



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

February 19, 2019
Honolulu, Hawai'i

Request Imposing a Fine Against the Landowner Bock Family Revocable Trust for
Altering the Stream Without a Permit Required in HRS §174C-71 and HAR §13-169-50;
Approve the After-the-Fact Stream Channel Alteration Permit (SCAP.5017.6) Application
For the Installation of Two Culvert Structures and about 800 Feet of Channelization
Subject to Special Conditions Including a Remediation Plan
East Kuiaha Stream, Ha'ikū, Maui, TMK: (2) 2-7-012:254

SUMMARY OF REQUEST

Authorize imposing a fine of up to \$1,000 and assess \$500 in administrative fees for installing two culvert structures in the East Kuiaha Stream and channelizing and hardening about 800 feet of stream bed and banks without a stream channel alteration permit.

Approve the After-the-Fact Stream Channel Alteration Permit (SCAP.5017.6) Application and Remediation Plan for the installation of two culvert structures, slope amendments, and other improvements to 800 feet of stream bed and banks subject to the conditions as recommended and indicated below.

FINDINGS OF FACT

APPLICANT/LANDOWNER:

Bock Family Revocable Trust
Rainer Werner Bock, Trustee
2761 Kaihikoalani Place
Ha'ikū, HI 96708

LOCATION: East Kuiaha Stream, Ha'ikū, Maui (**Exhibit 1**).

BACKGROUND

Photos from Google Earth show the timeline of development. (**Exhibits 2 and 3**). In 2011, the property was undeveloped. According to documents submitted as part of the permit application, the property was purchased in September 2012. By 2014, channelization is clearly seen.

Photos from Maui County (**Exhibit 4**) show streambank hardening in remediation area 5.

On August 3, 2016, Commission staff received a complaint regarding mud and debris in the subject stream allegedly caused by the Landowner. According to a downstream landowner, mud and debris damaged a road and caused erosion to their land that, in almost 20 years, never happened until the Landowner clear cut his land and channelized the stream.

On May 25, 2017, a Request for Response to Complaint was mailed to the Landowner.

On June 15, 2017, the Landowner responded to the Complaint letter by requesting a site visit with staff to review construction activities and discuss matters identified in the complaint.

On August 23, 2017, a Notice of Alleged Violation and Order was mailed to the Landowner.

On October 26, 2017, the Landowner filed a complete Stream Channel Alteration Permit Application.

On May 15, 2018, by a 4-0 vote, the Commission:

1. Found that the Applicant and Landowner, Bock Family Revocable Trust, violated Section 174C-71, Hawaii Revised Statutes (HRS) and §13-169-50, Hawaii Administrative Rules (HAR) by installing two road structures and culverts in the East Kuiaha Stream and channelizing about 800 feet of stream bed and banks without authorization;
2. Deferred imposing a fine of \$1,000 and assessing \$500 in administrative fees against the Landowner pursuant to HRS §174C-15 and HAR §13-169-3;
3. Denied the after-the-fact Stream Channel Alteration Permit (SCAP.4700.6) application for the installation of two road structures and culverts and the channelization of about 800 feet of stream bed and banks, and requested staff to provide more information regarding the length of time of the serious and on-going violations;
4. Directed staff to work with the parties on a Remediation Plan, pursuant to HRS §174C-71(3), to be submitted to the Commission within six months with a permit request to conduct the work contemplated by that Plan. Remediation shall consist of stream bank stabilization, planting riparian vegetation, the placement of rocks and such to recreate riffles and pools, recreate flood storage capacity which may include the removal of structures and fill, and other restorative measures to support the maintenance of waters in their natural state and protect stream channels whenever practicable to provide for fisheries, wildlife and other beneficial instream uses.

5. Issue a written warning to the Landowner indicating any future violations involving a stream channel alteration without the necessary permits may be considered a repeat violation with fines assessed for each day of violation.

On July 18, 2018, the Landowner filed a Notice of Appeal in the State Supreme Court appealing the denial of a stream channel alteration permit.

On October 1, 2018, the Court consolidated the appeals and stayed the deadlines and requirements until January 31, 2019, and established a briefing schedule.

On November 9, 2018, the Landowner's consultant, Stacy Otomo of Otomo Engineering, Inc., filed a remediation plan for review by Commission staff. A draft stream channel alteration permit application was submitted on November 16.

On December 11, 2018, the Landowner filed a stipulation to continue briefing schedules, noting that the parties have made progress toward achieving a resolution but will not be able to achieve a resolution before January 31, 2019, thus extending the stay to March 31, 2019.

On December 17, 2018, the Landowner filed a final stream channel alteration permit application and remediation plan one-month past the six-month deadline.

STREAM DESCRIPTION

According to the *Hawaii Stream Assessment* (1990), prepared by the National Park Service, and the *Atlas of Hawaiian Watersheds and Their Aquatic Resources* (2008), published by the Bishop Museum and the Department of Land and Natural Resources, Division of Aquatic Resources, East Kuiaha is a perennial stream about six miles long. According to USGS Report 98-4142 Ground Water and Surface Water in the Ha'ikū Area, East Maui, Hawai'i (pg. 1), the Kuiaha and Kaupakulua Gulch systems are usually dry from sea level to an altitude of 350 feet and gain water from about 350 feet to about 900 feet altitude. The Landowner is located near 900 feet in elevation. Aquatic species present are mostly introduced such as crustaceans (*Macrobrachium rosenbergii*). The area of the watershed is about six square miles.

UNPERMITTED USES

1. Makai Culvert. Construction of a 8-ft wide x 6-foot tall x 20-ft long road structure with two 42-inch culverts across entire stream channel. **(Exhibit 6)**;
2. Graded, grubbed, filled, and channelized about 800 feet of the East Kuiaha Stream. **(Exhibit 8)**; and,
3. Mauka Culvert. Construction of a 8-ft wide x 15-foot tall x 20-ft long road structure with two 42-inch and three 24-inch culverts across entire stream channel. **(Exhibit 9)**.

REMEDICATION PLAN DESCRIPTION

The Landowner proposes to widen the stream cross-section between the mauka and makai culverts to a more natural state, reduce the side slopes of the channel to a 2:horizontal to 1:vertical (2:1) maximum slope, recreate riffles and pools, stream bank stabilization with riparian vegetation, placement of rocks where practicable to protect the stream banks, and raising of the streambed at the mauka and makai culverts to create a level condition at the inlet and outlet of the culverts and the streambed. The work consists of widening the cross-section of the streambed to a minimum base width of 8 feet and grading the side slopes to a 2:1 slope where possible. Two retention areas will be created where the topography allows. (**Exhibit 13**).

It is estimated that the remediation plan will disturb approximately 0.9 acres of land and generate 23 cubic yards of embankment and 1,890 cubic yards of excavation. The grubbed material will be stockpiled onsite and will be spread onto the graded slopes for revegetation. The landowner proposes to stockpile approximately 100 cubic yards of the excavated material onsite for future use on the property. The remaining material will be hauled offsite.

Remediation area #1 (**Exhibit 5**). 64-ft wide x 5-ft high x 150-ft long structure across entire stream channel. Includes bank stabilization, restoration, retention basin, and grading.

Remediation area #2 (**Exhibit 6**). 45-ft wide x 5-ft high x 120-ft long structure. Includes bank stabilization, restoration, retention basin, and grading and makai culvert consisting of (2) 42-inch culverts across entire stream channel.

Remediation area #3 (**Exhibit 7**). 90-ft wide x 7-ft high x 65-ft long structure across entire stream channel. Includes bank stabilization, restoration, retention basin, and grading.

Remediation area #4 (**Exhibit 8**). 35-ft wide x 8-ft high x 260-ft long structure across entire stream channel. Includes bank stabilization, restoration, retention basin, and grading.

Remediation area #5 (**Exhibit 9**). 42-ft wide x 6-ft high x 220-ft long structure. Includes bank stabilization, restoration, retention basin, and grading and the mauka culvert consisting of (2) 42-inch culverts and (3) 24-inch culverts across entire stream channel.

Construction methods. The remediation work will be done using small dozers, backhoes, dump trucks and miscellaneous hand tools. The remediation area will be grubbed of all vegetation and the grubbed material will be stockpiled onsite and will be spread onto the graded slopes for revegetation. The work consists primarily of excavation, which will be done using the equipment described above. Rocks removed by the excavation will be used at the base and side slope interface of the stream to help prevent erosion. As the slopes are graded to the plan elevation, a jute material will be placed on all exposed channel slope areas for erosion control. The existing onsite water tank will be used for dust control. Source of water for the tank is a catchment system. Upon completion of the grading operation and installation of the jute, the stockpiled grubbed material will be spread over the jute to start the growth of the native plants. In addition, Bermuda grass seeds will be placed on the jute for the permanent erosion control.

AGENCY REVIEW COMMENTS

County of Maui, Planning Department: In order to determine that such alterations do not reduce the capacity of the stream or adversely affect any downstream or adjacent properties a Flood Development Permit Application should be submitted pursuant to the following:

Maui County Code Section 19.62.050.E. Watercourse alteration. Whenever a watercourse is to be altered or relocated, the director shall:

1. For riverine situations, require the applicant to notify the State of Hawai'i department of land and natural resources, commission on water resource management, before such alteration or relocation, and submit evidence of such notification to the Federal Insurance Administration and Federal Emergency Management Agency (FEMA).
2. Require that the flood-carrying capacity of the altered or relocated portion of the watercourse be maintained."

Maui County Code 19.62.100 - Developments adjacent to drainage facilities.

- A. Applications involving developments encompassing or adjoining any stream, river, or drainage facility outside of the special flood hazard areas identified on the Flood Insurance Rate Map (FIRM) shall be subject to review by the director. Upon request by the director, further information concerning base flood elevation, floodways, surface water runoff, existing and proposed drainage patterns, and other information, including a detailed flood elevation study, drainage report, and findings and opinions by a licensed professional civil engineer, shall be provided to evaluate the potential flooding of the area.
- B. The director shall not issue or recommend issuance of any permit or approval involving modification, construction, lining, or alteration of any drainage facility, river, or stream unless such modification, construction, lining, or alteration does not reduce the capacity of the drainage facility, river, or stream, or adversely affect any downstream or adjacent property.

Accordingly, a permit may be required to alter or relocate water course and since the stream is located outside of special flood hazard areas they may be subject to review and/or flood hazard development permit.

Staff: Commission staff has no evidence that this remediation plan is in compliance with the County of Maui's Flood Development Permit, certification of no-rise, grading, and discretionary permit(s), Army Corps of Engineers, and Department of Health, Clean Water Branch, since these boxes were unchecked in the application on file with the Commission. The application and remediation plan shows no timeline of performance to meet County requirements.

The County requires that the modification, construction, lining, or alteration does not reduce the flood carrying capacity of stream, or adversely affect any downstream or adjacent property. The Commission's standard permit condition #2 states that "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." The applicant has no stated timeline to complete these requirements.

Department of Hawaiian Home Land (DHHL): Did not comment.

Department of Land and Natural Resources (DLNR), Aquatic Resources (DAR): DAR is in full support of the restoration of stream habitats including "pools" that provide rest areas for migrating native stream species. The raising of the stream-beds to be level with the culverts is also supported as several of the native stream species migrate up and down the streams to the near-shore marine environment throughout their life cycle. Large slopes or overhangs can impede the movement of native stream species.

DAR is also in support of using native plants as a way to prevent further erosion from the stream banks that leads to silt entering the stream. The use of excavated rocks for the bank stabilization is also supported as they were already in the area and will not introduce anything new into the system.

DAR requests that the applicant use sediment reduction measures such as, but not limited to, silt screens, sediment fences, silt bags and environmental socks. DAR recommends having a stream geomorphologist review the project in all stream bed restoration projects.

Staff: By statute, the Dept of Health manages pollution control measures and best management practices. Standard permit condition #2 states that 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.

DLNR, Engineering: Did not comment.

DLNR, Forestry and Wildlife: No objections.

DLNR, Historic Preservation: Did not comment.

DLNR, Land Division: Did not comment.

DLNR, State Parks: No objections.

Dept. of Health (DOH), Clean Water Branch: Did not comment.

Staff: Commission staff has no evidence that this remediation plan is in compliance with the Department of Health, Clean Water Branch since the box was unchecked on the application.

Office of Hawaiian Affairs: Did not comment.

US Army Corps of Engineers: Did not comment.

Staff: Commission staff has no evidence that this remediation plan is in compliance with the Army Corps of Engineers since the box was unchecked on the application on file.

US Fish and Wildlife Service (FWS): Did not comment.

PUBLIC COMMENTS

On January 4, 2019, the Commission received a comment letter from Audrey McGauley (**Exhibit 10**).

Chapter 343, Hawaii Revised Statutes (HRS) Environmental Assessment

In accordance with HRS §343-5(a), the applicant's proposed action does not trigger the need for an environmental assessment.

TRADITIONAL AND CUSTOMARY PRACTICES

The subject action is not anticipated to have any impact upon traditional and customary practices in the watershed area. Should any impacts be identified in the future, the Commission may decide to re-evaluate the IIFS.

The Commission's analysis under *Ka Pa'akai O Ka'aina*, are as follows:

Commission staff reviewed the Office of Hawaiian Affairs' (OHA) Kipuka database which shows no historic sites or crown lands occurring within the project area or the ahupua'a of Hāmākualoa. OHA and the State Historic Preservation Division were sent copies of the application, and no comments were received. Further, the application was posted on the Commission website for 30 days. No public comments were received. Per the Hawaii Stream Assessment (1990), the hydrologic unit of Kuiaha is roughly 5.7 square miles, with approximately 0.8% zoned conservation, 90% agriculture, 4.1% rural, and 2.1% urban.

- 1) *The identity and scope of valued cultural, historical, or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area.*

The Landowner did not identify any exercise of traditional and customary native Hawaiian rights in the area.

- 2) *The extent to which those resources, including traditional and customary native Hawaiian rights will be affected or impaired by the proposed action.*

The Landowner is not aware of and could not determine that the property is subject to the exercise of traditional and customary native Hawaiian rights.

- 3) *The feasible action, if any, to be taken by the Commission to reasonably protect native Hawaiian rights if they are found to exist.*

As far as can be determined by the Landowner, no actions would be required to protect native Hawaiian rights.

STAFF REVIEW

HAR §13-169-52 set out the general criteria for ruling on SCAP applications.

(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.

Staff: The stream ecology was adversely affected when about 800 feet of stream was channelized and culverts were constructed. The Remediation Plan described above appears to support (1) the maintenance of waters in their natural state; and, (2) protect stream channels for fisheries, wildlife and other beneficial instream uses. However, staff is unaware if other agency requirements were met. Maui County Code requires that the flood-carrying capacity of the altered watercourse is maintained by their Flood Development Permit, as well as FEMA's certificate of no rise for structures placed in the stream, or if it meets Army Corps permitting needs, if any.

- (2) Where instream flow standards or interim instream flow standards have been established pursuant to HAR Chapter 13-169, 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.

Staff: 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. Previously, the Division of Aquatic Resources commented that native aquatic animals could be present during the rainy season and that the restoration of flow to many East Maui streams has resulted in successful upstream recruitment of native stream animals including 'o'opu and 'ōpae.

The interim instream flow standard for East Maui is an unmeasured amount and the status quo of streamflow conditions in October 1988 (HAR §13-169-44). Generally, instream uses include aquatic species habitat and streamflow contribution to the nearshore waters and its ecology.

- (3) The proposed channel alteration should not interfere substantially and materially with existing instream or non-instream uses or with channel alterations previously permitted.

Staff: An existing instream use is aquatic habitat and its maintenance. The remediation plan appears to mitigate aquatic species' migration concerns. There are two registered diversions located below the Landowner's property. The subject alteration does not appear to interfere with existing uses or channel alterations previously registered.

ADMINISTRATIVE AND CIVIL PENALTY GUIDELINE (G14-01)

HRS §174C-15, as amended, provides for fines up to up to \$5,000 per day for any violation of any provision of HRS Chapter 174C. However, HAR §13-169-3 read up to \$1,000 at the time of the violation.

On October 1, 2014, the Commission approved its Administrative and Civil Penalty Guideline (G14-01) to provide a logical and consistent means to assess penalties and guide the settlement of Commission enforcement cases. The guidelines are non-binding. The system is used to:

- a) Deter violations;
- b) Remove the economic benefit of violations;
- c) Provide fair treatment of the regulated community; and
- d) Offer the violator a chance to undertake a beneficial alternative, under proper conditions, in a partial or total replacement of a cash penalty.

Violation: Channelized and hardened about 800 feet of stream and constructed two culvert structures without a stream channel alteration permit. Specifically, HRS §174C-71(3)(A) states, in pertinent part: "The commission shall require persons to obtain a permit from the commission prior to undertaking a stream channel alteration . . ." HAR §13-169-50(a) states in pertinent part: "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."

Administrative Fee \$500

On August 23, 2017, a Notice of Alleged Violation was mailed to the Landowner. Per Administrative and Civil Penalty Guideline (G14-01), an administrative fee of \$500 shall be assessed with the issuance of a written Notice of Alleged Violation. The flat fee incorporates staff time to investigate a potential violation, travel costs, and other administrative matters.

Minimum Component

- Finding of Violation. Up to \$1,000/incident.
- Occurring in a Water Management Area.
- Repeat Violation.

Staff: The stream channel was altered without authorization. The alleged violation did not occur in a Water Management Area and is not a repeat violation.

Mitigation Component: Mitigative factors can be considered in the recommendation of any fine or alternative penalty. The presence of one or more factors can reduce or eliminate the fine or alternative penalty recommendation. Mitigative factors include but are not limited to:

- Insignificant impact on the resource.
- Attempt to remedy the violation without notice.
- Good faith effort to remedy violation once noticed.
- Self-reporting in a timely manner.
- Diligent and speedy effort to remedy the violation once noticed.

Mitigating Factors:

Staff: Once notified on the alleged violation, the landowner stated that he stopped work and filed a stream channel alteration permit application. The commission denied the first application and required the Landowner to submit a remediation plan within six months. (Exhibit 12).

Gravity Component: Gravity factors can be considered in the recommendation of any fine or alternative penalty. Presence of one or more factors can enhance the fine or alternative penalty recommendation.

Gravity Factors:

- Significant risk of or actual damage or harm to the water resources or the environment.

Staff: Allegedly caused mud and debris flows downstream causing property damage and adversely affected aquatic habitat by the channelization and construction of culverts.

- Multiple or repeat violations of the code or regulations.

Staff: Not applicable.

- Evidence that the violator should have known about the violation.
Staff: The Landowner stated in his application that he was unaware that permits were needed for construction activities.
- Refusal to correct the violation once noticed.
Staff: The Landowner claimed he stopped work after he received the Notice of Alleged Violation.
- Failure to meet deadlines as set by the Commission or its staff.
Staff: The commission required the Landowner to submit a remediation plan within six months. A draft remediation plan was filed within six months, with a final remediation plan and application submitted one month later.

Calculation of the Number of Days for the Recommended Fine: If one or more of the gravity components are met, a daily fine may be imposed. Those fines shall accrue on the following basis:

- Violation where no permit is issued and no prior permits have been issued or no permit is required.
Staff: Exhibits 2 to 9 show before and after photos. No stream channel alteration permit is on file for the subject property at that time.
- Violation where no permit is issued but prior permits have been issued.
Staff: No prior permits were issued.
- Violation where permit has been issued. Either:
 - The date the violation has occurred.
 - The date of permit approval.
 - The date permit issued.
 - The date of Commission meeting for conditions or deadlines imposed by the Commission not contained in a permit.*Staff: Not applicable.*
- Tolling. In calculating a recommendation for the imposition of a daily fine, the time may be tolled upon the filing of a permit application, satisfactory progress in addressing the violation, or for good cause.
Staff: The commission required the Landowner to submit a remediation plan within six months. Seven months later, the Landowner filed a remediation plan.
- End. In calculating a recommendation for the imposition of a daily fine, the period of the violation ends upon: (1) satisfactory resolution of the violation, or (2) removal or remedy of the violation.
Staff: Not applicable.

No staff recommendation shall exceed the maximum amount allowable in HRS §174C-15.

Summary – Violation 1: Stream Channel Alteration Without a Permit

| Description | Penalty Calculation Method | Amount (\$) |
|--------------------------------------|----------------------------|----------------|
| Administrative Fee: | | 500 |
| Initial Minimum Penalty: | | |
| Finding of Violation | | up to 1,000 |
| Occurring in a Water Management Area | | Not applicable |
| Repeat Violation | | Not applicable |
| Duration | 1 day | |
| TOTAL | | 1,500 |

FUTURE APPLICATIONS

Future applications from an Applicant who has not paid fines or met alternative settlements or for a project with outstanding violations may be considered incomplete until sanctions are fulfilled and/or violations are corrected.

RECOMMENDATION:

1. Find that the Landowner violated HRS §174C-71, and HAR §13-169-50, by installing two culverts in the East Kuiaha Stream and hardened/channelizing about 800 feet of stream bed and banks without authorization;
2. Impose a fine of up to \$1,000, and assess \$500 in administrative fees against the Landowner pursuant to HRS §174C-15 and HAR §13-169-3, payable within 30 days;
3. Approve an after-the-fact Stream Channel Alteration Permit (SCAP.5017.6) application for the installation of two culverts and the channelization of about 800 feet of stream bed and banks subject to the Commission's standard permit conditions in **Exhibit 11**, and the following special conditions:
 - a. Remediation shall consist of stream bank stabilization, planting riparian vegetation, the placement of rocks and such to recreate riffles and pools, recreate flood storage capacity which may include the removal of structures and fill, and other restorative measures to support (1) the maintenance of waters in their natural state; and, (2) protect stream channels whenever practicable to provide for fisheries, wildlife and other beneficial instream uses;
 - b. The applicant shall apply for a Flood Development Permit with the County of Maui, Department of Planning and, upon approval, submit a copy to the Commission staff.

4. Issue a written warning to the Landowner indicating any future violations involving a stream channel alteration without the necessary permits may be considered a repeat violation with fines assessed for each day of violation; and,
5. Suspend any current, pending or future applications including the subject application by the Landowner until the fine is paid and the Remediation Plan is implemented.

Ola i ka wai,

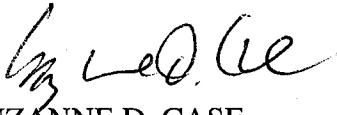


M. KALEO MANUEL
Deputy Director

Exhibits:

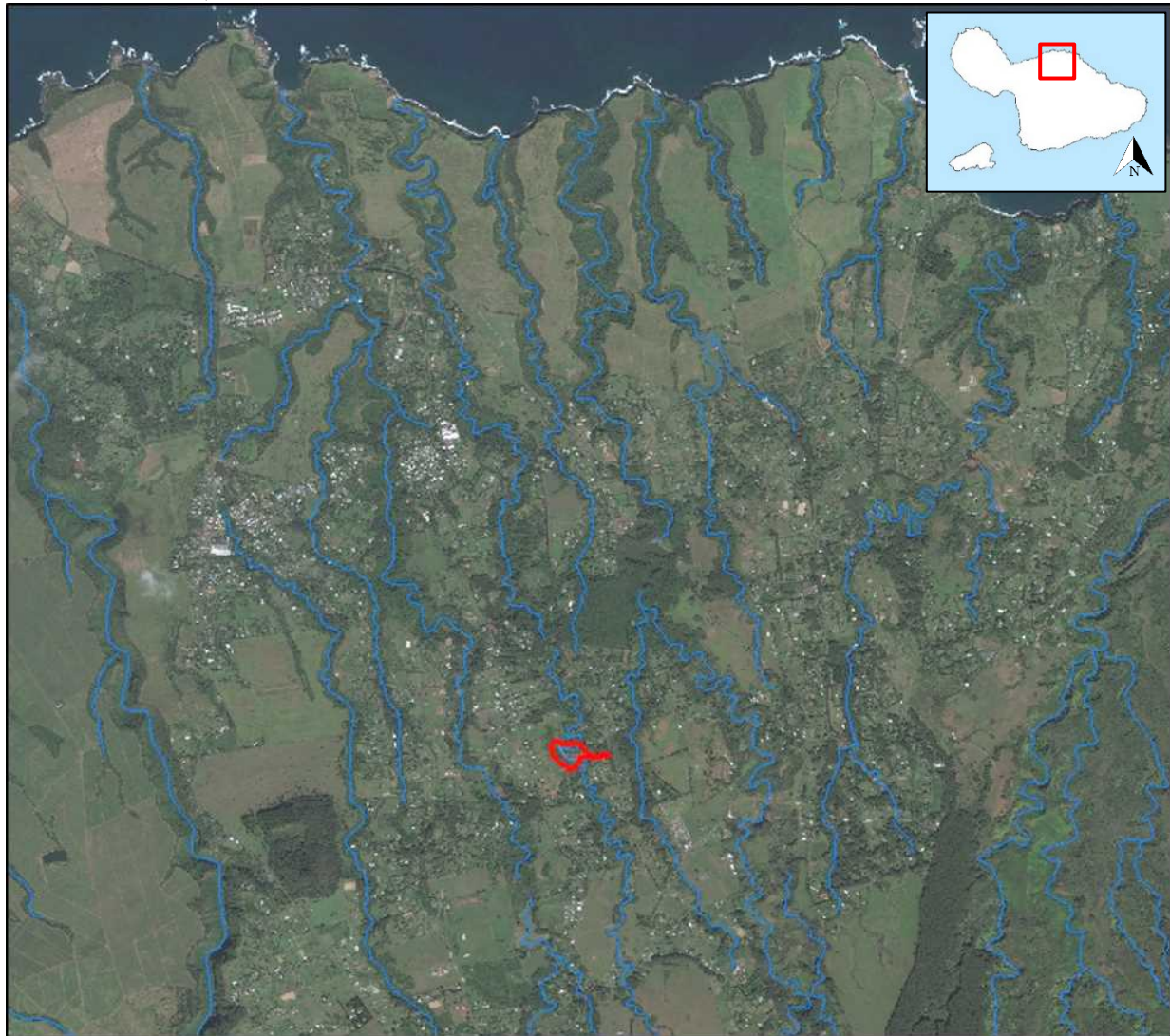
1. Location: Haiku, Maui.
2. Timeline: Before purchase. June 24, 2011.
3. Timeline: After purchase. 2014. With remediation areas shown.
4. From County of Maui website showing streambank hardening.
5. Remediation Area 1, located to the right of the footbridge.
6. Remediation Area 2, makai culvert looking upstream. 2017.
7. Remediation Area 3.
8. Remediation Area 4, channelized section looking downstream. Early to late 2013.
9. Remediation Area 5, above and below mauka culvert. 2017.
10. Comment letter received from Audrey McGauley on January 4, 2019.
11. Standard Stream Channel Alteration Permit and Stream Diversion Works Permit Conditions.
12. Legal Authorities.
13. Remediation Plan.

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson

Location: Haiku, Maui.



Timeline: Before purchase. June 24, 2011.



Timeline: After purchase. 2014. With remediation areas shown.



From County of Maui website. Looking makai. 2015.02.08.



From County of Maui website. Looking mauka. 2015.04.17.



Remediation Area 1, located to the right of the footbridge.



Remediation Area 2, makai culvert looking upstream. 2017.



Remediation Area 3.



Remediation Area 4, channelized section looking downstream. Early 2013.



Remediation Area 4, channelized section looking downstream. Late 2013.



Remediation Area 5, above mauka culvert looking downstream. 2017.



Remediation Area 5, below mauka culvert looking downstream. 2017.



February 19, 2019

TO: State Water Commissioners and DLNR Staff
FROM: Audrey McGauley
DATE: January 2019
RE: Letter of Comment on Remediation Plan at 750 East Kuiaha Rd, Haiku Hi.

After careful review of the Remediation Plan in consultation with a General Contractor and Hydrologist, I have many concerns.

However, first I want to say that as the adjacent downstream property owner, I continue to experience extreme flooding and continued damage to my property due to Mr Bock's unpermitted and extensive stream alterations. During high water periods I am still unable to exit my property as the flooding is too deep for a vehicle to cross my driveway. Sedimentation continues to fill the stream on my property even though it has been emptied twice for the purpose of protecting my rental ohana property with permission from Army Corps. The stream flooding at the rental ohana property threatens the tenants. The cement culvert that is flooded regularly now has been seriously damaged. None of these problems existed prior to Mr. Bock's stream alterations.

After waiting six months for this Remediation Plan the question remains: will the Plan fix the extensive flooding, sedimentation and erosion issues? There is no proof that this Plan will not cause greater problems particularly with sedimentation flows and erosion as new stream boundaries are made to now include retention areas that are built upon filled in soil areas.

The Plan does not address the primary flood capacity issue. Where is evidence of the prefill topography, prior to the 6-8' high soil that was filled in along the streambed? How can it be said that there will be "no in-stream changes" when there is no presentation of the No Rise FEMA requirement? It seems this information would be needed prior to an overall approval of the Plan for it to be deemed adequate and sufficiently restorative.

Who will assure that other agencies who should be involved will in fact review the Plan? If they require a change in the Plan then how will that alter DLNR's position on this Plan as presented today?

While I am the first person to want to begin implementation of the Remediation Plan to prevent continued flooding and damage, I believe the Plan is incomplete. I am hopeful that the Water Commission does not approve this Plan based on the fact that it does not include the review and approval of the other involved agencies that may require further changes. I ask that timeframes for submittal of an acceptable Remediation Plan be strict and with consequences. After all, the law has been broken, the environment and personal property have been damaged and the client has shown disinterest to remediate adequately.

Thank you for your consideration of my comments.

STANDARD STREAM CHANNEL ALTERATION PERMIT AND
STREAM DIVERSION WORKS PERMIT CONDITIONS
(Revised January 28, 2016)

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.
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*, 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)

HRS §174C-15 Penalties and common law remedies. Provides for fines of up to \$5,000 for violation of any provision of HRS §174C. For a continuing offense, each day during which the offense is committed is a separate violation.

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:

- (3) Protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses;
 - (A) The commission shall require persons to obtain a permit from the commission prior to undertaking a stream channel alteration; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit;
 - (C) The commission shall establish guidelines for processing and considering applications for stream channel alterations consistent with section 174C-93;

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 §13-169-3 Penalties. (a) Any person who violates any provision of this chapter or any permit condition or who fails to comply with any order of the commission may be subject to a fine imposed by the commission. Such fine shall not exceed \$1,000 per violation. For a continuing offense, each day’s continuance is a separate violation.

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

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.

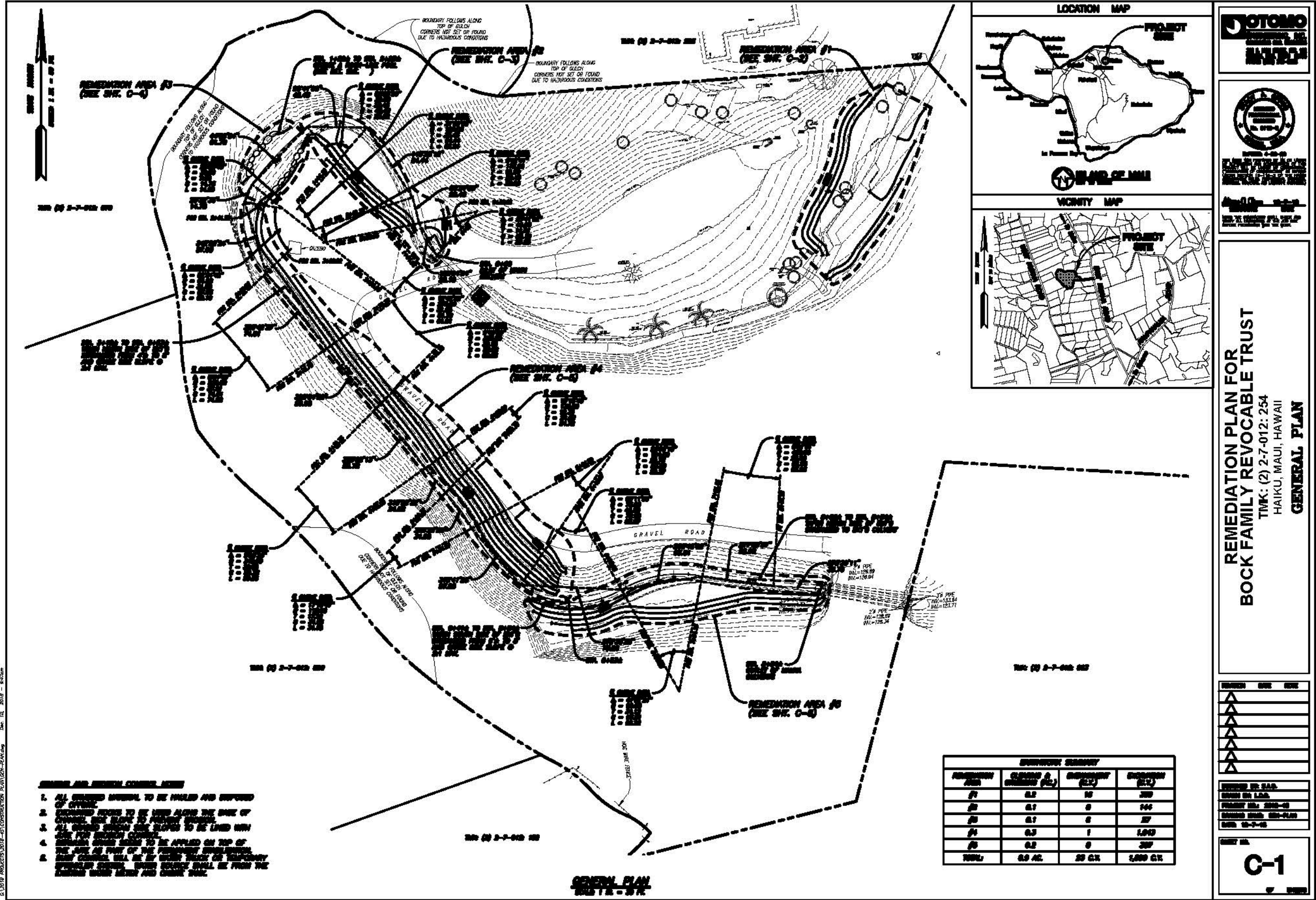


EXHIBIT 13

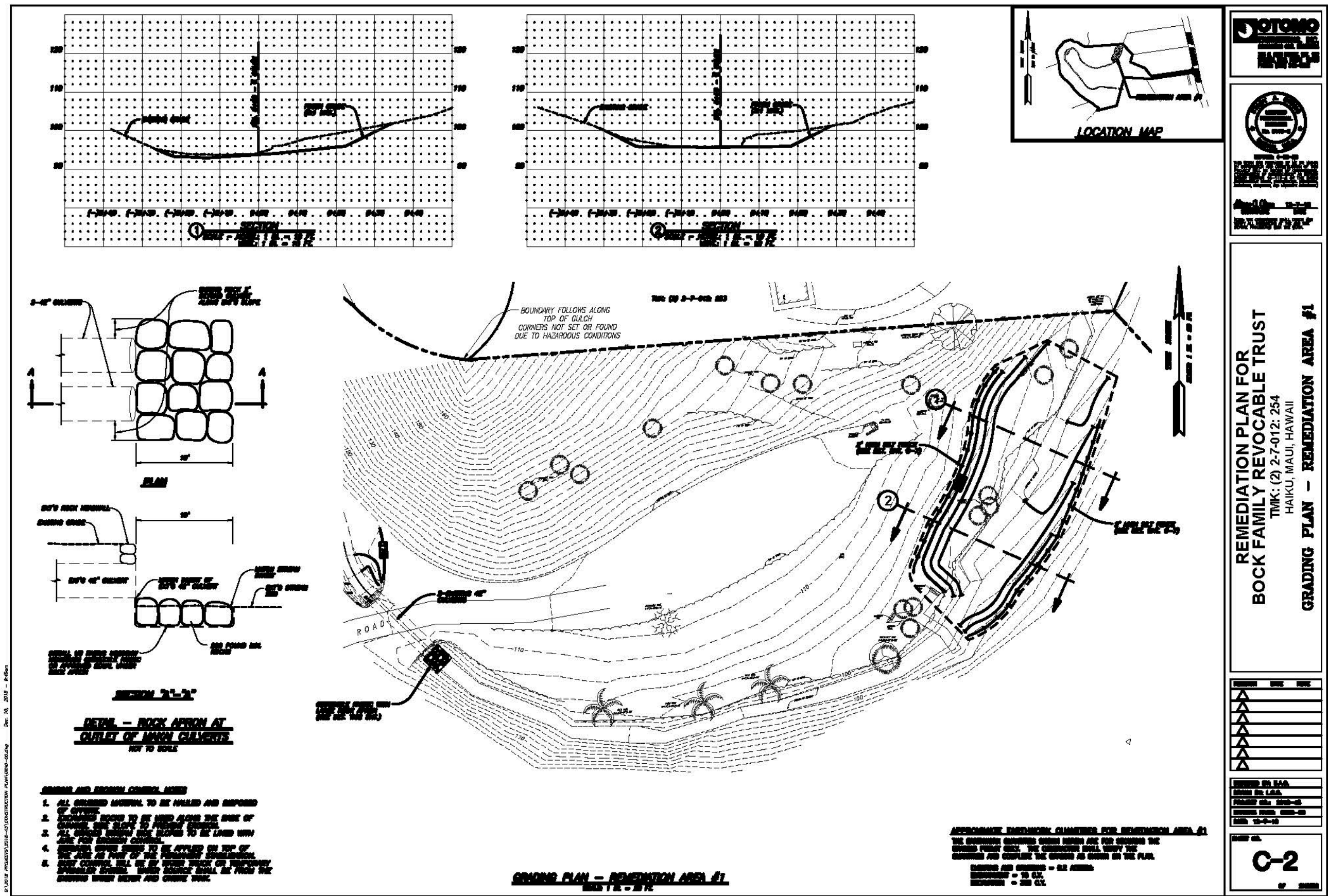
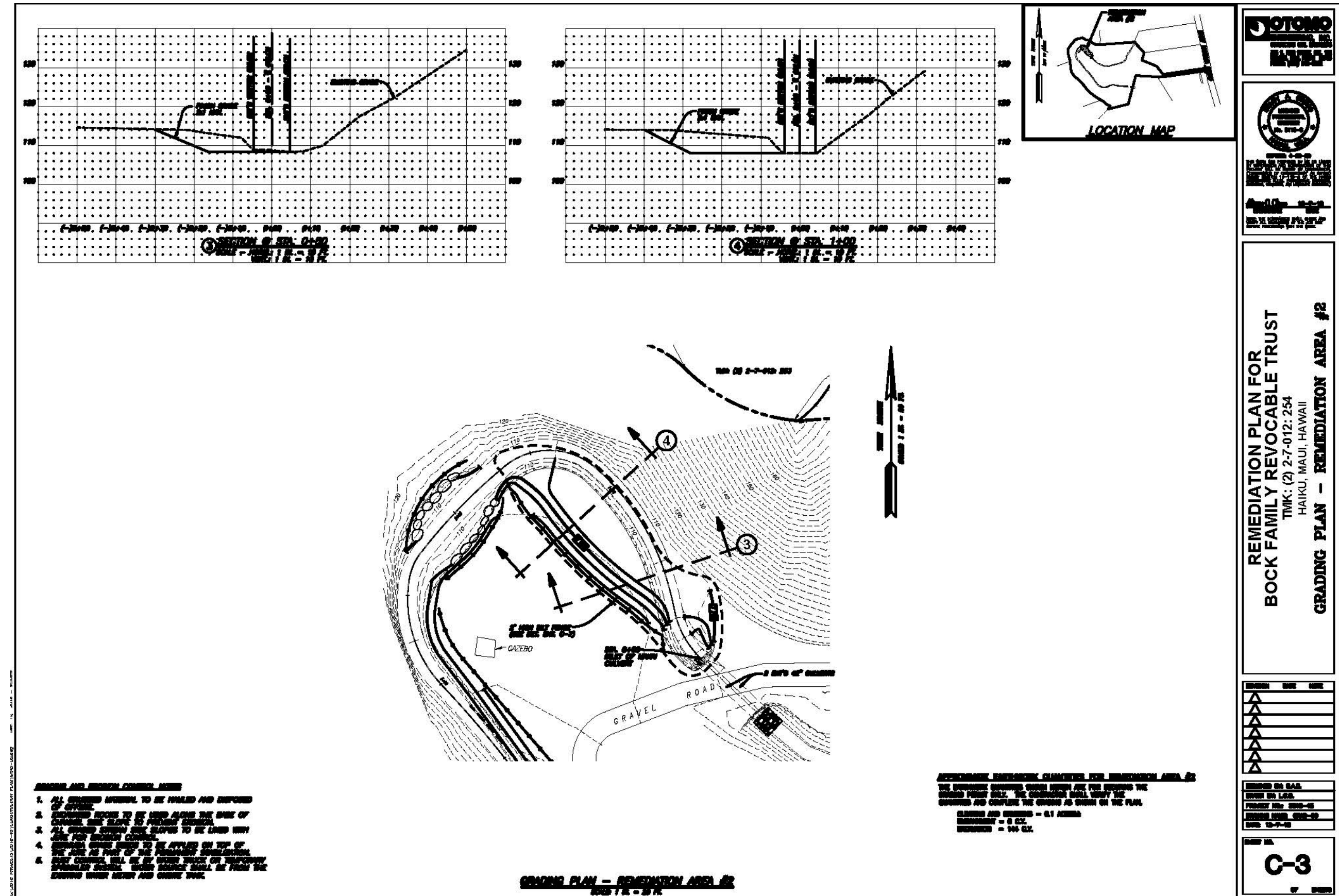
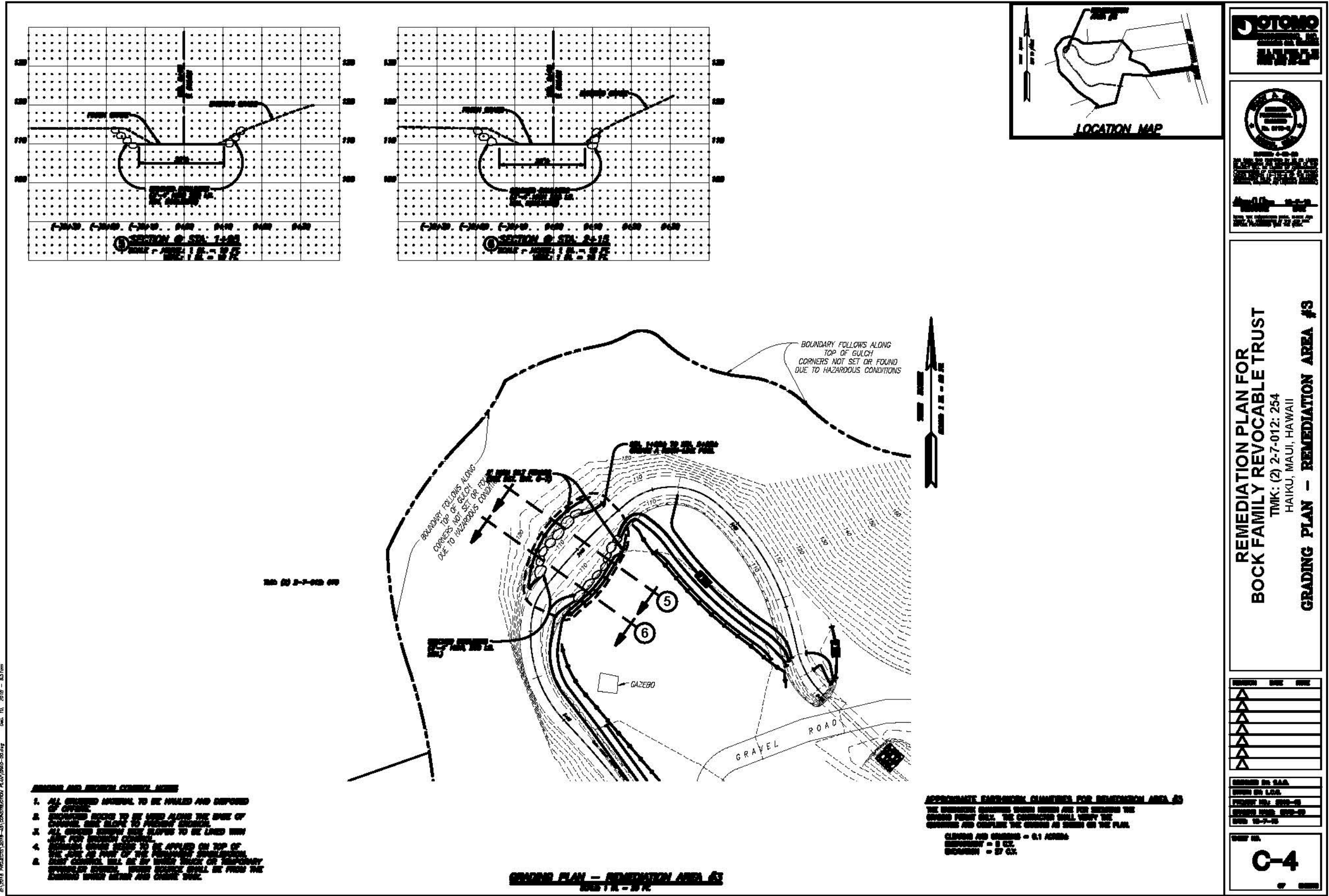
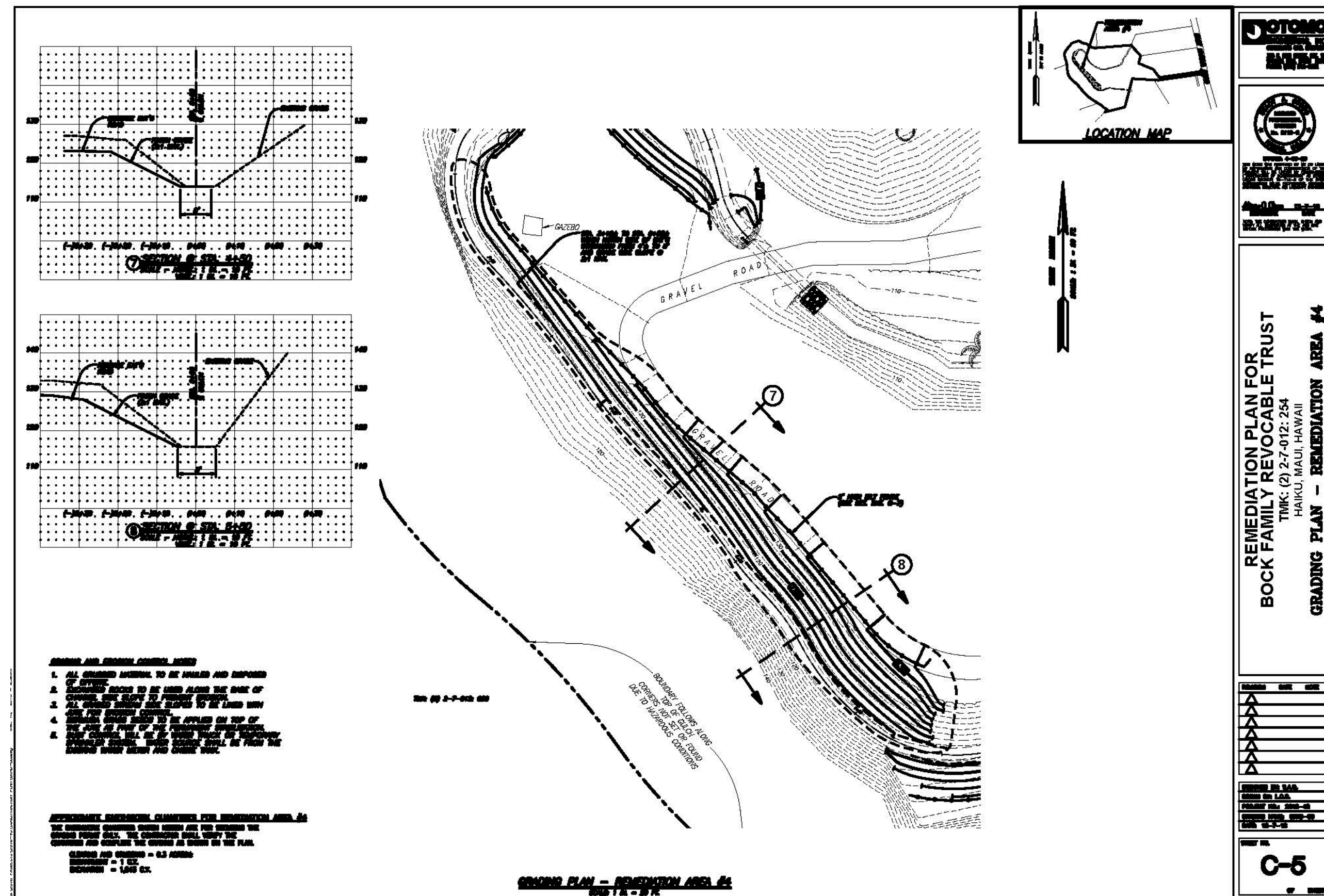


EXHIBIT 13

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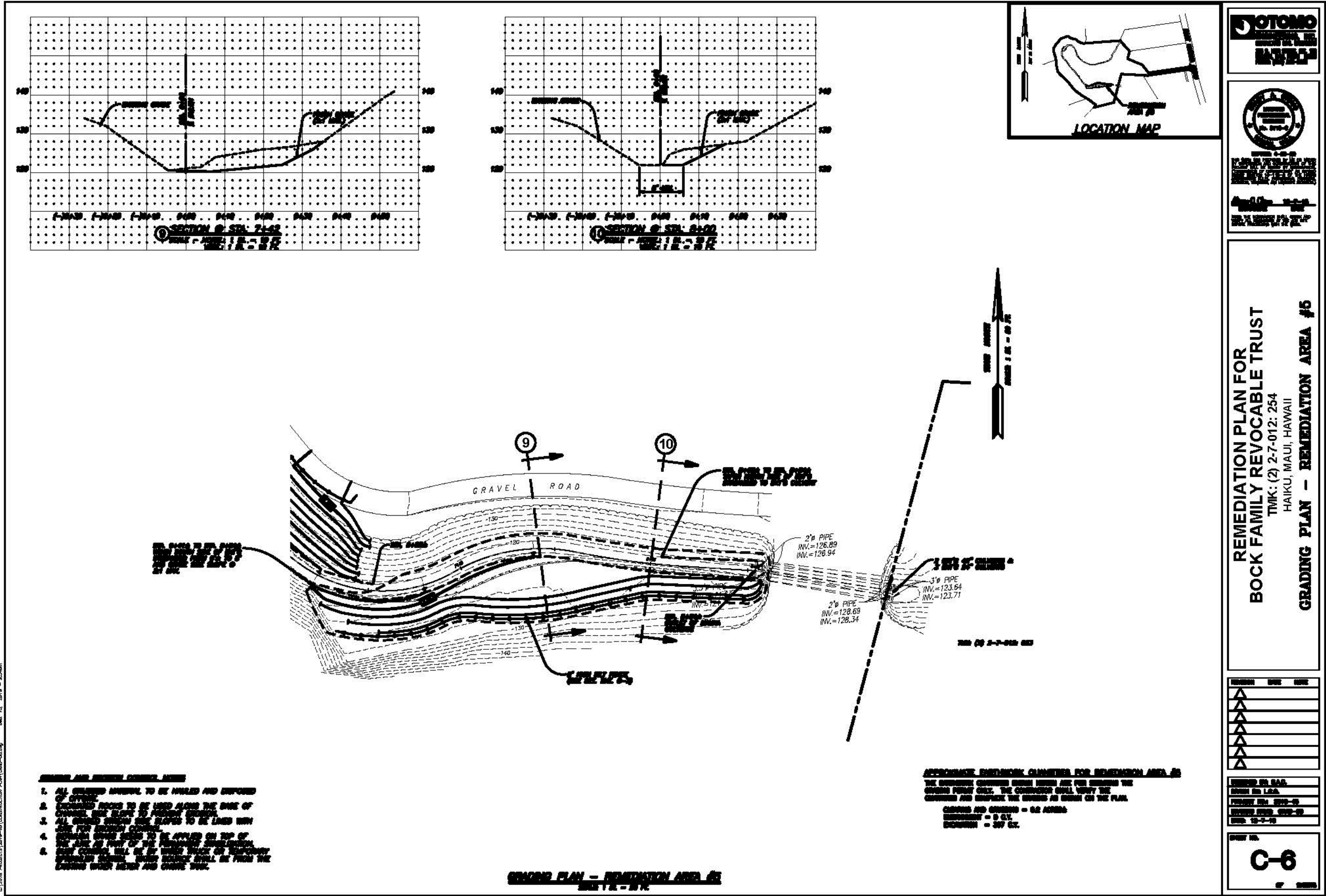


EXHIBIT 13

ENVIRONMENTAL PROTECTION

1. The Contractor shall remove all dirt and debris resulting from its work and deposited in drainage basins, ditches and other areas. The costs incurred for any necessary extended action by the City's Environmental staff shall be borne by the Contractor.
2. The Contractor shall keep the project area and surrounding areas free from dust whenever all is conducted with the following: Section 10.11, Chapter 20.1, Air Pollution Control. All costs shall be borne by the Contractor.
3. All grading shall be performed in accordance with the applicable provisions of Chapter 20.11, Air Pollution Control, and Chapter 20.12, Water Pollution Control, and Chapter 20.13, Noise Control, of the City of Portland.
4. All cut and fill slopes shall be seeded or planted immediately after grading work has been completed.
5. Construction debris and wastes shall be deposited at appropriate sites. The Contractor shall inform the Engineer of the location of the disposal sites. The disposal sites shall also satisfy the requirements of the City of Portland.
6. The Contractor shall not discharge or clear any structure, site, or vessel lot without first obtaining the permits or clearance of releases which may endanger the public health by disposal from such practices. Should such operation exceed the provision of such releases, the Contractor shall conduct such releases before demolishing or clearing such structure, site or vessel lot.

GRADING

1. The Contractor shall provide a "Working Permit" from the Development Services Administration, Department of Public Works, two (2) weeks prior to the commencement of any clearing and grubbing. A satisfactory dust and erosion control plan and/or notes shall be submitted by the Contractor.
2. The Contractor shall remove all dirt and debris resulting from his work and deposited in drainage basins, roadways and other areas. The cost incurred for any necessary removal action by the Department of Public Works shall be borne solely by the Contractor.
3. The Contractor shall at all times, during the construction and surrounding areas free from dust nuisance. His work shall be in conformance with the Air Pollution Control Standards and Regulations of the State Department of Health.
4. All grading operations shall be performed in conformance with the applicable provisions of the State Pollution Control and Water Control Standards of Public Health Department, State Department of Health and Chapter 15.00 of the County Code.
5. Construction debris and waste shall be deposited at separate sites. Solid sites shall also follow the requirements of Chapter 15.00 of the local County Code.
6. The Contractor shall be responsible for all construction related.

EROSION CONTROL

The following measures shall be taken to control erosion during the site development period:

1. Minimize the time of construction.

2. ~~Make~~ **Make** ~~any~~ **any** ground cover with blind data to complete construction.
3. ~~Any~~ **Any** construction of drainage control features.
4. ~~The~~ **The** temporary water upstream in non-silted construction areas when ground cover is removed.
5. ~~Station~~ **Station** water back on the dune during construction grade to provide for immediate spilling in case of failure.
6. ~~The~~ **The** temporary water upstream in non-silted construction areas when ground cover is removed.
7. ~~Ground~~ **Ground** cover shall be thoroughly removed after construction activity has ceased for the day and on weekends.
8. ~~All~~ **All** cut and fill slopes shall be seeded immediately after grading work has been completed.

EXISTING GRADES

1. Rising grade shall be verified by the contractor before proceeding with grading work. Should any discrepancies be discovered in the existing grades or dimensions given on the plans, the Contractor shall immediately notify the Engineer before proceeding further with any work, otherwise he will be held responsible for any and all work in correction of construction placed due to such discrepancies.

EXISTING UTILITIES

- [illegible]

SECTION 3.44.015(C)—MAIN COUNTY CODE[illegible]

STATE HISTORIC PRESERVATION DIVISION REQUIREMENTS

Should bluffs also such as walls, platforms, pavements and mounds, or remains such as altars, hearths, concentrations of shovels or shells be encountered during construction activities, work shall cease in the immediate vicinity of the find and the find shall be protected from further damage. The contractor and/or landowner shall immediately contact the State Historic Preservation Division (202-576-7070 or 202-576-7000), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary.

EROSION CONTROL PLAN REQUIREMENTS

The erosion control plan shall employ Best Management Practices to the maximum extent practicable to prevent or reduce pollutants from water bodies, including sediment and other contaminants, in discharging from a construction site.

The following must be addressed if applicable:

1. Stabilizing of denuded areas.
2. Protection/stabilization of soil structure.
3. Permanent soil stabilization.
4. Enhancement and maintenance of permanent vegetation.
5. Protection of adjacent properties and water bodies.
6. Soil/rock erosion control.
7. Erosion control.
8. Cut and fill slopes (retaining).
9. Hurricane stabilization.
10. Succession of construction operations, including phased and successive development.
11. Erosion control.
12. Storm water inlet protection.
13. Control of erosion and sediment movement.
14. Velocity control on disturbed lots during construction.
15. Sealing in or grading cul-de-sacs.
16. Interim/primary construction.
17. Temporary installation of permanent erosion and sediment control.
18. Control of erosion control facilities.
19. Protection of existing vegetation.
20. Dust control.

MINIMUM BEST MANAGEMENT PRACTICES

Drainage. Handle drainage to control erosion, prevent damage to downstream properties and reduce sediments to the natural drainage course in a manner which minimizes sedimentation or other pollution to the maximum extent practicable.

Dust Control. Control dust emissions to the maximum extent practicable through BMP's such as water spraying, dust fences, loading area of disturbance and timely grading of ditch cross.

Vegetation. Rich natural vegetation, especially grasses, wherever feasible. Avoid storage of grabbed material near watercourses.

Exotic Controls. Stability of disturbed areas with exotic control measures such as vegetation, sand dunes, stream dams, seeding, livestock, barred deer hunting, and other such facilities.

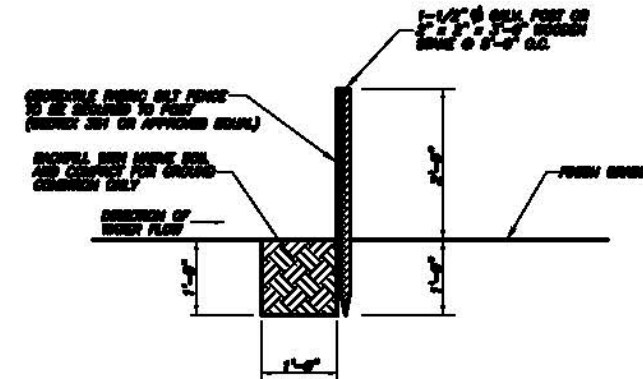
Sediment Control. Deploy sediment transport in runoff to minimize the sediment from leaving the site with methods such as sediment basins, sediment traps, silt fences, sand bags, and vegetated filter strips.

Materials and Waste Management. Properly store toxic material and prevent the discharge of petroleum associated with construction activities.

Timing of Control Measure Implementation. Timing of control measures shall be in accordance with the approved erosion control plan. Disturbed areas of construction sites that will not be stabilized (grassed or planted) by no later than the fourteenth day after the last disturbance.

Shoreline Area. Use of soil as fill is prohibited within any shoreline area, except for sand.

Coastal Dams. Grading or mining of a coastal dam is prohibited.



DETAIL - SILT FENCE INSTALLATION
50 LB. 1 R. = 1 R.

OTOMO
OTOMO
OTOMO



1990-1991 **1991-1992**

**REMEDICATION PLAN FOR
BOCK FAMILY REVOCABLE TRUST**
TMWK: (2) 2-7-012: 254
HAIKU, MAUI, HAWAII

[illegible]

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