for assessment and testing purposes, under the following conditions:

1. Upon acceptance of the terms herein, and the provision of the required insurance mentioned in paragraph 3, this ROE permit shall be effective until December 31, 2023, or completion of the WELL monitoring, whichever is the earlier. Time extensions may be granted upon written request by BWS.
2. BWS, its consultants, contractors and/or persons acting for or on its behalf, shall obtain permission and/or agreements from the State Department of Health to access the Department's well.
3. BWS, its consultants, contractors and/or persons acting for or on its behalf shall procure at its own expense, and maintain during the entire period of this ROE, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best Rating of not less than "A-VIII" or other comparable and equivalent industry rating, a policy or policies of comprehensive public liability insurance

or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured, and a copy shall be filed with the Department. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of BWS, its consultants, contractors and/or persons acting for or on its behalf. BWS, its consultants, contractors and/or persons acting for or on its behalf shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or nonrenewed until written notice has been given to the Department. The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of the Department, the insurance provisions in this ROE do not provide adequate protection for the Department, the Department may require BWS, its consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Department shall notify BWS, its consultants, contractors and/or persons acting for or on its behalf in writing of changes in the insurance requirements and BWS, its consultants, contractors and/or persons acting for or on its behalf shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Department incorporating the changes within receipt of the notice. The procuring of the required policy(s) of insurance shall not be construed to limit BWS, its consultants, contractors and/or persons acting for or on its behalf, liability under this ROE nor to release or relieve BWS, its consultants, contractors and/or persons acting for or on its behalf of the indemnification provisions and requirements of this ROE. Notwithstanding the policy(s) of insurance, BWS, its consultants, contractors and/or persons acting for or on its behalf shall be obligated for the full and total amount of any damage, injury, or loss caused by BWS, its consultants, contractors and/or persons acting for or on its behalf negligence or neglect connected with this ROE.

4. At all times herein, BWS, its consultants, contractors and/or persons acting for or on its behalf shall keep the ROE area or premises in a strictly clean, sanitary, and orderly condition.
5. BWS, its consultants, contractors and/or persons acting for or on its behalf shall be responsible for cleaning and restoring the area or premises to its original condition or a condition satisfactory to the Department upon completion of the event. All trash shall be removed from the area or premises.
6. BWS, its consultants, contractors and/or persons acting for or on its behalf shall obtain and pay for all required permits prior to the start of work. Copies of approved permits shall be transmitted to the DLNR Engineering Division (ENG) prior to the start of any work.

7. BWS, its consultants, contractors and/or persons acting for or on its behalf shall comply with all requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the ROE area or premises, now in force or which may be in force.
8. BWS, its consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the Department harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of BWS, its consultants, contractors and/or persons acting for or on its behalf relating to BWS, its consultants, contractors and/or persons acting for or on its behalf use, occupancy, maintenance, or enjoyment of the ROE area or premises; (2) any failure on the part of BWS, its consultants, contractors and/or persons acting for or on its behalf to maintain the ROE area or premises and areas adjacent thereto in BWS, its consultants, contractors and/or persons acting for or on its behalf use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of BWS, its consultants, contractors and/or persons acting for or on its behalf to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of BWS, its consultants, contractors and/or persons acting for or on its behalf non-observance or non-performance of any of the terms, covenants, and conditions of this ROE or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.
9. BWS shall supply to ENG, a name, e-mail address and local telephone number of the contact person who can be reached at any time around the clock during this event.
10. BWS, its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. BWS, its consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the ROE area or premises any such materials except to use in the ordinary course of BWS, its consultants, contractors and/or persons acting for or on its behalf business, and then only after written notice is given to the Department of the identity of such materials and upon the Department's consent which consent may be withheld at the Department's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether there has been any release of hazardous materials by BWS, its consultants, contractors and/or persons acting for or on its behalf, then the BWS, its consultants, contractors and/or persons acting for or on its behalf shall be responsible for the cost thereof. In addition, BWS, its consultants, contractors and/or persons acting for or on its behalf shall execute affidavits, representations and the like from time to time at the Department's request concerning BWS, its consultants, contractors and/or persons acting for or on its behalf best knowledge and belief regarding the presence of hazardous materials on the ROE area or premises placed or released by BWS, its consultants, contractors and/or persons acting for or on its behalf.

11. BWS, its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the Department harmless, from any damages and claims resulting from the release of hazardous materials on the ROE area or premises occurring while BWS, its consultants, contractors and/or persons acting for or on its behalf is/are in possession, or elsewhere if caused by BWS, its consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this ROE.

For purposes of this ROE, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

12. BWS, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this ROE shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.
13. All costs associated with the construction within the ROE area or premises shall be the sole responsibility of the BWS, its consultants, contractors and/or persons acting for or on its behalf.
14. BWS, its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from BWS, its consultants, contractors and/or persons acting for or on its behalf use, maintenance, repair and operation of the ROE area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the ROE area or premises and its surrounding waters of such pollutant or contaminant and restore to the Department's satisfaction the areas affected by such pollution or contamination, all at BWS, its consultants, contractors and/or persons acting for or on its behalf own cost and expense.
15. Best management practices shall be employed to avoid having silt or dirt enter the ocean.
16. In the event any historic properties or burial sites, as defined in section 6E-2 of chapter 6E, Hawaii Revised Statutes, are found on the premises, BWS, its consultants, contractors and/or persons acting for or on its behalf shall immediately stop all land utilization or work or both and contact the State Historic Preservation Office at (808) 692-8015 immediately in compliance with chapter 6E, Hawaii Revised Statutes.

17. This ROE is revocable and terminable for any breach of terms and conditions herein at the sole and absolute discretion of the Chairperson.
18. This ROE or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged, or otherwise transferred or disposed.
19. The Department reserves the right to impose additional, but reasonable terms and conditions as it deems necessary while this ROE is in force.
20. All disputes or questions arising under this ROE shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
21. BWS, its consultants, contractors and/or persons acting for or on its behalf shall obtain DLNR Engineering Division and CWRM approvals before making any modifications to the WELL.

Should you concur with the above terms and conditions, please acknowledge and return a signed copy of this letter and the required liability insurance policy to us. If you have any questions, please feel free to contact Gayson Ching of the Engineering Division at (808) 587-0232 or via e-mail at gayson.v.ching@hawaii.gov.

Sincerely,

SUZANNE D. CASE
Chairperson

Attachments

Mr. Ernest Y. W. Lau

Page 6

{Date} 2022

Approved by the Board of Land and Natural
Resources at its meeting on _____

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

SUZANNE D. CASE
Chairperson

Date: _____

APPROVED AS TO FORM:

Name:
Deputy Attorney General
STATE OF HAWAII

Date: _____

**CITY AND COUNTY OF HONOLULU,
BOARD OF WATER SUPPLY**

By:
Its:

ACKNOWLEDGED AND ACCEPTED

this _____ day of _____, 2022

7BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843
www.boardofwatersupply.com



June 8, 2022

RICK BLANGIARDI, MAYOR

BRYAN P. ANDAYA, Chair
KAPUA SPROAT, Vice Chair
RAY C. SOON
MAX J. SWORD
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Deputy Manager and Chief Engineer *me*

Ms. Suzanne D. Case, Chairperson
Board of Land and Natural Resources
State of Hawaii
Department of Land and Natural Resources
1151 Punchbowl Street, Board Room 132
Honolulu, Hawaii 96813

Dear Chairperson Case:

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If you have any questions, please contact me at (808) 748-5061.

Very truly yours,

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

cc: ~~Elizabeth Char~~, M.D., Department of Health