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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
P.O. BOX 821  
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

for the meeting of the  
COMMISSION ON WATER RESOURCE MANAGEMENT

October 28, 2008  
Honolulu, Hawaii

Application for Stream Channel Alteration Permit (SCAP.1652.3)  
Construction of a Retaining Wall along Kapaka Stream  
Hauula, Oahu, TMK: (1) 5-3-014:003

APPLICANT:

Mr. Jerold Kringel  
78 Kaneohe Bay Drive, #A  
Kailua, HI 96734

LANDOWNER:

Same as applicant  
53-004 Pokiwai Place  
Hauula, HI 96717

SUMMARY OF REQUEST:

Application for a Stream Channel Alteration Permit to construct a retaining wall along Kapaka Stream, Hauula, Oahu, TMK: (1) 5-3-014:03.

LOCATION: Exhibits 1a and 1b.

BACKGROUND:

The applicant's property is located on the southeast corner of the intersection of Kamehameha Highway and Pokiwai Place. The property is flanked by Kamehameha Highway on the east and Pokiwai Place on the north. The main channel of Kapaka Stream flows in a south-westerly to north-easterly direction and runs along the southern portion of the applicant's property. A "U"-shaped side channel of Kapaka Stream flows under Pokiwai Place, exits under Pokiwai Place again through a culvert, flows along the western portion of the applicant's property, and rejoins the main channel flowing under Kamehameha Highway into the ocean. A portion of Kapaka Stream is tidally influenced, and during the Department of Health's (DOH) site inspection, waves washed intermittently upstream past the applicant's property.

In the mid-1980's, the applicant purchased 53-004 Pokiwai Place where a two-family detached dwelling was located.

ITEM C4

On April 20, 2006, George Segedin, P.E. and building consultant, prepared an evaluation of 53-004 Pokiwai Place for the applicant and made the following comments:

- The runoff from the 40 days of rain on Oahu damaged the existing retaining wall and eroded the embankment of the developed portion of this applicant's property.
- The proposed repair and extension of the existing retaining wall would stabilize the developed portion of the property.
- The proposed work would shield the intersection of Kamehameha Highway and Pokiwai Place from future erosion and protect the 12-inch water main buried along side Kamehameha Highway.
- The proposed repair and extension would not adversely affect adjacent property, will not create backwater or ponding, nor alter any critical velocities.
- The proposed work will permit the construction of a modern, two-family, detached dwelling to replace the distressed, two-family, detached dwelling that was demolished and its site cleared on April 21, 2006.
- Immediate construction of the proposed repair and extension of the existing retaining wall aligned as shown on the site plan was recommended.

On April 21, 2006, the applicant demolished the house that was located at 53-004 Pokiwai Place and placed approximately 330 cubic yards of boulders in Kapaka Stream along the useable piece of land at the same time to protect it from further erosion.

In May 2006, the applicant hired Kulani Architectural Design (KAD) to prepare the necessary drawings for the retaining wall and obtain the necessary permits.

On May 1, 2006, the City and County of Honolulu Department of Planning and Permitting (DPP) issued a Notice of Violation (NOV), 2006/NOV-04-172, to the applicant for grading without a permit. On September 11, 2006, City and County of Honolulu, Code Compliance Branch issued a Notice of Order, (NOO), 2006/NOO-266, with daily fines for failure to comply with the NOV issued on May 1, 2006.

On August 7, 2006, DOH Clean Water Branch (CWB) received a complaint that boulders had been placed in two sections of Kapaka/Pokiwai Stream at 53-004 Pokiwai Place.

On August 9, 2006, DOH CWB conducted a site investigation and observed a sandy, empty piece of land with boulders in two sections of Kapaka Stream. CWB staff observed a large area of sand under the Kamehameha Highway bridge adjacent to the south edge of the property that appeared to be the result of sand migrating from between the boulders on the mauka and south sides of the applicant's property into Kapaka Stream and was blocking the drainage outlet for Kapaka Stream into the ocean. CWB referred the investigation to the CWB Enforcement Section and the City and County for follow up.

On October 23, 2006, the Commission sent a Notice of Unpermitted Stream Channel Alteration to the applicant by certified mail. The Notice was based on the DOH CWB's site investigation report and requested submittal of a SCAP within 45 days of the applicant's receipt of the Notice.

On October 31, 2006, the City and County of Honolulu DPP issued a NOV, 2006/NOV-10/254, to the applicant for constructing a retaining wall without a permit. On December 13, 2006, City and County of Honolulu, Code Compliance Branch issued a NOO, 2006/NOO-471, with daily fines for failure to comply with the NOV issued on October 31, 2006.

In May 2007, the applicant was dissatisfied with his original consultant, Kulani Architectural Design (KAD), and replaced KAD with Lyon Associates, an engineering consultant, who requested documentation and electronic files for the project from KAD. Lyon Associates received marked-up, hard

copies of the files and had to digitize a new set of prints for the design created by KAD. According to Lyon Associates:

KAD was in a second round of discussions with DPP to obtain a grading permit.

- DPP required the applicant to obtain all other departmental approvals prior to obtaining DPP's final approval.
- Initially, DOH CWB did not intend to allow an after-the-fact situation, and the applicant would have been required to remove the riprap wall to return conditions to their pre-existing state.
- The applicant's ongoing permitting efforts would have been moot, and a new design and drawings would be required for the new permit review process.

On July 16, 2007, City and County of Honolulu DPP:

- Reviewed the applicant's proposal to retain a 6.67-foot, rock retaining wall and to grade and fill the vacant, 17,062 square-feet, R-5 Residential District lot at 53-004 Pokiwai Place.
- Determined that the lot lies within the Special Management Area (SMA) and would not have any significant effect on the SMA.
- Issued a SMA Minor Permit to the applicant.

On December 4, 2007, DOH CWB staff conducted a second site investigation at 53-004 Pokiwai Place along with the U.S. Army Corps of Engineers (COE) staff, the applicant and his consultant, Lyon Associates. The applicant informed DOH CWB staff that:

- He had been working with DPP on permitting, the civil penalties (fines) that were levied, and the best course of action.
- He had granted the City and County of Honolulu Department of Facilities Maintenance Roads Division, access through his property to clear out Kapaka Stream and the sand that was clogging the culvert under Pokiwai Place.
- There is a water line and a sewer line that can be exposed and damaged if too much land on his property is eroded.

DOH CWB staff noted that ocean waves and high stream flow threatened to erode the applicant's property and concluded that:

The placement of the boulders in Kapaka Stream in April 2006 was a discharge of pollutants to state waters and a violation of Hawaii Water pollution rules and regulations. Additionally, doing so without obtaining a Section 401 Water Quality Certification first was also a violation. In its present state, the boulders do not appear to create a pollution hazard. However, further work, whether it entails the removal and subsequent replacement of the boulders or construction on the property, will require great care and proper permitting to ensure that further discharges to state waters do not occur.

On January 15, 2008, DOH CWB:

- Notified the applicant that CWB had received a response signed by the applicant's representative, Mr. Thomas Adolpho, to the issued Request for Information (RFI) letter dated September 11, 2006. The response was dated October 1, 2006.
- Acknowledged the efforts made by the applicant and his current engineering consultant, Lyon Associates, in working with the COE Honolulu District and CWB Engineering Section to determine the best course of action to remedy the violation and to ensure that the proper permits are obtained.
- Determined that CWB would not take any further action against the applicant at that time.

On January 29, 2008, Lyon Associates submitted an after-the-fact SCAP application on behalf of the applicant.

On March 19, 2008, the Commission and Division of Aquatic Resources (DAR) staff met with the applicant and his consultant to inspect the applicant's boulder retaining wall and the aquatic resources in Kapaka Stream.

On May 15, 2008, the Commission received an email from Lyon Associates summarizing the following COE and CWB permitting procedures that the applicant must comply with for the unauthorized boulders placed in the stream and the proposed construction of a new retaining wall and backfill:

- The COE must approve the applicant's permit application to remove the unauthorized boulders before the applicant can proceed to remove the boulders.
- The applicant must submit a Department of the Army (DA) Section 404 Permit (to discharge dredged or fill material into U.S. Waters) to the COE and a Section 401 Water Quality Certification (WQC) to the CWB for review.
- After the COE has received the DA Section 404 application and deemed it complete, COE will issue an electronic pre-construction notice (PCN) to federal and state agencies for a 30-day review and comment period.
- Following the 30-day review and comment period, COE will draft a permit for the new work. Issuance of the permit will be contingent upon: 1) complete removal of the boulders from their current location (resolution of unauthorized activity) and 2) receipt of the 401 WQC, or waiver from the CWB.
- The applicant must notify the COE and CWB several days prior to removing the boulders, and COE will verify the removal of the boulders. COE and CWB will complete their review and processing of the applicant's permit applications.
- Once the COE has received an approved Section 401 WQC from the CWB, COE will issue a permit to the applicant to construct and backfill the new retaining wall.

On September 15, 2008, the COE informed City and County of Honolulu DPP that:

- The COE was processing an application for the final structure for the applicant's property. Plans had undergone several changes in processing the COE permit to resolve outstanding unauthorized fill issues and to permit the final structure which will result in the least amount of impact to aquatic resources.
- Although removal of the boulders had been previously granted, the boulders were allowed to remain in place to stabilize and prevent further discharge and erosion of the applicant's property under high rain and tide events while the COE was processing the applicant's permit for the final structure.
- Upon issuance, the permit will verify authorization for removal of the unauthorized fill and final construction of a structure which will stabilize erosion and will not impact adjacent aquatic resources.

On September 20, 2008, Lyon Associates notified the COE that the unpermitted boulders were removed from Kapaka Stream.

On September 26, 2008, the COE confirmed receipt of the photo documentation from Lyon Associates that the removal of the unauthorized fill was completed and noted that the COE administrative record for the unauthorized fill was resolved.

On September 29, 2008, Commission staff met with the staff from the COE, DOH CWB, DOT Highways, State Office of Planning (OIP) Coastal Zone Management (CZM), City and County DPP, the

applicant and Lyon Associates to discuss the removal of the unpermitted boulders from and the new retaining wall on Kapaka Stream.

On October 1, 2008, Lyon Associates submitted updated plans for the new retaining wall to the COE, DOH CWB and Commission staff for review and approval.

On October 3, 2008, Lyon Associates submitted an updated SCAP application for the new boulder retaining wall.

#### DESCRIPTION:

On April 21, 2006, the applicant demolished the house that was located at 53-004 Pokiwai Place and placed approximately 330 cubic yards of boulders in Kapaka Stream without a Stream Channel Alteration Permit. The unpermitted boulders were left in place to stabilize the site and prevent further erosion while the applicant was working with his new engineering consultant to deal with permitting and design issues. On September 20, 2008, the applicant removed the unpermitted boulders from Kapaka Stream and stockpiled them on his property.

The applicant will construct a new retaining wall that will be outside of the COE's jurisdictional determination (JD) line along the west and south sides of the applicant's property bordering Kapaka Stream. The new grouted rock and boulder retaining wall will be approximately 140 feet long, vary in height from 2 feet to 12 feet and in thickness from 3.5 feet to eight feet, and will tie in to the DOT's boulder retaining wall for its pedestrian bridge across Kapaka Stream. Other construction activities include excavating down two to four feet to bedrock, grading and filling the site with approximately 322 cubic yards of fill, and installing a wood silt fence along the perimeter of the new retaining wall that will be lined with filter fabric and polyethylene sheeting on the construction side to prevent concrete spills from entering the stream.

Best management practices (BMPs) for the project will include:

- Installing a wood silt fence lined with filter fabric and polyethylene sheeting to prevent spills from entering the stream.
- Flagging the limits of grading and having erosion control measures in place before any earth moving or grading is initiated.
- Preventing rocks, soil or debris from falling on to adjoining properties, streets, or watercourse.
- Ensuring that grading and construction activities will minimize the discharge of pollutants which will not exceed state water quality standards.
- Keeping the project and surrounding area free from dust nuisance and conforming to state air pollution control standards and regulations.
- Diverting storm runoff away from slopes.
- Providing a stabilized construction entrance to provide ingress to and egress from the site.

#### ANALYSIS:

##### Agency Reviews

The U.S. COE commented that:

- It will process the applicant's permit under the current Nationwide Permit #13 Bank Stabilization and #33 Temporary Structures for non-fill BMPs only.

- It does not anticipate significant issues from either the Coastal Zone Management (CZM) or DOH CWB as the project should have minimal impacts to the aquatic environment; and therefore, no Section 404 WQC permit processing is required.
- The DA permit issued will allow the applicant to stabilize his property to prevent further erosion until he obtains the other necessary permits for his grading and retaining wall.
- Permitting under the COE's Nationwide Permits (NWP) "authorizes those activities that have a minimal individual and cumulative adverse effect on the aquatic environment and satisfy other public interest factors" (Federal Register, Vol. 72, No. 47, March 12, 2007, page 11092).
- The construction of the retaining wall is applicable under the NWPs because it will inhibit further erosion (discharges) from/of the applicant's property to the adjacent aquatic resources.

The DOH CWB made the following comments:

- Any discharges related to project construction or operation activities must comply with applicable State Water Quality Standards.
- An individual wastewater system is required for the residential house construction, and the applicant should contact the DOH Wastewater Branch for its requirements.

The City and County of Honolulu, DPP commented that a Special Management Area (SMA) Minor Permit (No. 2007/SMA-41) was approved on July 16, 2007; a grading plan will be required for the proposed work; and issues relating to no-rise and flooding will be addressed as part of the construction plans approval process.

The Division of Aquatic Resources (DAR) made the following comments:

- Kapaka Stream is listed as non-perennial stream but does provide habitat for two native species observed on the March 19, 2008, site visit.
- The project did not appear to pose any further impact to the aquatic resource values in the area since the unpermitted boulders were already in place.
- There are further erosion concerns apparent along the stream bank near the bridge and pedestrian crossing.

The Engineering Division made the following comments:

- The project is located in Flood Zone VE according to the Flood Insurance Rate Map (FIRM).
- Developments within Zone VE are regulated by the National Flood Insurance Program (NFIP).
- This project site must comply with the rules and regulations of the NFIP.

The Office of Hawaiian Affairs (OHA) noted that the unpermitted boulders were installed under emergency circumstances and that no other options were likely available at that time. OHA had no substantive comments given the urgency to install the boulders and the "seeming lack of impact upon natural resources."

Forestry and Wildlife and the State Historic Preservation Division had no objections to the project. State Parks and Land Division commented that the project was not subject to its regulatory authority or permit.

The U.S. Fish and Wildlife Service, Department of Hawaiian Home Lands, and the University of Hawaii Environmental Center, did not submit comments as of the date of preparation of this submittal.

Commission Review

The applicant had placed unpermitted boulders on his property along Kapaka Stream in 2006. The COE allowed the applicant to leave the unpermitted boulders in place to stabilize his property and prevent further discharge and erosion of the site under high rain and tide events while the COE was processing the applicant's permit for the final structure. On September 20, 2008, the applicant removed the unpermitted boulders from Kapaka Stream; consequently, there is no permit violation for a stream channel alteration.

The new retaining wall will be located outside of the COE's JD line and will not be subject to the COE's Section 404 or the DOH CWB's Section 401 Water Quality Certification (WQC) requirements. The new wall will stabilize the applicant's property and prevent discharge and erosion of the site in to Kapaka Stream.

RECOMMENDATION:

That the Commission:

Approve a Stream Channel Alteration Permit for a new retaining wall along Kapaka Stream, Hauula, Oahu, TMK: (1) 5-3-014:003. The permit shall be subject to the Commission's standard conditions in Exhibit 4.

Respectfully submitted,



KEN C. KAWAHARA, P.E.  
Deputy Director

- Exhibits:
1. Location maps 1a and 1b
  2. Site and construction plans
  3. Photos of project site
  4. Standard Stream Channel Alteration Permit Conditions

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN  
Chairperson



Department of Land and Natural Resources  
 Commission on Water Resource Management  
 Stream Protection and Management Branch

★ 53-004 Pokiawai Place  
 TMK 5-3-014:003

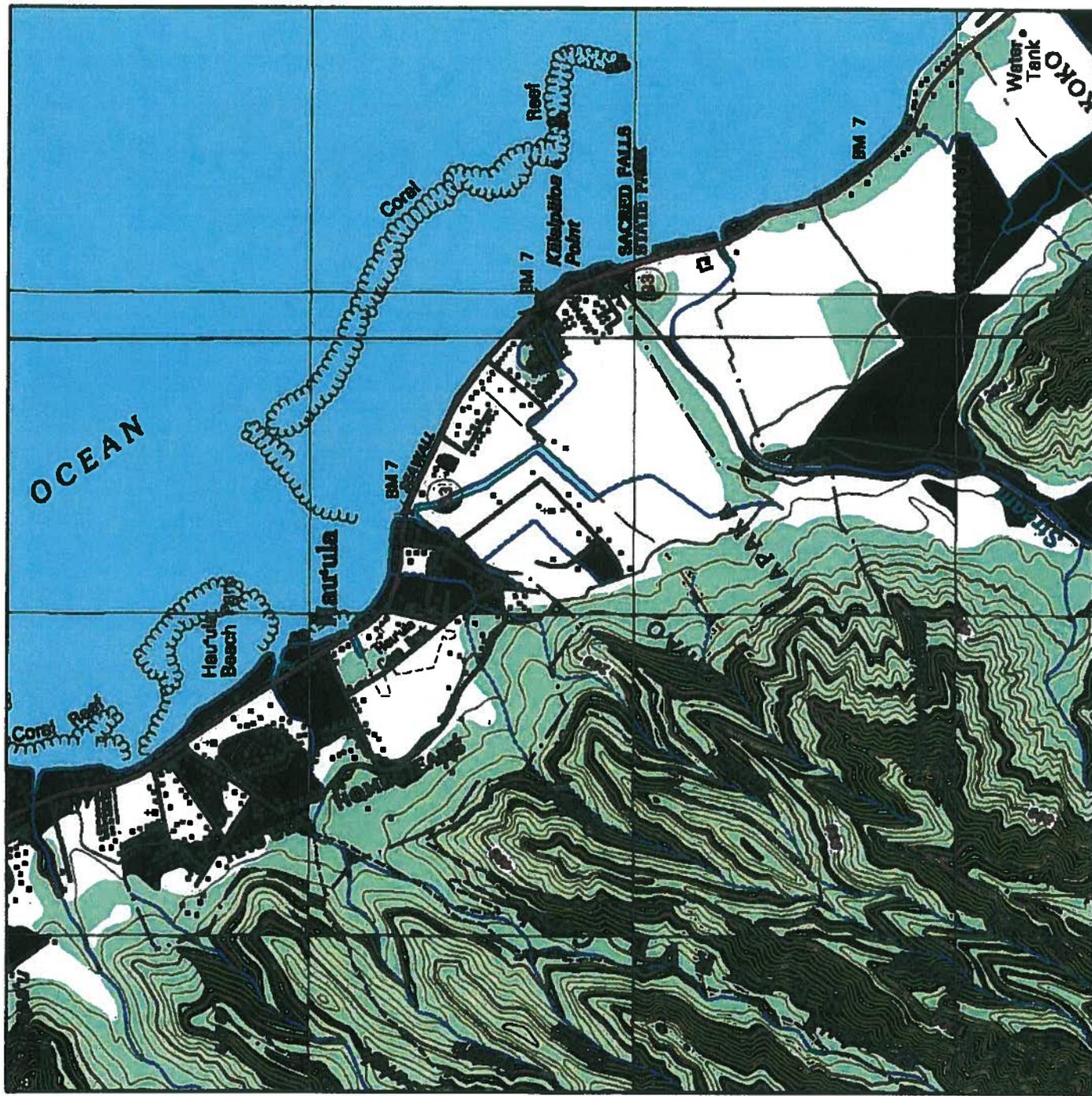
This map was produced by the Department of Land and Natural Resources (DLNR), Commission on Water Resource Management for planning purposes. It should not be used for boundary interpretations or other spatial analysis beyond the limitations of the data. Information regarding compilation dates and accuracy of the data presented can be obtained from DLNR.

Datum: North American Datum 1983

Tax Map Key (TMK) layer is comprised of tax assessor parcels derived from paper plat maps with attributes from public tax assessor records and is updated by each respective county.



April 2008



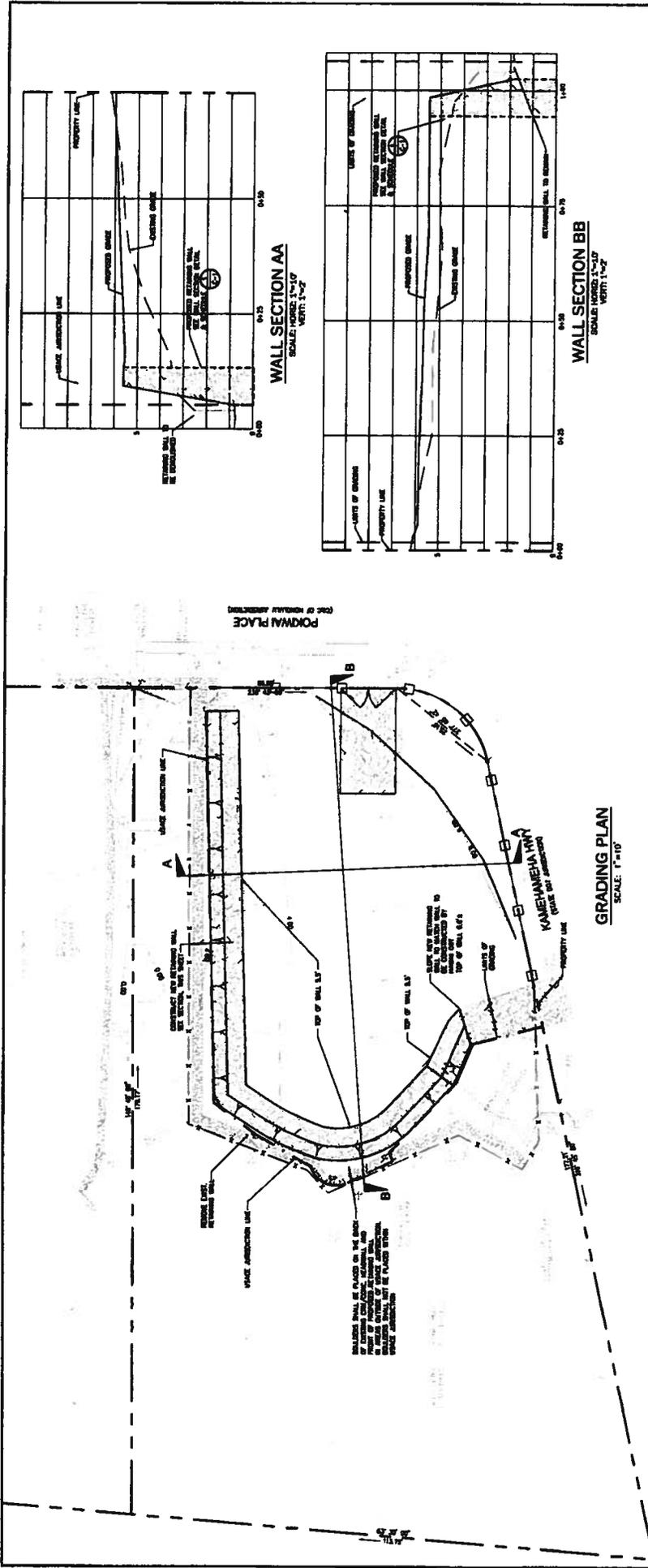












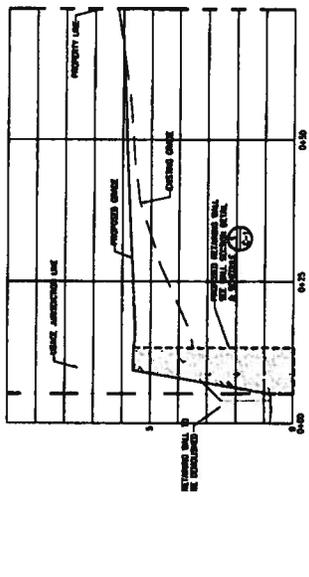
POMONA PLACE  
(ONE OF NEIGHBORHOODS)

GRADING PLAN  
SCALE: 1"=10'

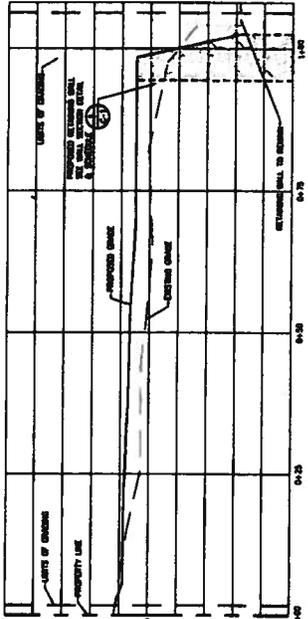
**EARTHWORK QUANTITIES:**  
(FOR BIDDING PURPOSES ONLY)  
(CATEGORY 1)

|                   | NOV      | PROPOSED  |
|-------------------|----------|-----------|
| AREA TO BE GRADED | 0.189 AC | 0.131 AC  |
| EXCAVATION        | 0 CY     | 183.33 CY |
| EMBANKMENT        | 330 CY   | 370.84 CY |
| TOTAL             | 330 CY   | 128.59 CY |

- LEGEND:**
- PROPERTY LINE
  - EXISTING SURFACE
  - PROPOSED SURFACE
  - EXISTING GRADE
  - PROPOSED GRADE
  - LIMITS OF GRADING
  - EXISTENCE



WALL SECTION AA  
SCALE: HORIZ. 1"=10'  
VERT. 1"=2'



WALL SECTION BB  
SCALE: HORIZ. 1"=10'  
VERT. 1"=2'



**MASS GRADING PLANS FOR  
KRINGEL RESIDENCE  
PROPOSED GRADING PLAN  
& WALL SECTIONS**

DATE: \_\_\_\_\_ BY: \_\_\_\_\_ CHECKED BY: \_\_\_\_\_

**LYON**  
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**C-4**

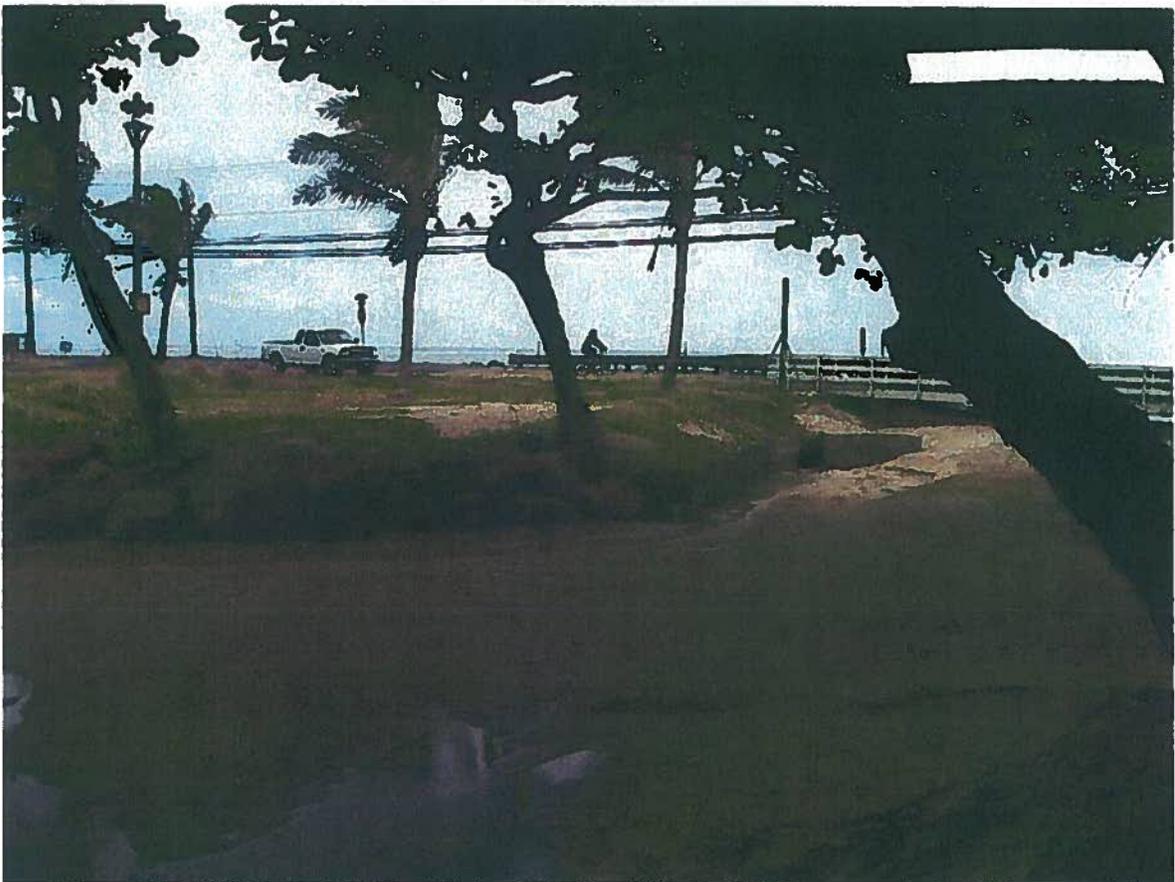
**View upstream of main channel.**



**View of side channel and unpermitted boulders.**

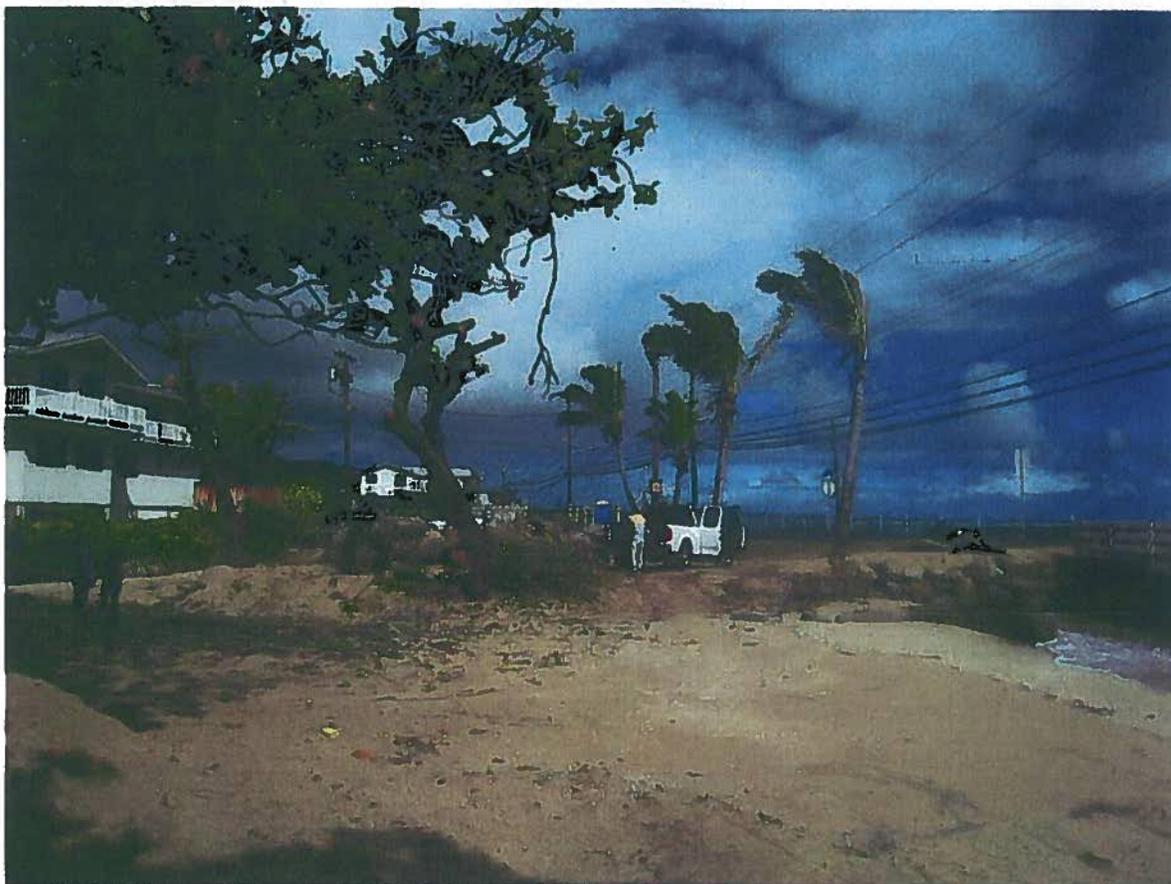
**EXHIBIT 3**

**View northeast of unpermitted boulders and side channel.**



**View east of unpermitted boulders.**

**View south of unpermitted boulders removed from stream.**



**View north of unpermitted boulders removed from stream**

**STANDARD STREAM CHANNEL ALTERATION PERMIT CONDITIONS**  
(Revised 9/19/07)

1. The permit application and staff submittal approved by the Commission at its meeting on October 28, 2008, shall be incorporated herein by reference.
2. The applicant shall comply with all other applicable statutes, ordinances, and regulations of the Federal, State and City and County of Honolulu governments.
3. The applicant, 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 applicant or his successors, assigns, officers, employees, contractors, and agents under this permit or related to the granting of this permit.
4. The applicant shall notify the Commission, by letter, of the actual dates of project initiation and completion. The applicant shall submit a set of as-built plans and photos 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 applicant shall submit one set of construction plans and specifications to determine consistency with the conditions of the permit and the declarations set forth in the permit application.
6. *The applicant shall develop site-specific, construction best management practices (BMPs) that are designed, implemented, operated, and maintained by the applicant and its contractor to properly isolate and confine construction activities and to contain and prevent any potential pollutant(s) discharges from adversely impacting state waters. BMPs shall control erosion and dust during construction and schedule construction activities during periods of low stream flow.*
7. *The applicant shall protect and preserve the natural character of the stream bank and stream bed to the greatest extent possible. The applicant 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 applicant 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.