

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

September 22, 2023

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

Ref: 21OD-075

OAHU

*Amend Prior Board Action of November 12, 2021, agenda item D-11; Withdrawal from Governor's Executive Order No. 4215; Issuance of Perpetual Non-Exclusive Access and Utility Easements and Right-of-Entry Permit to City and County of Honolulu, Board of Water Supply; Waimanalo, Koolaulopoko, Oahu, Tax Map Key: (1) 4-1-008: portions of 103.*

The amendment is to seek an extension of the right-of-entry permit and authorize the Chairperson further extend the right-of-entry, if necessary.

BACKGROUND:

At its meeting of November 12, 2021, under agenda item D-11, the Board approved the issuance of an easement and a right-of-entry permit ("ROE") to the Board of Water Supply ("BWS"). A copy of the 2021 submittal is attached as **Exhibit 1**.

The ROE expired on December 27, 2022 due to the statutory provision limiting the permit to one year. However, the construction process was unexpectedly delayed due to other permitting requirements. Recently, BWS confirmed that all permits have been obtained, and the contractor only needs a current ROE from the Board to start construction. Therefore, BWS requests an extension of the above-mentioned ROE.

Staff recommends the Board approve after the fact the annual renewal of the ROE to comply with the statutory language limiting the term of any right-of-entry permit issued pursuant to 171-55, HRS, to one-year. Further, staff recommends the Board renew the above-mentioned ROE for another year commencing from the Board date and delegate to the Chairperson authority to approve additional annual renewals, if required.

RECOMMENDATION: That the Board amend its prior Board action of November 12, 2021, under agenda item D-11 by:

1. Approving after the fact the renewal of the right-of-entry permit issued to the Board of Water Supply pursuant to the Board approval of November 12, 2021, Item D-

11, renew the subject right-of-entry for one calendar year commencing from today's Board action, and delegate to the Chairperson authority to approve any additional renewals for good cause shown.

2. Affirming that, except as amended hereby, all terms and conditions listed in its November 12, 2021 approval to remain the same.

Respectfully Submitted,

*Barry Cheung*

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Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:



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Dawn N. S. Chang, Chairperson *PCM*

*RT*

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

November 12, 2021

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

Ref: 21OD-075

Oahu

Withdrawal from Governor’s Executive Order No. 4215; Issuance of Perpetual Non-Exclusive Access and Utility Easements and Right-of-Entry Permit to City and County of Honolulu, Board of Water Supply; Waimanalo, Koolauapoko, Oahu, Tax Map Key: (1) 4-1-008: portions of 103.<sup>1</sup>

APPLICANT:

City and County of Honolulu, by its Board of Water Supply (“BWS”).

LEGAL REFERENCE:

Sections 171-11, 13, 55 and 95(a), Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Government lands situated at Waimanalo, Koolauapoko, Oahu, identified by Tax Map Key: (1) 4-1-008: portions of 103 as shown on the map attached as **Exhibit A**.

AREA:

To be determined, subject to review and approval by the Department of Accounting and General Services, Survey Division. See Remarks section.

ZONING:

State Land Use District: Agriculture  
City & County of Honolulu LUO: AG-1

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

<sup>1</sup> TMK (1) 4-1-008:103 fka (1) 4-1-008:080

**EXHIBIT 1**

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
November 12, 2021 *jo.*

D-11

CURRENT USE STATUS:

Encumbered by Right-of-Entry No. 4431 dated May 22, 2018 issued to University of Hawaii (“UH”) for educational and research purposes; and

Governor’s Executive Order No. 4215 setting aside to Board of Water Supply for well site (0.188 acre) together with access and utility, waterline, and drainage easements (5.691 acres, more or less) purposes.

CHARACTER OF USE (EASEMENT):

Right, privilege and authority to construct, use, maintain and repair a right-of-way for access and utility, waterline, and drainage purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (“HAR”) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Type No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and Part 1, Item No. 39 that states "Creation or termination of easement, covenants, or other rights in structures or land." The subject request is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

Further, Exemption Notice for the subject project pursuant to HAR 11-200.1 was declared by BWS. See **Exhibit B**.

APPLICANT REQUIREMENTS: The Applicant shall

1. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
2. Process and obtain designation of easement approval from the City and County of Honolulu, Department of Planning and Permitting at Applicant's own cost.

REMARKS:

Pursuant to Governor’s Executive Order No. (“EO”) 4215 dated December 24, 2017, certain State lands in Waimanalo were set aside to BWS for well site together with easements for various purposes, including Access and Utility Easement W-1 (4.449 acres).

By its letter dated June 29, 2021 (**Exhibit C**), BWS plans to undertake a project to repair a portion of the Easement W-1. The project involves replacing the existing drainage culvert

under the access road where it crosses the stream with a new modular truss bridge and paving the access road with concrete on both sides of the new bridge.

As part of the construction, BWS needs some areas outside the alignment of Easement W-1 for staging purposes. See the area highlighted on **Exhibit D-1**. Upon completion of the construction, a portion of the new bridge will occupy some additional area outside Easement -1 as shown on **Exhibit D-2**.

By an email dated June 15, 2021, a representative of UH indicated its concurrence with the project. Staff understands UH is still working on master planning and possibly other land entitlement processes and believes the withdrawal of the easement areas from EO 4215 and issuing new easements to BWS to cover the final additional area as shown on Exhibit D-2 is prudent. The current approach for handling easements associated with an executive order is to issue a separate easement document which will expressly include standard conditions, for example, maintenance responsibility, indemnification, etc. Therefore, staff recommends the Board authorize the withdrawal of all easement areas described above from the relevant executive order. The withdrawn easement areas together with the additional area shown in blue on Exhibit D-2 will be encumbered by a perpetual easement to BWS under the terms cited above.

In view of the project timeline, BWS also requests issuance of an immediate construction right-of-entry permit which shall expire upon issuance of the requested amendment.

Staff did not solicit comments from agencies other than UH. There are no other pertinent issues and concerns. Staff recommends the Board approve the request as listed in the Recommendation section.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis action.
2. Approve of and recommend to the Governor issuance of an executive order withdrawing the above-mentioned easement areas (5.691 acres, more or less), from the Governor's Executive Order No. 4215 and subject to the following:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;

- C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to the City and County of Honolulu, Board of Water Supply over the area highlighted in blue on Exhibit D-2, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of an immediate construction right-of-entry permit to the City and County of Honolulu, Board of Water Supply over the area highlighted in red on Exhibit D-1, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current right-of-entry form, as may be amended from time to time; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

*Barry Cheung*

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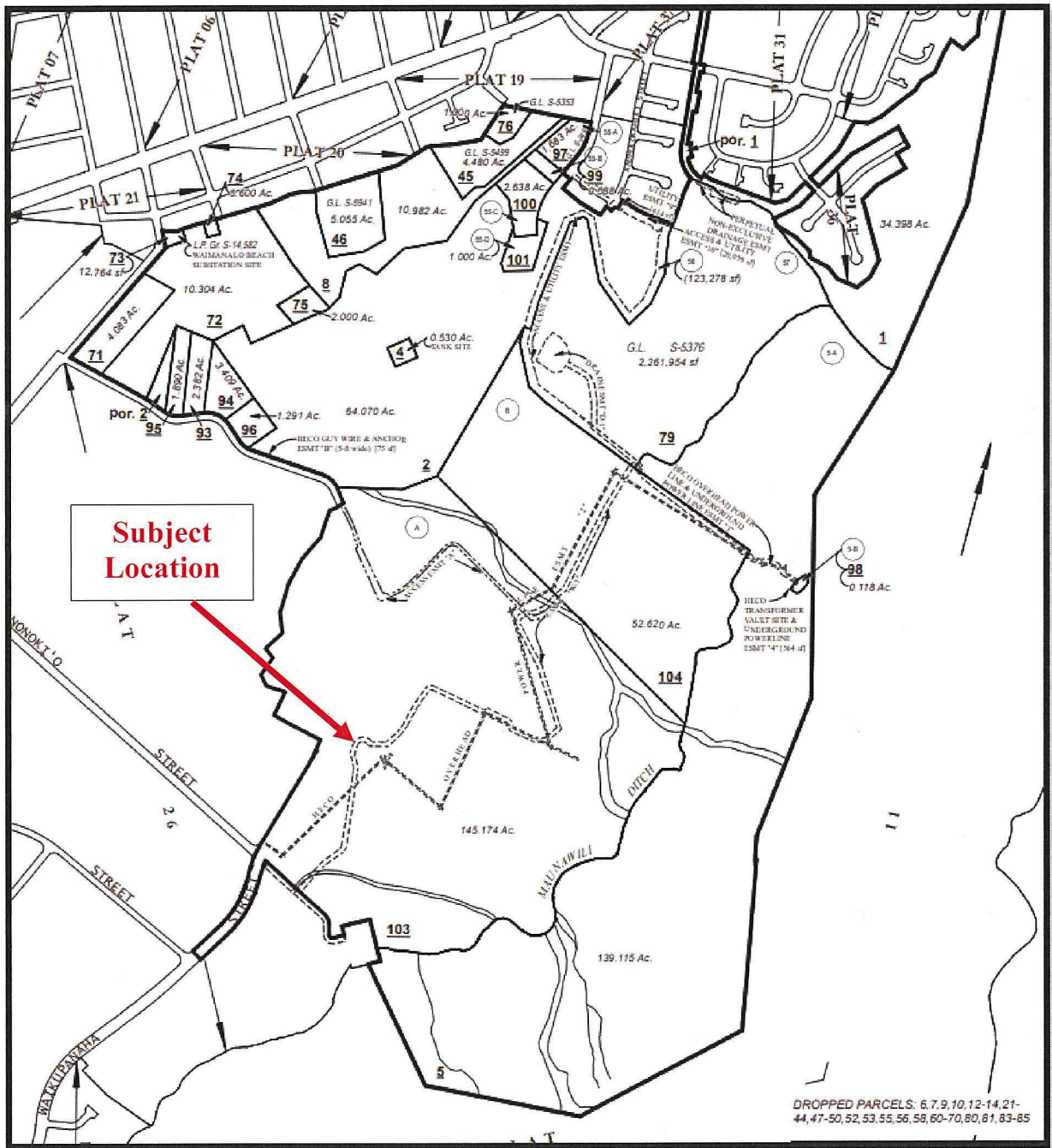
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

*Suzanne D. Case*

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Suzanne D. Case, Chairperson *RT*



**TMK (1) 4-1-008:103**

**EXHIBIT A**

**EXEMPTION NOTICE FORM**

BOARD OF WATER SUPPLY  
CITY AND COUNTY OF HONOLULU  
630 SOUTH BERETANIA STREET  
HONOLULU, HI 96843

TO: OFFICE OF ENVIRONMENTAL QUALITY CONTROL  
STATE OF HAWAII, DEPARTMENT OF HEALTH

FROM: ERNEST Y. W. LAU, P.E.  
MANAGER AND CHIEF ENGINEER

SUBJECT: EXEMPTION DECLARATION

DATE: March 19, 2021

AGENCY OR APPLICANT ACTION

Check applicable box

- This exempted action is an agency action as defined by Section 343-5(b), Hawai'i Revised Statutes (HRS), and Section 11-200.1-8, Hawai'i Administrative Rules (HAR),
- This exempted action is an applicant action as defined by Section 343-5(e), HRS, and Section 11-200.1-9, HAR

SPECIFY EXEMPTION TYPE:

Check applicable box

- The Exemption Notice for the action described below is based on the Exemption List for the Office of Environmental Quality Control, reviewed and concurred to by the Environmental Council on July 23, 2009.
  - Exemption List Class 1.
  - Item Number 17.
  - Applicable language from the exemption list: **Repair and maintenance of access roads and pathways.**
  
  - Exemption List Class 2.
  - Item Number 1.d..
  - Applicable language from the exemption list: **Replacement or reconstruction of drainage structure.**

**EXHIBIT B**



Exemption Notice Form  
3/19/2021  
Page 2 of 4

- The Exemption Notice for the action described below is based on the general types enumerated in Section 11-200.1-15(c), Hawai'i Administrative Rules (HAR), Exemption Type **1 Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.**

Exemption Type **2 Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.**

DESCRIPTION OF ACTION

Proposing Agency or Applicant: Board of Water Supply

Project Name & Address/Location: Waimanalo Wells III Access Road Repairs  
Waimanalo, Oahu, Hawaii

Anticipated Start Date: 7/1/2021

Anticipated End Date: 9/1/2022

Island and District: O`ahu Waimanalo

Tax Map Key(s) and other geolocation means: 4-1-008:103

All Necessary Permits and Approvals: Department of Planning and Permitting One-Time-Review, Disability and Communication Access Board (DCAB), State Historic Preservation Division (SHPD) 6E determination

Exemption Notice Form  
 3/19/2021  
 Page 3 of 4

**NARRATIVE**

Describe the action and why it qualifies for the exemption: Repair and restore eroded/damaged portion of the access road. Repair/replace the existing drainage pipe/structure as required. These improvements meet the Section 11-200.1-15(c), Hawaii Administrative Rules (HAR), exemption requirement as mentioned above.

**RECEIVING ENVIRONMENT**

Describe the site, including any impacts on the receiving environment: The action described above will have minimal impact on the receiving environment.

**ENVIRONMENTAL ANALYSIS**

I have considered the potential effects of the proposed project and all related activities against the criteria checked below:

- |   |                                     |
|---|-------------------------------------|
|   | Not Applicable                      |
| <input checked="" type="checkbox"/> Land Use and Zoning Conformance               | <input type="checkbox"/>            |
| <input checked="" type="checkbox"/> Traffic (Vehicles, Bicycles, Pedestrian)      | <input type="checkbox"/>            |
| <input checked="" type="checkbox"/> Infrastructure (Roads, Buildings, Utilities)  | <input type="checkbox"/>            |
| <input checked="" type="checkbox"/> Air Quality Pollutant Emissions               | <input type="checkbox"/>            |
| <input checked="" type="checkbox"/> Noise Emissions                               | <input type="checkbox"/>            |
| <input checked="" type="checkbox"/> Solid, Hazardous, and Liquid Waste Management | <input type="checkbox"/>            |
| <input type="checkbox"/> Social   | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Economic   | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Health and Safety  | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Recreation   | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Public Beach Access                                      | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Cultural Resources and Practices                         | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Visual/Aesthetic   | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Environmental Justice                                    | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Rare, Threatened, and/or Endangered Species              | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Surface and Ground Water Resources                       | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Wetlands   | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Floodplains  | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Riparian/Coastal Resources                               | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Other  | <input checked="" type="checkbox"/> |

Comments/summary of impact analysis: All construction work is limited to Board of Water Supply properties. Traffic to and from the properties may increase during construction, however, it will be temporary for the duration of the project.

Exemption Notice Form  
3/19/2021  
Page 4 of 4

#### MITIGATION

Describe all mitigation measures and best management practices planned to address impacts during the project activities and after project completion: The Contractor is required to obtain all applicable NPDES permits and will be required to comply with the Erosion and Sediment Control and BMP plans.

#### CONSULTATION

The following parties have been consulted about this declaration exemption (Name, affiliation, consultation date): Board of Water Supply Personnel

#### EXEMPT DECLARATION

The direct, cumulative, and potential impacts of the action described above have been considered pursuant to Chapter 343, Hawai'i Revised Statutes and Chapter 11-200.1, Hawai'i Administrative Rules. I declare that the action described above will have minimal or no significant impact on the environment and is therefore exempt from the requirement to prepare an environmental assessment.



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



DATE

- This document is on file in our office and is available for public review.
- This document has been submitted to the Office of Environmental Quality Control for publication in *The Environmental Notice*.

**BOARD OF WATER SUPPLY**

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



June 29, 2021

RICK BLANGIARDI, MAYOR

BRYAN P. ANDAYA, Chair  
KAPUA SPROAT, Vice Chair  
RAY C. SOON  
MAX J. SWORD  
ANTHONY NA'ALEHU

JADE T. BUTAY, Ex-Officio  
ROGER BABCOCK, Jr., Ex-Officio

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

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

Ms. Suzanne Case, Chair  
Board of Land and Natural Resources  
State of Hawaii  
Department of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

Dear Ms. Case:

Subject: Request for Construction Management Right of Entry Permit and Granting of Perpetual, Non-Exclusive Easement over State Property Situated at Waimanalo, Koolaupoko, Bearing Tax Map Key 4-1-008:103

The Board of Water Supply (BWS) requests the issuance of a Construction Management Right of Entry (ROE) permit and the granting of a perpetual, non-exclusive easement for the BWS Waimanalo Wells III Access Road Repair project located on the subject property.

BWS was already granted an easement for its access road by Governor's Executive Order 4215 in 2007. BWS will be undertaking a project to repair a portion of this access road (see attached location map). The repairs will include replacing the existing drainage culvert under the access road where it crosses a tributary to Inoa'ole Stream with a new modular truss bridge and paving the access road with concrete on both sides of the new bridge.

The ROE permit is being requested because BWS would like to use portions of the existing parcel outside its access road easement for a staging area and construction of the new bridge. The new easement is being requested because of portion of the new bridge will extend beyond the limits of the existing BWS easement. Plans showing this are attached for your reference.

BWS understands that the subject parcel is being considered for a direct lease to the University of Hawaii College of Tropical Agriculture and Human Resources (UH CTAHR) and a management ROE permit has been issued to CTAHR. At the recommendation of your Land Division, BWS met with UH and CTAHR on June 4, 2021 to discuss the project. UH and CTAHR did not have any major objections to BWS's use of portions of the subject parcel for the staging area and construction of the road repairs

RECEIVED  
2021 JUN 30 AM 10:32  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

RECEIVED  
LAND DIVISION  
2021 JUN 1 AM 11:04  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII


**EXHIBIT C**

Ms. Case  
June 29, 2021  
Page 2

or to the granting of an easement for the portion of the new bridge that would extend into the subject parcel.

We look forward to your favorable response. If you have any questions, please contact Michael Matsuo of our Land Division at (808) 748-5951.

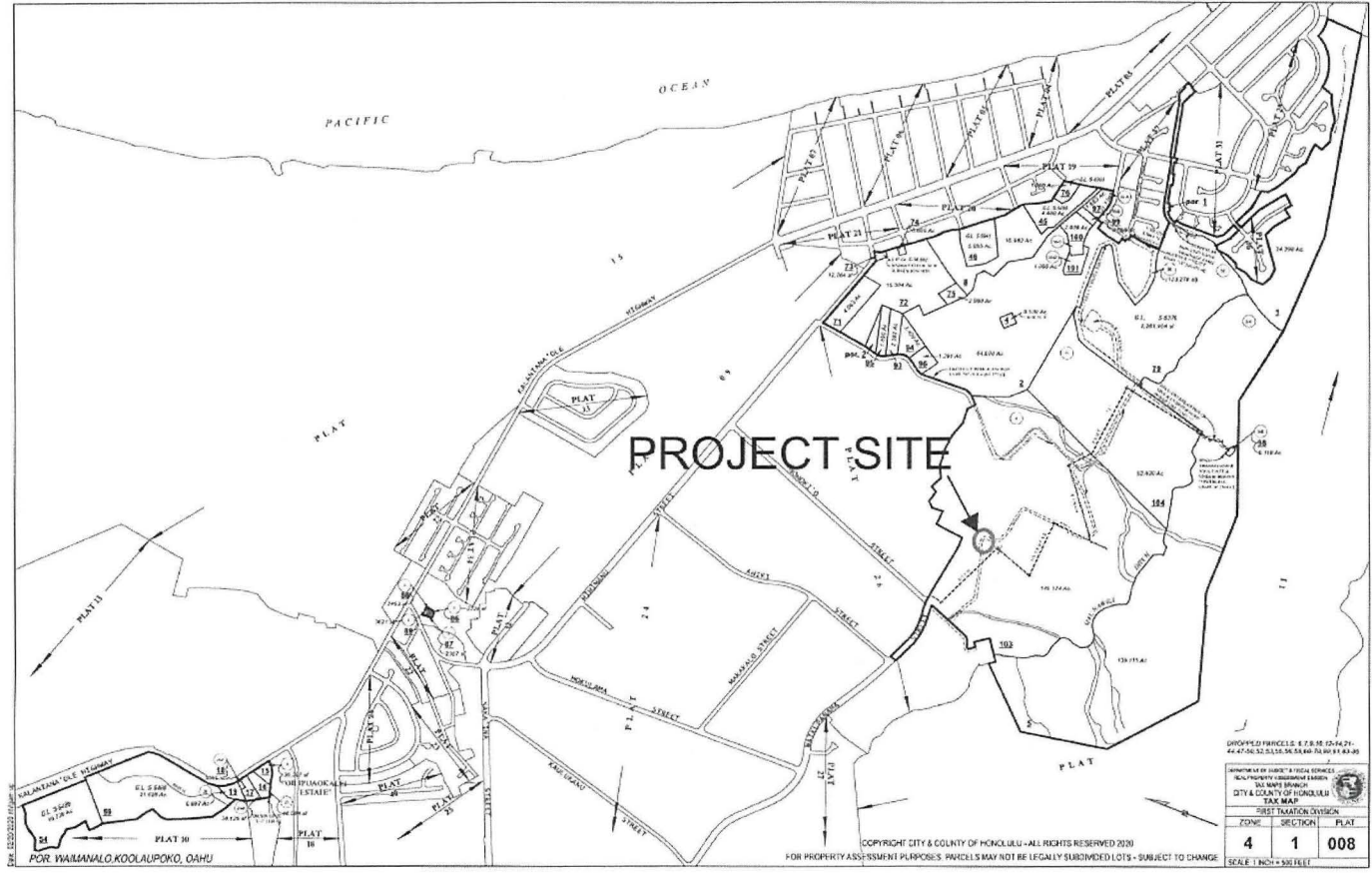
Very truly yours,

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

Attachments

MM:kb

Cc: Thomas Lim  
College of Tropical Agriculture and Human Resources  
University of Hawaii at Manoa



# TMKK EXHIBIT

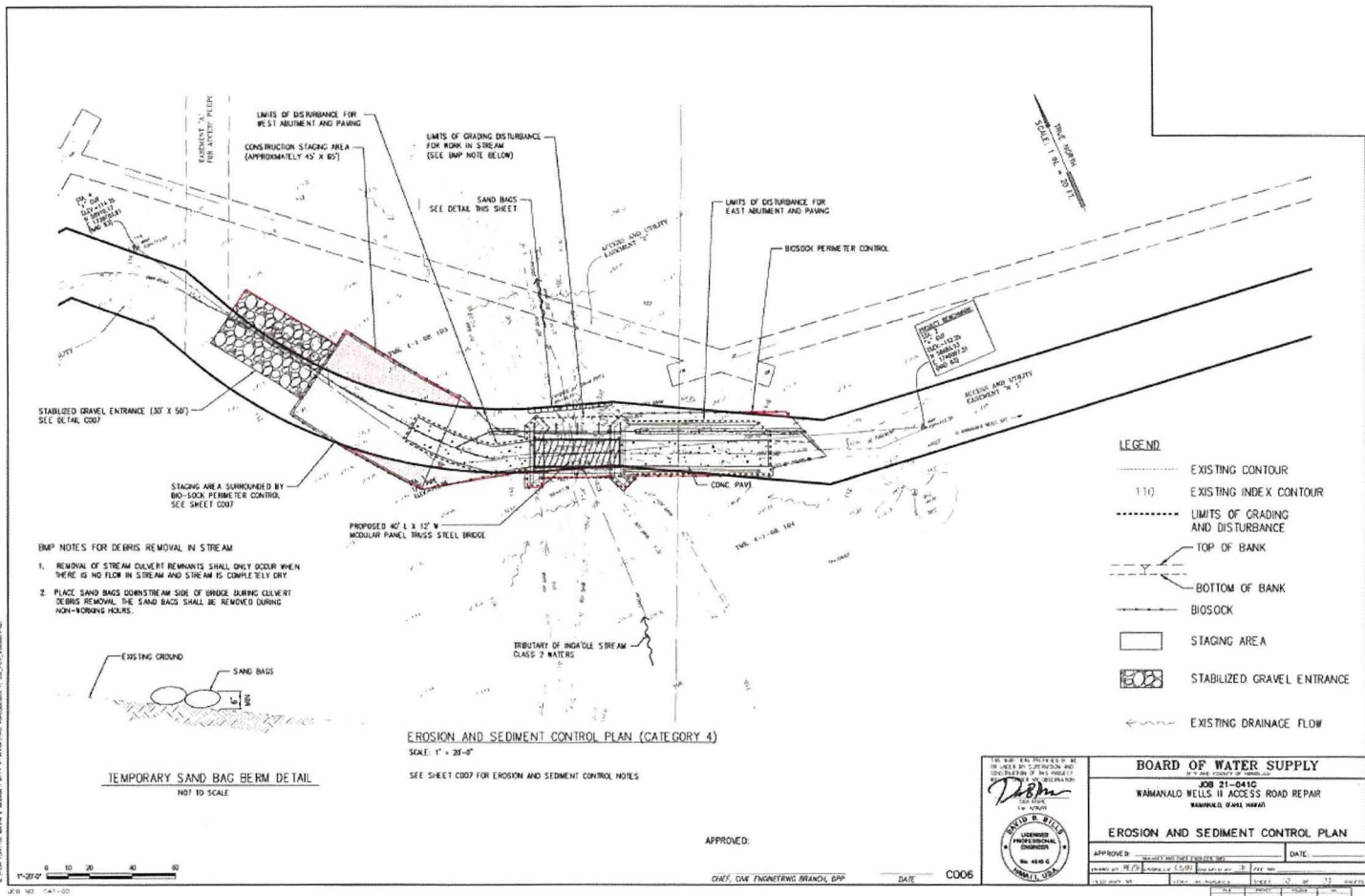


EXHIBIT D-1

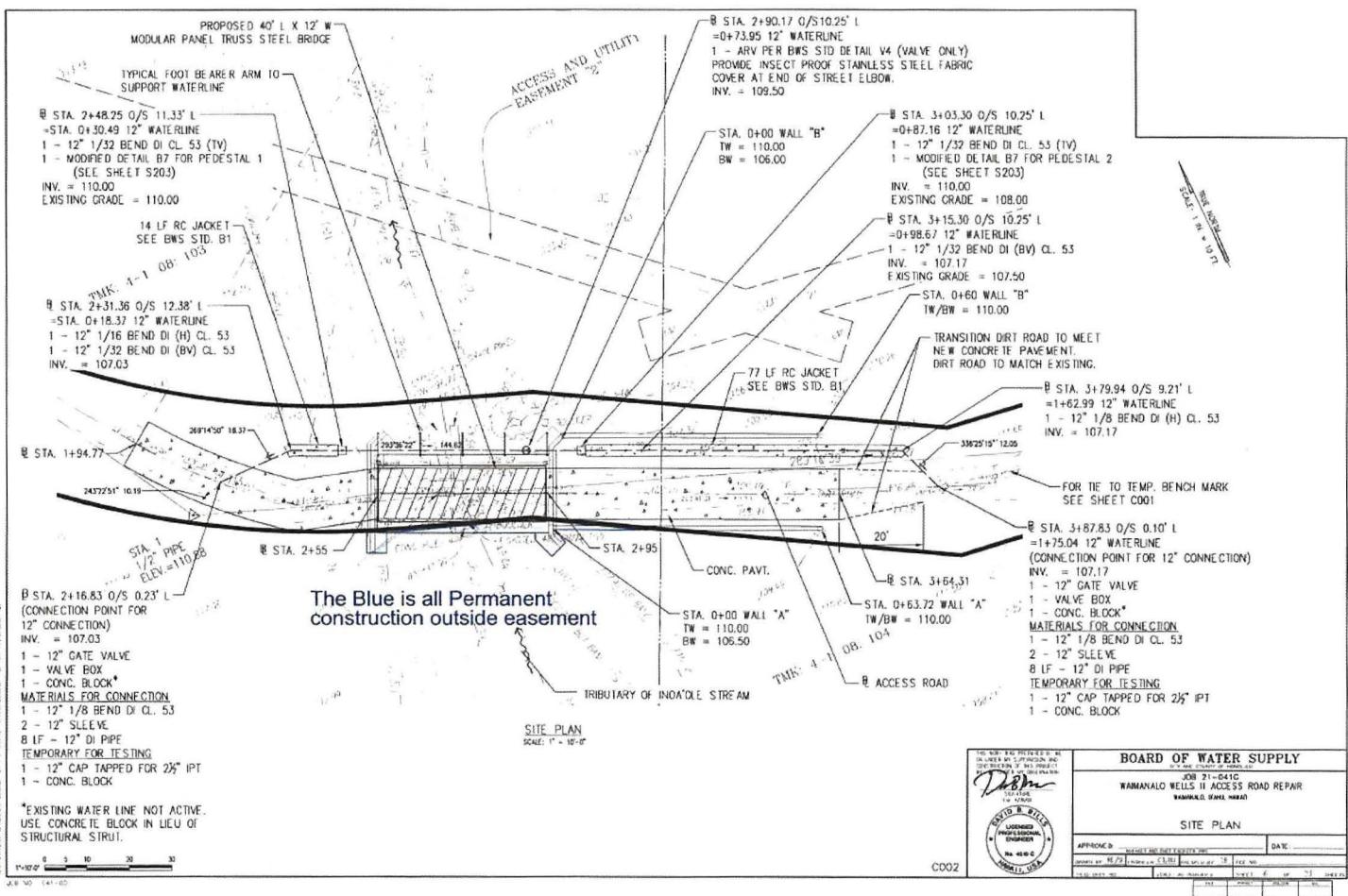


EXHIBIT D-2