



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

November 17, 2020  
Honolulu, Hawai'i

Authorize Imposing a Fine Against the Applicant Rainer Werner Bock, Trustee  
For Altering a Stream Channel Without a Permit as  
Required in HRS §174C-71(3)(A) and HAR §13-169-50; and  
Approve the After-the-Fact Stream Channel Alteration Permit (SCAP.5422.6) Application  
For the Construction of Culverts, Channelization and Remediation Plan  
East Kuiaha Stream, Ha'ikū, Maui, TMK: (2) 2-7-012:254

SUMMARY OF REQUEST

Authorize imposing a fine of up to \$39,000 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.5422.6) Application for the construction of two culverts and special conditions contained in the Remediation Plan that proposes to widen the stream cross section to a more natural state, reduce the side slopes of the channel to a 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 makai culvert outlet for native biota passage.

APPLICANT/LANDOWNER:

Rainer Werner Bock, Trustee  
P.O. Box 681  
Ha'ikū, HI 96708

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

## BACKGROUND

In 2011, the subject property was undeveloped (**Exhibit 2**). As part of the permit application, the Applicant submitted documents showing that the property was purchased in September 2012. By 2014, channelization is clearly seen (**Exhibit 3**). Remediation areas 1-5 are also shown.

On August 3, 2016, Commission staff received a complaint regarding mud and debris in the subject stream allegedly caused by the Applicant. 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 Applicant graded and grubbed in and outside of the stream channel.

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

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

In July 2017, staff conducted a site visit and compiled the following photos from the complaint and site visit to document the alleged violations:

1. Streambank hardening downstream of the footbridge (**Exhibit 4**).
2. Makai culvert with overhanging lip looking upstream, an 8-ft wide x 6-foot tall x 20-ft long road structure with two 42-inch culverts across stream channel (**Exhibit 5**).
3. Streambank hardening (**Exhibit 6**).
4. Channelized about 800 feet of the East Kuiaha Stream (**Exhibit 7**).
5. Streambank hardening downstream of the mauka culvert. From the County of Maui website, dated 2015 (**Exhibit 8**).
6. Mauka culvert looking downstream, an 8-ft wide x 15-foot tall x 20-ft long road structure with two 42-inch and three 24-inch culverts across stream channel (**Exhibit 9**).

On August 23, 2017, a Notice of Alleged Violation and Order was mailed to the Applicant (**Exhibit 10**).

On October 26, 2017, the Applicant filed the first of three after-the-fact Stream Channel Alteration Permit (SCAP.4700.6) Applications regarding the construction of two culverts and the Remediation Plan that proposed to widen the stream cross section to a more natural state, reduce the side slopes of the channel to a 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 makai culvert outlet for native biota passage.

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 Applicant 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 Applicant'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, 2018.

On December 11, 2018, the Applicant 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 Applicant filed the second of three after-the-fact Stream Channel Alteration Permit (SCAP.5017.6) Applications regarding the construction of two culverts and the Remediation Plan that proposes to widen the stream cross section to a more natural state, reduce the side slopes of the channel to a 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 makai culvert outlet for native biota passage.

On February 19, 2019, by a 5-0 vote, the Commission:

1. Deferred action on the Stream Channel Alteration Permit (SCAP.5017.6) application and Remediation Plan (Plan), including the imposition of a fine and administrative fee against the Applicant. The Deputy Director shall write a letter to the applicant indicating that the Commission has reviewed the proposed Plan and finds that the Plan is in compliance with

the State Water Code, Chapter 174C, Hawaii Revised Statutes. However, the Commission has concerns with flooding issues that must be addressed in consultation with the County of Maui, Planning Department, U.S. Army Corps of Engineers, and the Hawai'i Department of Health's Clean Water Branch.

2. Delegated authority to the Chairperson to approve the letter from the Deputy Director to the applicant; and
3. Following consultation with other government agencies to address flooding concerns, a new Stream Channel Alteration Permit application and detailed Remediation Plan shall be submitted to the Commission that must include a narrative of what the Plan objectives are, how the Plan shall be implemented to meet objectives, detailed descriptions and hydrologic analyses with relation to the construction drawings, a timeline of performance, and a flowchart depicting permitting requirements and/or review of the project by all relevant government agencies.

On August 31, 2020, the Applicant filed the third of three after-the-fact Stream Channel Alteration Permit (SCAP.5422.6) Applications regarding the construction of two culverts and the Remediation Plan that proposes to widen the stream cross section to a more natural state, reduce the side slopes of the channel to a 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 makai culvert outlet for native biota passage. The stream channel alteration permit application (SCAP5422.6) can be viewed on the Commission website at: [https://files.hawaii.gov/dlnr/cwrm/swreview/SCAP\\_5422\\_6.pdf](https://files.hawaii.gov/dlnr/cwrm/swreview/SCAP_5422_6.pdf).

#### STREAM DESCRIPTION

According to the *Atlas of Hawaiian Watersheds and Their Aquatic Resources* (2008), East Kuiaha is a perennial stream about six miles long and is one of six streams that occur within the Kuiaha Gulch watershed. It is an ungedged stream. Aquatic species present are mostly introduced such as crustaceans (*Macrobrachium rosenbergii*). No site-specific flora and fauna surveys are available for the project location. The watershed was unranked according to the *Hawaii Stream Assessment* (1990). 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 Applicant is located near 900 feet in elevation.

#### AFTER-THE-FACT PROJECT DESCRIPTION

1. Makai culvert: 8-ft wide x 6-ft high x 20-ft long structure. Includes two (2) 42-inch culverts across entire stream channel.
2. Mauka culvert: 8-ft wide x 15-ft high x 20-ft long structure. Includes two (2) 42-inch culverts and three (3) 24-inch culverts across entire stream channel.



### REMEDICATION PLAN PROJECT DESCRIPTION

The Applicant proposes to widen the stream cross-section 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 trapezoidal 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 16**). Consisting of the following:

1. Remediation area #1: 64-ft wide x 5-ft high x 150-ft long bank stabilization, restoration, retention basin, and grading.
2. Remediation area #2: 45-ft wide x 5-ft high x 120-ft long bank stabilization, restoration, retention basin, and grading.
3. Remediation area #3: 90-ft wide x 7-ft high x 65-ft long bank stabilization, restoration, retention basin, and grading.
4. Remediation area #4: 35-ft wide x 8-ft high x 260-ft long bank stabilization, restoration, retention basin, and grading.
5. Remediation area #5: 42-ft wide x 6-ft high x 220-ft long bank stabilization, restoration, retention basin, and grading.

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.

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 Applicant 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.

### AGENCY REVIEW COMMENTS

County of Maui, Planning Department: Did not comment.

*Staff: On October 31, 2019, the County of Maui approved the Applicant's Special Flood Hazard Area Development Permit (**Exhibit 11**) and Certification of a No Rise Determination (**Exhibit 12**). The Applicant also submitted an undated, but filled out, County of Maui Grading and Grubbing Permit application.*

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

Department of Land and Natural Resources (DLNR), Aha Moku: No objections.

DLNR, Aquatic Resources (DAR): Did not comment.

*Staff: On January 11, 2019, DAR previously stated that it 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 was 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 requested that the applicant use sediment reduction measures such as, but not limited to, silt screens, sediment fences, silt bags and environmental socks. DAR also recommended having a stream geomorphologist review the project in all stream bed restoration projects.*

DLNR, Engineering: No comments.

DLNR, Forestry and Wildlife: No objections.

DLNR, Historic Preservation: Did not comment.

*Staff: On December 5, 2019, the Applicant received an Archaeological Field Inspection report from Scientific Consultant Services, Inc. The survey did not find any historic properties and concluded that any construction will not have an adverse impact on historic sites.*

DLNR, Land Division: Did not comment.

DLNR, State Parks: Not subject to our regulatory authority and permit.

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

*Staff: On June 8, 2019, the Department of Health approved the Applicant's Section 401 Water Quality Certification regarding a 10-ft wide x 10-ft long riprap scour pad located downstream of the makai culvert (Remediation Area 2).*

Office of Hawaiian Affairs: Did not comment.

US Army Corps of Engineers: Did not comment.

*Staff: On February 5, 2020, the Army Corps of Engineers approved the Applicant's Section 404 permit for the construction of a 10-ft wide x 10-ft long riprap scour pad located downstream of the makai culvert (Remediation Area 2).*

US Fish and Wildlife Service (FWS): No objections.

Public Comments: On January 4, 2019, the Commission received a comment letter from Audrey McGauley (**Exhibit 15**).

### TRADITIONAL AND CUSTOMARY PRACTICES

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

The Applicant stated "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."

*Staff: An Archaeological Field Inspection report accompanying the SCAP Application indicates that a "full pedestrian survey of the entire property did not yield the presence of any historic properties. While testing was not done during this survey, there were no areas on the parcel that stood out in terms of potentially containing subsurface cultural deposits. Given the nature, location and scope of work proposed, it is highly unlikely that any historical properties will be identified and/or negatively impacted or disturbed during proposed work on the property." This area is zoned agriculture and was developed decades ago. The Office of Hawaiian Affairs' Kipuka database shows no historic sites or crown lands located within or adjacent to the project 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 Applicant stated, "The owner is not aware of any effects or impacts by the proposed action on traditional and customary native Hawaiian rights."

*Staff: Affected or impaired resources are minimal since the area is fully developed.*

- 3) What feasible action, if any, could be taken by the Commission in regards to this application to reasonably protect native Hawaiian rights.

The Applicant stated, "As far as can be determined by the owner, no actions would be required to protect native Hawaiian rights."

*Staff: No further action as can be determined.*

#### HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT (EA) COMPLIANCE

In accordance with §HRS 343-5(a), the Applicant’s construction does not trigger the need for an EA. An EA shall be required for actions, as summarized in part below, that propose:

- (1) use of state land or county lands, or the use of state or county funds;
- (2) use within any land classified as a conservation district;
- (3) use within a shoreline area;
- (4) use within any historic site as designated in the National Register or Hawaii Register;
- (5) use within the Waikiki area of O‘ahu;
- (6) any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation;
- (7) any reclassification of any land classified as a conservation district;
- (8) construction of new or the expansion or modification of existing helicopter facilities within the State, that may affect: (A) any land classified as a conservation district; (B) a shoreline area; or (C) any historic site as designated in the National Register or Hawaii Register;
- (9) any (A) wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent; (B) Waste-to-energy facility; (C) Landfill; (D) Oil refinery; or (E) Power-generating facility.

#### ADMINISTRATIVE AND CIVIL PENALTY GUIDELINE (G14-01)

HRS Section §174C-15, as amended, and HAR §13-169-3, provides for fines up to \$5,000 per day for any violation of any provision of HRS §174C. The Commission adopted an Administrative and Civil Penalty Guideline (G01-01) in 2001, and subsequently amended the Guideline in October 2014 (G14-01), to provide a logical and consistent means to assess penalties and guide the settlement of Commission enforcement cases. The Guideline includes Initial Minimum, Gravity, Mitigative, and Duration Components. Gravity and Duration Components can increase the initial minimum penalty while Mitigative Components can decrease the initial minimum penalty. In 2017, when the Applicant filed the first SCAP.4700.6 application, HAR §13-169-3 Penalties stated that the fine shall not exceed \$1,000 per 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.

Violations:

There is one (1) violation of HAR §13-169-50, as follows:

*Violation 1: Alteration of a stream channel without a permit issued by the Commission.*

Staff is recommending that Violation 1 is assessed on the Applicant for work performed without a Stream Channel Alteration Permit issued by the Commission that was required prior to starting construction.

Administrative Fee

An administrative fee of \$500 shall be assessed with the issuance of a written notice of violation.

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.

Applicability to violation:

The Commission staff finds that upon issuance of a notice of violation, an administrative fee of \$500 shall be assessed.

*Administrative Fee:* \$500

Staff is recommending that the Administrative Fee is assessed on the Applicant.

Minimum Components:

The minimum fine component established by the Commission's penalty policy is \$250 minimum per violation. The initial minimum components include the following:

<i>Component 1:</i> Finding of violation	\$250 per day/incident
<i>Component 2:</i> Occurring in Water Management Area	\$250 per day/incident
<i>Component 3:</i> Repeat Violation	\$250 per day/incident

(A repeat violation is deemed to occur when the party has previously been found to be a violator by the Commission. A repeat violation is tied to the party involved and is irrespective of the nature of the violation.)

Applicability to violation:

*Component 1:* \$250 per day/incident

*Component 2:* Not applicable

*Component 3:* Not applicable

Staff is recommending that Component 1 be assessed on Applicant for a minimum of \$250 per day/incident.

Gravity Component:

Gravity factors can be considered in the recommendation of any fine or alternative penalty. The gravity component can increase the minimum component up to a cap of \$1,000 per violation and initiate daily fines for a continuing offense.

Gravity factors include but are not limited to:

- G1* – Significant risk to the resource
- G2* – Actual damage or harm to resource
- G3* – Multiple or repeat violations of the code or regulations
- G4* – Evidence that the violator should have known about the violation
- G5* – Refusal to correct the violation once noticed
- G6* – Failure to meet deadlines as set by the Commission or its staff

Applicability to violation:

- Component G1:* Not applicable
- Component G2:* Applies to Applicant
- Component G3:* Not applicable
- Component G4:* Not applicable
- Component G5:* Not applicable
- Component G6:* Not applicable

Staff is recommending that Gravity Component G2 be assessed on the Applicant, thereby initiating daily fines.

Mitigation Component:

Mitigative factors can be considered in the recommendation of any fine or alternative penalty. The presence of one or more mitigative factors can reduce or eliminate the minimum penalty component fine or alternative penalty recommendation.

Mitigative factors include but are not limited to:

- M1* – Insignificant impact on the resource
- M2* – Attempt to remedy the violation without notice
- M3* – Good faith effort to remedy violation once noticed
- M4* – Self reporting in a timely manner
- M5* – Diligent and speedy effort to remedy the violation once noticed
- [M6]* – Emergency situations (not mentioned in the current penalty policy)

Applicability to violation:

- Component M1:* Not applicable
- Component M2:* Not applicable
- Component M3:* Applies to Applicant
- Component M4:* Not applicable
- Component M5:* Not applicable

Staff is recommending that mitigative component M3 apply, as the Applicant made a good faith effort to remedy the violation once noticed.

Duration Component:

If one or more of the gravity components are met, a daily fine may be imposed. The duration component has been difficult in its application by staff as specified in the penalty guideline because:

1. It does not consider emergency situations.
2. It does not specify certain circumstances such as non-permit related violations of the Code (i.e., water use reporting, submission of completion reports for maintenance activities, etc.).
3. It does not consider permit holder acknowledgement of conditions through formal signing of administrative permits (i.e., well construction & pump installation).
4. It does not consider noticing aspects of violations, which allow opportunity for violator to remedy or show good faith effort in compliance.
5. Strict adherence to the duration has in the past resulted in overly large sanctions. For example, repeat violation sanctions are both within the minimum penalty and gravity component calculations and start daily fines.

The circumstances surrounding each type of violation vary but the penalty guideline has proved flexible enough to consider the shortfalls mentioned above. Basically, when reasonable notice is given and the compliance is speedy and shows good faith, the policy has been to limit the duration exposure to fine to a single day minimum for many of the typical after-the-fact violations brought before the Commission.

Applicability to violation:

In the February 19, 2019 Staff Submittal, staff recommended a one (1) day violation for the maximum amount applicable (\$1,000/incident/day) at the time.

Here, the Commission staff is also providing an alternative amount which considers: 1) the date that the Applicant was first notified of the possible violation in a Request for Response to Complaint letter from the Commission, dated May 25, 2017; and 2) the date the Applicant filed the initial after-the-fact Stream Channel Alteration Permit Application, dated October 26, 2017. The duration of this period from initial notice to submission of the SCAP application is 154 days.

Summary of Total Recommended Fines:

Alternative No. 1: Alteration of a stream channel without a permit by the Applicant.

Administrative Fee:	\$	500
Minimum Component:	\$	1,000 per day/incident
Gravity Component:	\$	0 initiate daily fines
Mitigative Component:	\$	0
Duration Component:		<u>1 day</u>
Total Fine:	\$	1,500

Alternative No. 2: Alteration of a stream channel without a permit by the Applicant.

Administrative Fee:	\$	500
Minimum Component:	\$	250 per day/incident
Gravity Component:	\$	50 initiate daily fines
Mitigative Component:	\$	(50)
<u>Duration Component:</u>		<u>154 days</u>
Total Fine:	\$	39,000

Staff is recommending Alternative No. 2 based on the degree of work performed in the stream channel. While it is arguable that the Applicant should have known that permits were required for the work, the Applicant has appeared to make a good faith effort in remedying the violation once noticed.

Alternative Penalty Settlement:

The penalty guideline allows that in lieu of the total monetary fines, the violator may be offered an alternative sanction. Considerations that guide staff in offering such an alternative are:

1. A minimum \$500 fine in addition to the alternative offered.
2. The alternative must not be something the violator was required to do anyway because of legal or other obligations.
3. The alternative must result in new information, education, or other benefit to the water resources of the state.
4. The alternative must be completed within a specified timeframe and failure to do so will result in reinstatement of total recommended fines.

Staff is not recommending an alternative settlement.

STAFF REVIEW

HAR §13-169-52 sets 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.

- (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: Upon approval of the construction plans as proposed, the quantity of stream water is unchanged. The project is expected to improve stream ecology with repair of the scoured area below the culvert with a stone/grout infill to eliminate the current overhang that native macrofauna might not otherwise be able to pass during upstream migration. The Remediation Plan proposes the following:*



1. *Remediation area #1. 64-ft wide x 5-ft high x 150-ft long bank stabilization, restoration, retention basin, and grading.*
2. *Remediation area #2. 45-ft wide x 5-ft high x 120-ft long bank stabilization, restoration, retention basin, and grading, including a 10-ft wide x 10-ft long riprap scour pad.*
3. *Remediation area #3. 90-ft wide x 7-ft high x 65-ft long bank stabilization, restoration, retention basin, and grading.*
4. *Remediation area #4. 35-ft wide x 8-ft high x 260-ft long bank stabilization, restoration, retention basin, and grading.*
5. *Remediation area #5. 42-ft wide x 6-ft high x 220-ft long bank stabilization, restoration, retention basin, and grading.*

*On October 31, 2019, the County of Maui approved the Applicant's Special Flood Hazard Area Development Permit (**Exhibit 11**) and Certification of a No Rise Determination (**Exhibit 12**). The permit states that there are no "structures" in the stream. Per the County Code, which is based on Federal Emergency Management Agency's National Flood Insurance Program rules, a structure is a fully walled and roofed building. Thus, culverts are not considered structures. The County refers to them with the more general term "developments." However, it is Commission staff's understanding that the mauka and makai culverts were considered in the Applicant's scope of work which also included remediation actions.*

*On February 5, 2020, the Army Corps of Engineering Nationwide Permit Verification Letter (POH 2019-00213) approved the construction of a 10-ft wide x 10-ft long concrete scour pad located downstream of the makai culvert (Remediation Area 2). (**Exhibit 13**). In 2017, the Army Corps previously determined that the mauka and makai culverts were existing, so no permit was needed for these structures.*

*On June 8, 2019, the Department of Health approved the Applicant's Section 401 Water Quality Certification for the 10-ft x 10-ft scour pad (POH-2019-00213). (**Exhibit 14**).*

- (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.

*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. The interim instream flow standard for East Maui is an unmeasured amount and the status quo of streamflow conditions on the effective date of this standard (1988), and as that flow may naturally vary throughout the year (HAR §13-169-44). The identified instream uses include fish habitat and streamflow contribution to the nearshore waters, among others.*

- (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: There are two registered diversions located below the Applicant's property and two above. No complaints were received by the registered diversion landowners. Only the adjacent landowner downstream filed a complaint regarding debris and flooding problems.*

RECOMMENDATION:

That the Commission:

1. Find that the Applicant violated HRS §174C-71 and HAR §13-169-50 by installing two culverts in the East Kuiaha Stream, and hardened and channelized about 800 feet of stream bed and banks without a permit.
2. Issue a written notice of violation to the Applicant, pursuant to HRS §174C-15 and HAR §13-169-3, and authorize imposing a fine of \$39,000 (Alternative No. 2), due within 30 days of Commission action; issue a written warning that any future violations involving a stream channel alteration without the necessary permits shall be considered a repeat violation; and suspend any current, pending or future applications including the subject application until the fine is paid.
3. Approve the after-the-fact Stream Channel Alteration Permit (SCAP.5422.6) application to construct: 1) Makai culvert which is an 8-ft wide x 6-ft high x 20-ft long structure and includes two (2) 42-inch culverts across entire stream channel; and 2) Mauka culvert which is an 8-ft wide x 15-ft high x 20-ft long structure and includes two (2) 42-inch culverts and three (3) 24-inch culverts across entire stream channel, subject to the standard permit conditions in **Exhibit 17** and special conditions below:
  - a. Implement Best Management Practices (BMPs) recommended by the Department's Division of Aquatic Resources and have a stream geomorphologist review the project in all stream bed restoration projects.
  - b. Implement the Remediation Plan (**Exhibit 16**) to widen the stream cross section to a more natural state, reduce the side slopes of the channel to a 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 stream bed further described below:
    - 1) Remediation area #1: 64-ft wide x 5-ft high x 150-ft long bank stabilization, restoration, retention basin, and grading.
    - 2) Remediation area #2: 45-ft wide x 5-ft high x 120-ft long bank stabilization, restoration, retention basin, and grading, including a 10-ft wide x 10-ft long riprap scour pad.

- 3) Remediation area #3: 90-ft wide x 7-ft high x 65-ft long bank stabilization, restoration, retention basin, and grading.
- 4) Remediation area #4: 35-ft wide x 8-ft high x 260-ft long bank stabilization, restoration, retention basin, and grading.
- 5) Remediation area #5: 42-ft wide x 6-ft high x 220-ft long bank stabilization, restoration, retention basin, and grading.

Ola i ka wai,

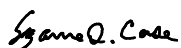


M. KALEO MANUEL  
Deputy Director

Exhibits:

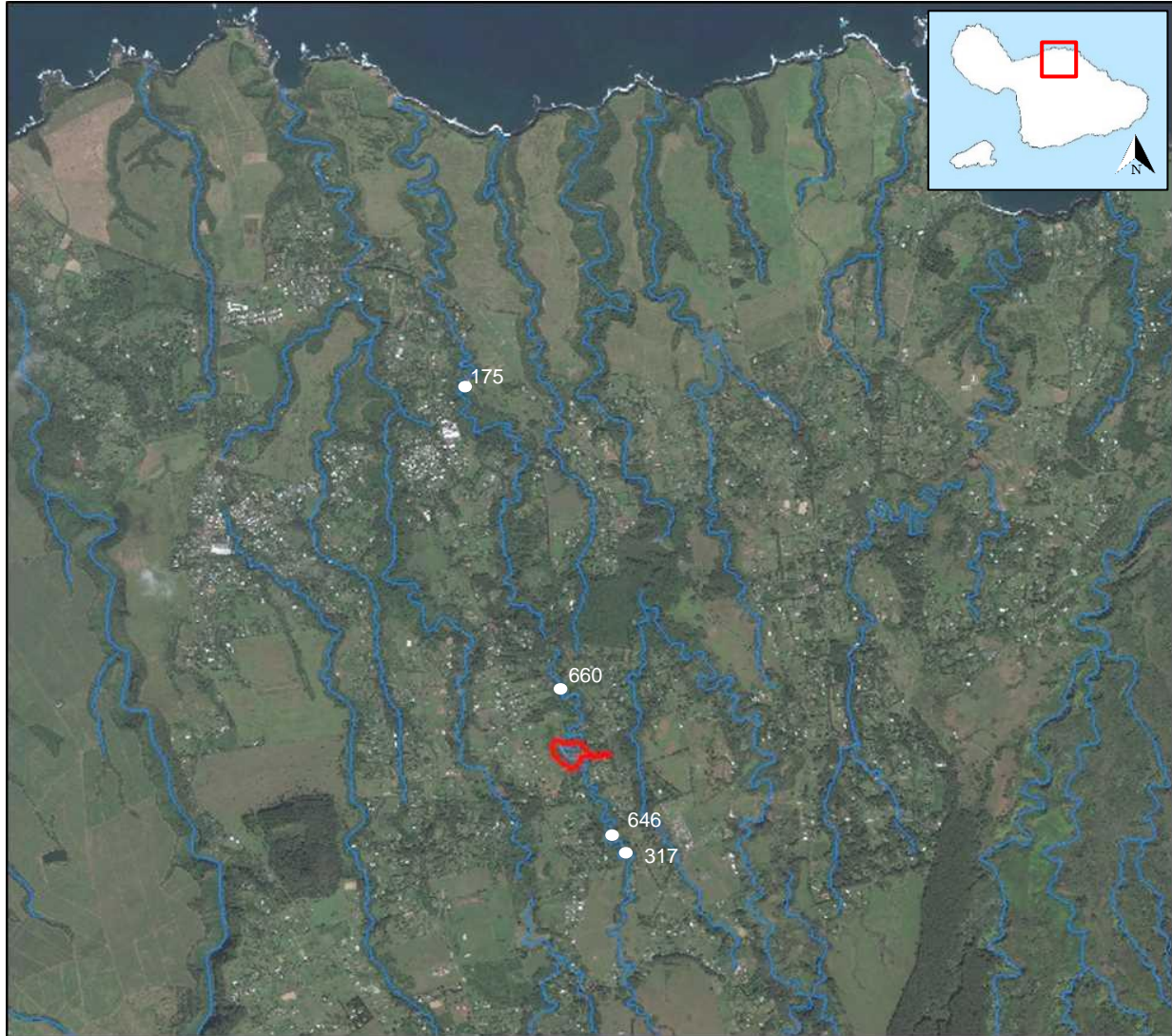
1. Location: Haiku, Maui.
2. Timeline: Before purchase. (Google Earth, June 24, 2011).
3. Timeline: After purchase with channelization clearly seen. (Google Earth, 2014).  
Remediation areas 1-5.
4. Remediation Area 1, streambank hardening downstream of the footbridge.
5. Remediation Area 2, makai culvert looking upstream. 2017.
6. Remediation Area 3, streambank hardening.
7. Remediation Area 4, channelized about 800 feet, looking downstream. Early to late 2013.
8. Remediation Area 5, streambank hardening below the mauka culvert looking mauka and makai. (Maui County website 2015).
9. Remediation Area 5, mauka culvert looking downstream. 2017.
10. Commission on Water Resource Management, Notice of Alleged Violation and Order, August 23, 2017.
11. County of Maui, Special Flood Hazard Area Development Permit, October 21, 2019.
12. Federal Emergency Management Agency, Certification of a "No-Rise" Determination for a Proposed Floodway Development, May 7, 2019
13. U.S. Army Corps of Engineering, Nationwide Permit Verification Letter, February 5, 2020.
14. Department of Health, Section 401 Water Quality Certification, June 8, 2020.
15. Comment letter received from Audrey McGauley, January 4, 2019.
16. Remediation Plan Drawings.
17. Standard Stream Channel Alteration Permit and Stream Diversion Works Permit Conditions.
18. Legal Authorities.

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE  
Chairperson

Location: Haiku, Maui.

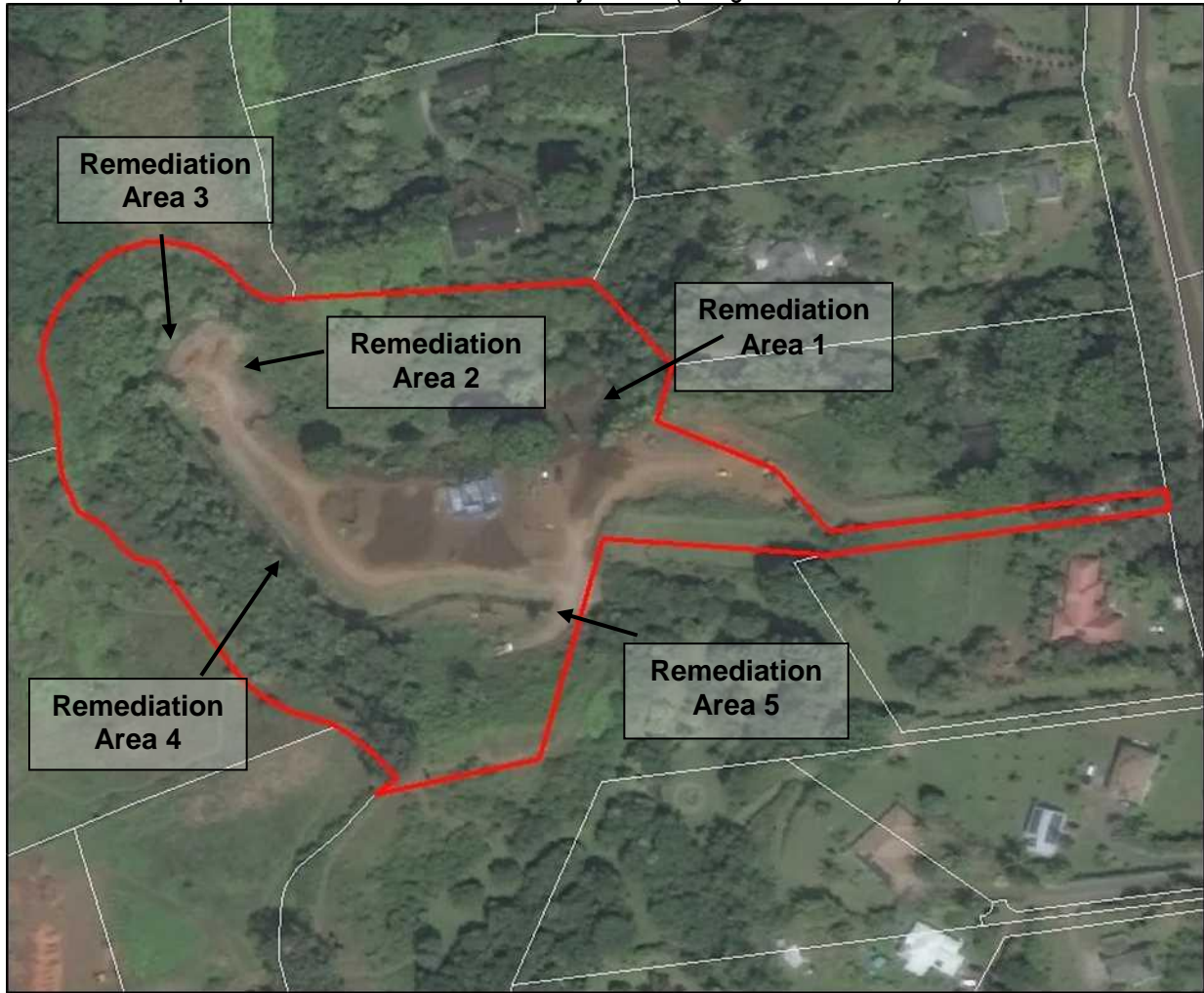




Timeline: Before purchase. (Google Earth, June 24, 2011).



Timeline: After purchase with channelization clearly seen. (Google Earth 2014). Remediation areas 1-5.





Remediation Area 1, streambank hardening downstream of the footbridge.





Remediation Area 2, makai culvert looking upstream. 2017.





Remediation Area 3, streambank hardening.





Remediation Area 4, channelized about 800 feet, looking downstream. Early 2013.



Remediation Area 4, channelized about 800 feet, looking downstream. Late 2013.

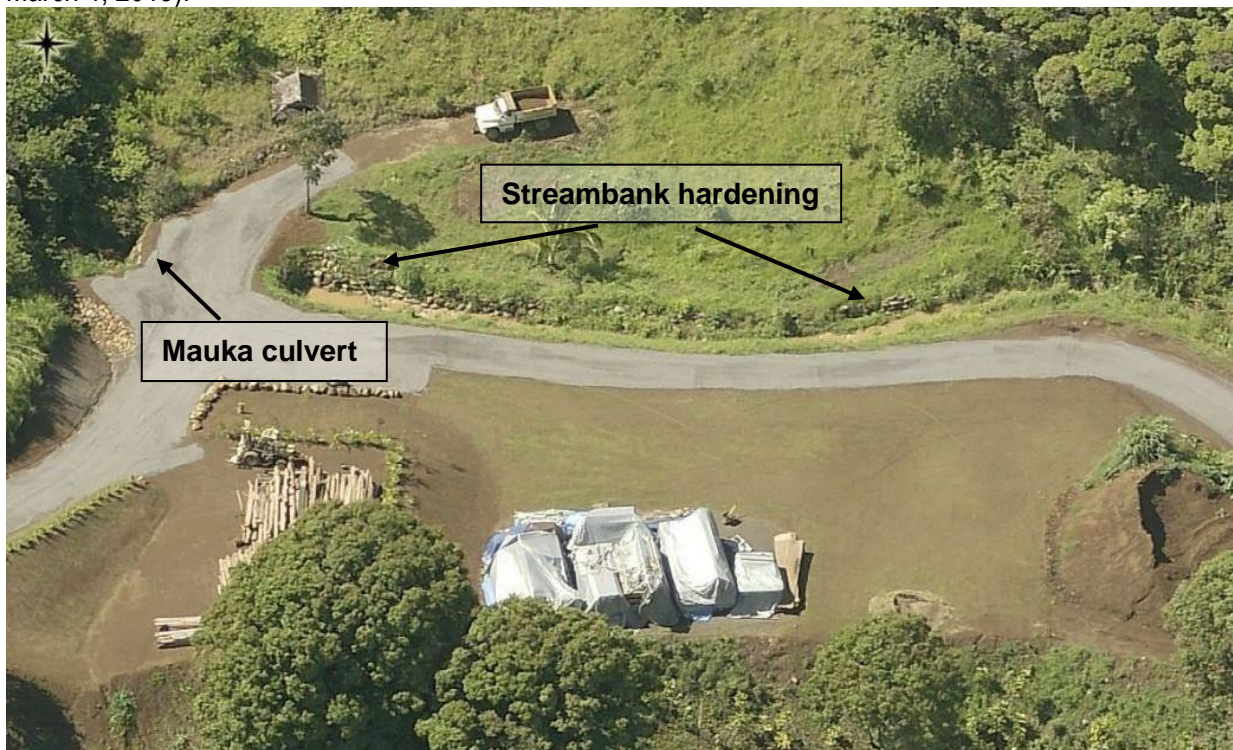




Remediation Area 5, streambank hardening below the mauka culvert looking makai. (Maui County website February 8, 2015).



Remediation Area 5, streambank hardening below the mauka culvert looking mauka. (Maui County website March 4, 2015).





Remediation Area 5, mauka culvert looking downstream. (Staff July, 2017).



DAVID Y. IGE  
GOVERNOR OF HAWAII



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

SUZANNE D. CASE  
CHAIRPERSON  
WILLIAM D. BALFOUR, JR.  
KAMANA BEAMER  
MICHAEL G. BUCK  
NEIL J. HANNAHS  
MILTON D. PAVAO  
VIRGINIA PRESSLER, M.D.  
JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR

August 23, 2017

Ref.: CDR.4552.6

Bock Family Revocable Trust  
c/o Rainer W. Bock, Trustee  
2761 Kauhikoalani Place  
Haiku HI 96708

Dear Mr. Bock:

Notice of Alleged Violation and Order  
Stream Channel Alteration Without a Permit  
East Kuiaha Stream, Haiku, Maui, Tax Map Key (2) 2-7-012:254

Notice is hereby given that the Bock Family Trust may be in violation of the following:

1. On the subject Tax Map Key (Exhibit 1) construction of two (2) culverts across the East Kuiaha Stream (Exhibits 2-3); and,
2. Altering several hundred feet of the East Kuiaha Stream without a permit from its original location to a more mauka location. (Exhibit 4)

Hawaii Revised Statutes §174C-71 and Hawaii Administrative Rules §13-169-50 states:

“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...”

According to HRS §174C-15, HAR §13-168-3, and Administrative and Civil Penalty Guideline (G14-01), any person who violates any provision of this chapter, or any rule adopted pursuant to this chapter, may be subject to a fine imposed by the Commission. Such fine shall not exceed \$5,000 per violation. For a continuing offense, each day's continuance is a separate violation.

Please fill out a stream channel alteration permit application and petition to amend the instream flow standard and submit to our office within 30 days of the date of this letter. An application can be downloaded at: <http://files.hawaii.gov/dlnr/cwrm/forms/FormSCAP-APP.pdf>.

FILE ID:	CDR.4552.6
DOC ID:	17366

Rainer W. Bock, Trustee  
August 23, 2017  
Page 2

**If you fail to fill out a permit application within thirty (30) days of the date of this letter we intend to schedule this case before the Commission for final disposition.** You will be notified at that time concerning the meeting time and place.

Please note any information provided to the Commission in regards to this alleged violation may be used in civil proceedings. If you have any questions, contact Rebecca Alakai at 587-0266, or [rebecca.r.alakai@hawaii.gov](mailto:rebecca.r.alakai@hawaii.gov).

Sincerely,



JEFFREY T. PEARSON, P.E.  
Deputy Director

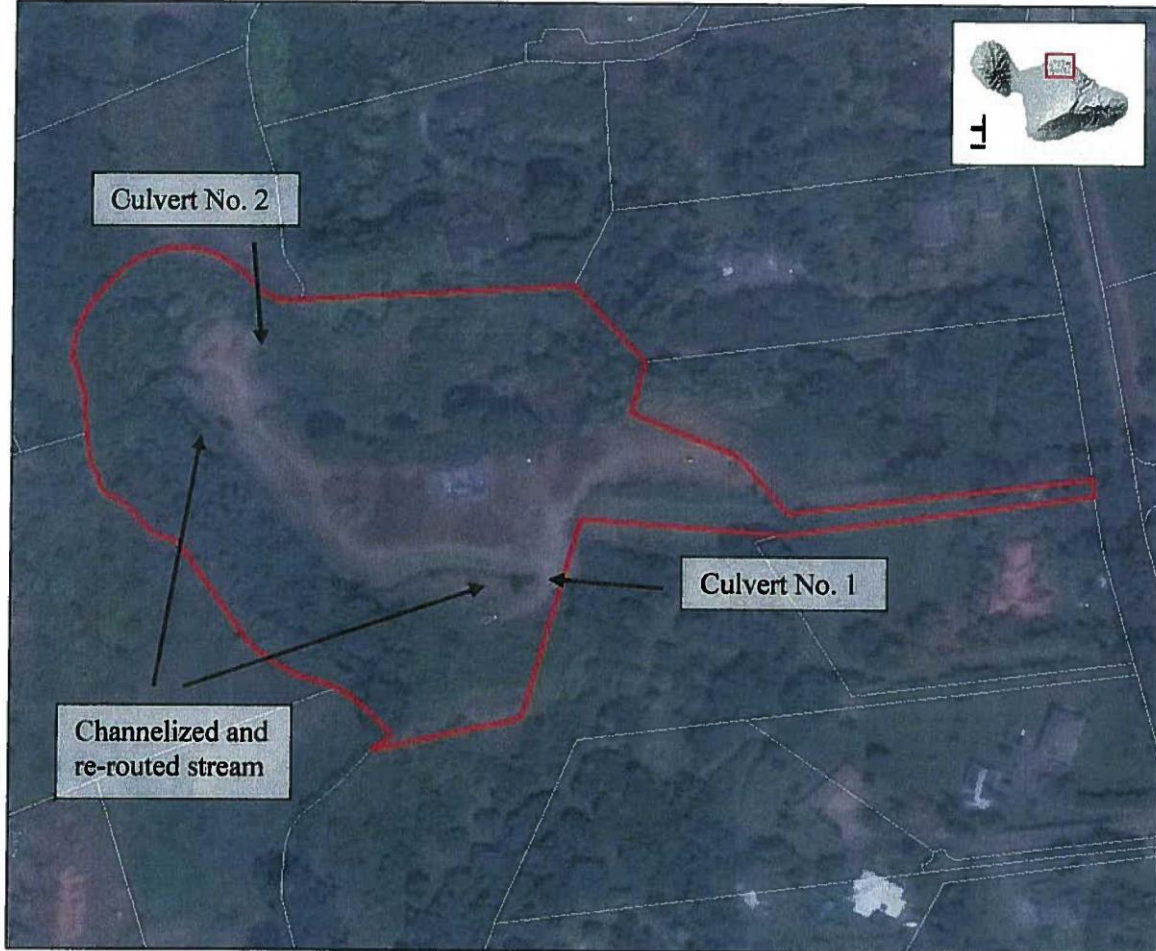
cc: Department of Health, Clean Water Branch  
Army Corps of Engineers

Exhibits:

1. Location Map TMK (2) 2-7-012:254.
2. New culvert construction No. 1. Photo dated 2017.
3. New culvert construction No. 2. Photo dated 2017.
4. Channelized and re-routed stream.



Location Map TMK (2) 2-7-012:254.



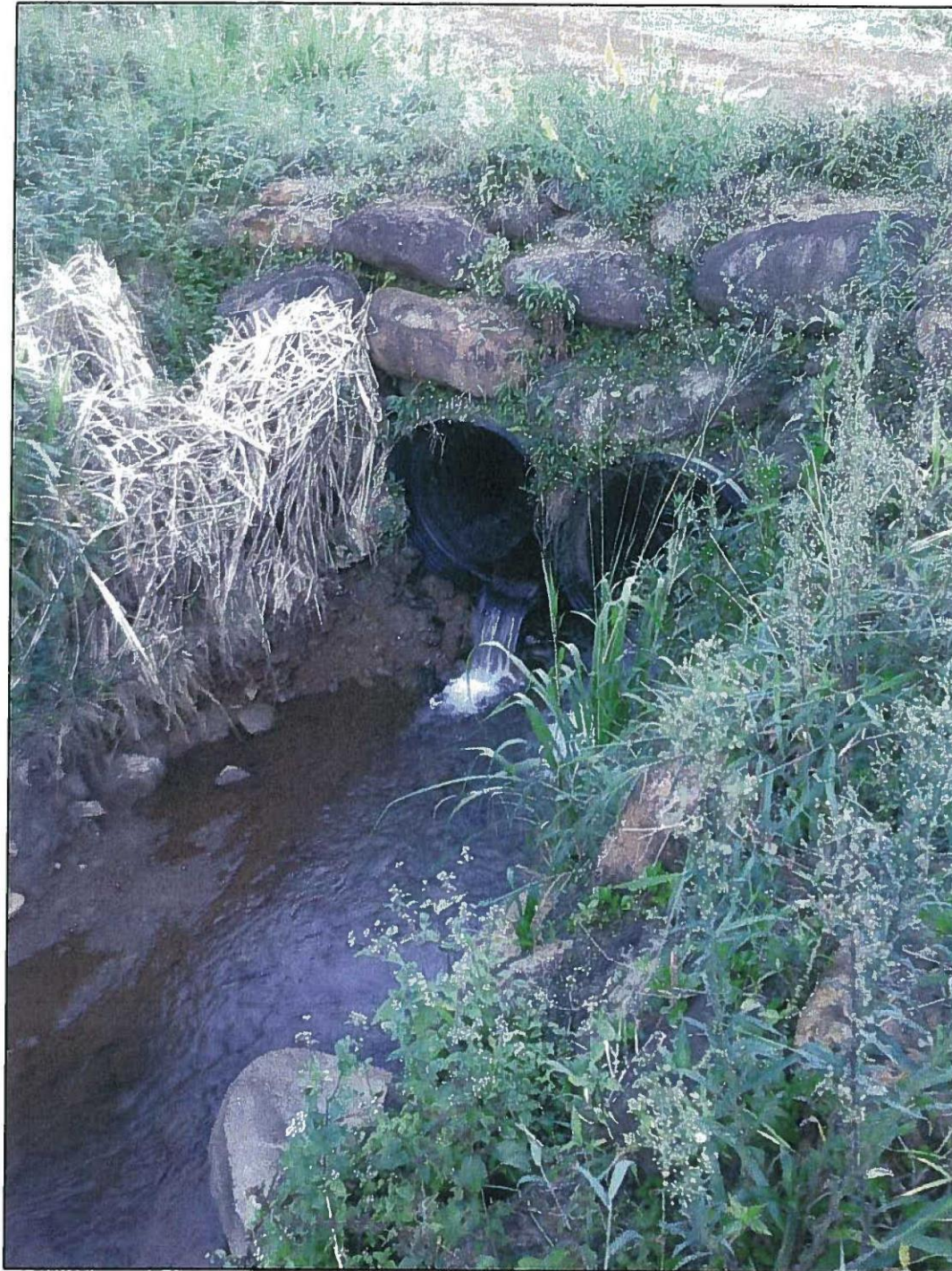
New culvert construction No. 1. Photo dated 2017.





Rainer W. Bock, Trustee  
August 23, 2017  
Page 5

New culvert construction No. 2. Photo dated 2017.



**EXHIBIT 3**

























COUNTY OF MAUI  
DEPARTMENT OF PLANNING  
2200 MAIN STREET, SUITE 315  
WAILUKU, HI 96793  
(808) 270-7735 FAX (808)270-7634  
email: [planning@mauicounty.gov](mailto:planning@mauicounty.gov)

RECEIVED

MAY 22 2019

COUNTY OF MAUI  
DEPT OF PLANNING  
PERMIT NO. FDP

FDP 2019/0070  
12/01/0025

**APPLICATION FOR SPECIAL FLOOD HAZARD AREA DEVELOPMENT PERMIT**

Remediation Plan for Bock Family Revocable Trust

Project Name/Owner: Rainer Werner Bock, Trustee Email: rwbockhawaii@yahoo.com  
Project Address: 830 E. Kuiaha Road TMK(s): (2)2-7-012:254  
Flood Zone(s): X Base Flood Elevation: n/a LTD\*  
Description of Construction: Remediation plan to bring East Kuiaha Stream to a more natural condition  
Year existing structure built: n/a Number of structures on property: none  
Plan Maker: Otomo Engineering, Inc. Phone No. (808)242-0032  
Address: 305 S. High St., Ste. 102; Wailuku, HI 96793 Email: stacy@otomoengineering.com

I, THE APPLICANT, CERTIFY THAT ALL STATEMENTS HEREIN AND ALL ATTACHMENTS TO THIS APPLICATION ARE, TO THE BEST OF MY KNOWLEDGE, TRUE AND ACCURATE.

Applicant:(print) Stacy A. Otomo signature Stacy A. Otomo  
Email: stacy@otomoengineering.com Phone No. (808)242-0032  
Address: 305 S. High St., Ste. 102; Wailuku, HI 96793

For structures built prior to June 1, 1981 and for properties affected by the 9/25/2009 or subsequent, FEMA flood map revisions, submit a cumulative cost worksheet to determine whether the project qualifies as a substantial improvement. If a project qualifies as a substantial improvement then the entire structure is required to be elevated to one foot above the base flood elevation or flood depth and comply with Maui County Code Chapter 19.62 Flood Hazard Areas.

Proposed elevation of the structure's lowest floor (including basement): n/a LTD\*  
V ZONES ONLY-Proposed elevation of the bottom of the lowest horizontal structural member: n/a LTD\*

Attachments (check all that apply):

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> PDF copy of ENTIRE submittal | <input checked="" type="checkbox"/> Fee (see attached table B)                         |
| <input type="checkbox"/> Cumulative Cost Worksheet               | <input type="checkbox"/> Coastal High Hazard Area Certification (V Zones)              |
| <input checked="" type="checkbox"/> Drainage Report (2 copies)   | <input type="checkbox"/> Coastal High Hazard Non-Conversion Agreement                  |
| <input type="checkbox"/> Elevation Certificate                   | <input type="checkbox"/> Conditional Letter of Map Revision (requires FEMA processing) |
| <input type="checkbox"/> Flood Hazard Area Certification         | <input type="checkbox"/> DLNR Notification of Watercourse Alteration                   |
| <input type="checkbox"/> Floodway Certification                  | <input type="checkbox"/> Floodproofing Certificate (non-residential structures)        |
| <input checked="" type="checkbox"/> No-Rise Analysis             | <input checked="" type="checkbox"/> Grading and Site Plans (2 copies)                  |
| <input type="checkbox"/> Wetlands permits obtained               | <input type="checkbox"/> Market Value Calculations or Appraisals                       |
| <input type="checkbox"/> Other                                   | <input type="checkbox"/> Reasonably Safe from Flooding Certification (based on fill)   |

Type of Development:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> New construction or         | <input checked="" type="checkbox"/> Addition/alteration | <input type="checkbox"/> Repetitive loss property |
| <input type="checkbox"/> Substantial improvement     | <input type="checkbox"/> Basement included              | <input type="checkbox"/> Subdivision              |
| <input type="checkbox"/> Non-substantial improvement | <input checked="" type="checkbox"/> Grading/paving      | <input type="checkbox"/> Wall                     |
| <input type="checkbox"/> Non-structural alteration   | <input type="checkbox"/> Material/equipment storage     | <input type="checkbox"/> Watercourse alteration   |
| <input type="checkbox"/> Other                       |   |   |

ZAED Use only:

Comments: \_\_\_\_\_  
Permit Issuance Date: 0/31/2019 By: Ana Lillis  
BPC or SMX \_\_\_\_\_ for William Spence  
Application No. N/A Planning Director

\*LOCAL TIDAL DATUM

RECEIVED  
COMMISSION ON WATER  
RESOURCE MANAGEMENT  
2020 JUL 10 AM 10:40



# Federal Emergency Management Agency

Washington, D.C. 20472

## CERTIFICATION OF A "NO-RISE" DETERMINATION FOR A PROPOSED FLOODWAY DEVELOPMENT

Maui  
Community Name

Bock Remediation Plan  
Development Name

TMK: (2)2-7-012:254  
Lot/Property Designation

Bock Family Revocable Trust  
Property Owner

I hereby certify that the proposed remedial measures, in combination with the property development designated above, will result in no loss of flow conveyance during the occurrence of the 1 percent annual chance of exceedence (100-year flood) discharge.

I further certify that the data submitted herewith in support of this request are accurate to the best of my knowledge, that the analyses have been performed correctly and in accordance with sound engineering practice, and that the proposed structural works are designed in accordance with sound engineering practice.

May 7, 2019  
Date

Stacy A. Otomo  
Registered Professional Engineer



*Stacy A. Otomo*





DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT  
FORT SHAFTER, HAWAII 96858-5440

RECEIVED  
COMMISSION ON WATER  
RESOURCE MANAGEMENT  
2020 JUL 10 AM 10:40

February 5, 2020

SUBJECT: Nationwide Permit Verification for Bock, Culvert Scour Pad, Haiku, Maui DA File No. POH-2019-00213

Mr. Rainer Bock  
P.O. Box 681  
Haiku, Hawaii 96708

Dear Mr. Bock:

The Honolulu District, U.S. Army Corps of Engineers (Corps), Regulatory Branch has completed review of your Pre-Construction Notification dated October 28, 2019 requesting authorization for the construction of riprap scour pad at 20.9005555°, - 156.30083333°, 830 E. Kuiaha Road, TMK (2) 2-7-012:254, Haiku, Island of Maui, Hawaii. Please reference Department of the Army (DA) file number POH-2019-00213 in any future correspondence related to this permit.

This letter verifies your activity complies with the terms and conditions of Nationwide Permit (NWP) #3, (Maintenance) issued on March 19, 2017 (82 FR 1860, January 6, 2017). This NWP verification letter is being issued pursuant to Section 404 of the Clean Water Act for the discharge of dredged and/or fill material into waters of the U.S. You are authorized to conduct the following work as described below and as depicted on the enclosed drawings (Enclosure 1):

- The maintenance of an existing culvert crossing with the placement of 2 cubic yards of riprap for a 10-foot wide by 10-foot long riprap scour pad downstream of the culvert.

In order for this NWP authorization to be valid, you must ensure that the work is performed in accordance with the *Nationwide Permit General Conditions* and the *Honolulu District Regional Conditions* (Enclosure 2) and the following project-specific Special Conditions:

a. Notification. You must notify this office of your intent to proceed with the authorized work in waters of the U.S. a minimum of seven (7) days prior to commencement. Your notification should be transmitted via email or phone using the contact information provided in this Nationwide Permit verification letter.

b. Water Quality Certification. You are not authorized to proceed with the proposed activity until you have received a water quality certification (WQC), or waiver, in accordance with Section 401 of the Clean Water Act from the State of Hawaii Department of Health, Clean Water Branch. Before commencing work in waters of the U.S. and within 14 days from receipt, you must submit a copy of the 401 WQC, or waiver, to this office at the address on the letterhead or via email to: [CEPOH-RO@usace.army.mil](mailto:CEPOH-RO@usace.army.mil). You must reference DA File

- 2 -

Number POH-2019-00213 with your submission. You must abide by and implement the 401 WQC conditions.

Verification of your project under this NWP is valid until **March 19, 2022** unless this NWP is modified, reissued, or revoked prior to that date. It is incumbent upon you to remain informed of changes to the NWPs. If the Corps modifies, reissues, or revokes any NWP at an earlier date, we will issue a public notice announcing the changes. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of the Rivers and Harbors Act and subsequent enforcement action. This authorization does not relieve you of the responsibility to obtain any other federal, state, and/or local authorizations required by law.

Finally, General Condition #30 requires a signed certification be submitted to this office upon completion of work. Therefore, please sign, date and return the enclosed *Compliance Certification* form (Enclosure 3) within 7 days of completion of work to the email address specified below or to the mailing address indicated on the letterhead above.

Thank you for your cooperation with the Honolulu District Regulatory Program. Should you have any questions related to this provisional permit, please contact me at 808-835-4310 or via e-mail at [Vera.B.Koskelo@usace.army.mil](mailto:Vera.B.Koskelo@usace.army.mil). You are encouraged to provide comments on your experience with the Honolulu District Regulatory Branch by accessing our web-based customer survey form at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=136:4:0](http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0).

Sincerely,

KOSKELO.VERA  
.B.1370139110  
Vera B. Koskelo  
Project Manager, Regulatory Branch

Digitally signed by  
KOSKELO.VERA.B.1370139110  
Date: 2020.02.05 14:10:24  
-10'00'

Enclosures

cc: State of Hawaii Department of Health, Clean Water Branch (DOH-CWB)  
State of Hawaii DBEDT Office of Planning (John Nakagawa)

DAVID Y. IGE  
GOVERNOR OF HAWAII

RECEIVED  
COMMISSION ON WATER  
RESOURCE MANAGEMENT  
2020 JUL 10 AM 10:48



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. BOX 3378  
HONOLULU, HI 96801-3378

BRUCE S. ANDERSON, Ph.D.  
DIRECTOR OF HEALTH

In reply, please refer to:  
EMD/CWB

WQC1077.FNL.20

June 8, 2020

Mr. Rainer Bock  
Trustee, Manager  
Rainer Bock  
P.O. Box 681  
Haiku, Hawaii 96708

Dear Mr. Bock:

**Subject: Section 401 Water Quality Certification (WQC) for  
Remediation Plan for Bock Family Revocable Trust  
Island of Maui, Hawaii  
File No. WQC1077/File No. POH-2019-00213**

In accordance with the provision of the Clean Water Act, as amended (33 U.S.C. 1251 et. seq.; the "CWA"); Hawaii Revised Statutes (HRS) Chapters 91, 92, and 342D; Part 121 of Title 40, Code of Federal Regulations (CFR); and Hawaii Administrative Rules (HAR) Chapter 11-54; the Department of Health (DOH), Clean Water Branch (CWB) issues this Section 401 WQC for your project based on your Section 401 WQC application (herein after referred to as the "Application"), dated June 4, 2020 (received on June 5, 2020). The activities associated with the subject project, (herein after referred to as the "Activities") will be authorized under the U.S. Department of the Army, Pacific Ocean Division, Honolulu District Office permit, File No. **POH-2019-00213**.

1. The DOH has examined the Application with respect to water quality considerations and asserts that when all requirements and conditions contained in this Section 401 WQC are fully complied with, there is reasonable assurance that the water pollutant discharges resulting from the Activities will be conducted in a manner which will not violate the applicable State water quality standards (WQS) and will comply with the applicable provisions of the CWA, Sections 301, 302, 303, 306, and 307.
2. This Section 401 WQC becomes effective on **June 8, 2020**, and shall expire on midnight **June 7, 2022**. The DOH may, upon written request from the Applicant who is the Owner, administratively extend the expiration date of this Section 401 WQC. The decision by the DOH to allow an administrative

**EXHIBIT 14**

Mr. Rainer Bock  
June 8, 2020  
Page 2

WQC1077.FNL.20

extension will be made on a case-by-case basis taking into account compliance history and impact to receiving State water quality.

3. This Section 401 WQC may be revoked when:
  - a. The DOH determines that any portion of the Activities are violating existing State WQS or any condition in this Section 401 WQC and the Applicant fails to cease the violation within seven (7) calendar days of notice by DOH letter.
  - b. New State WQS are subsequently established before the Activities are completed, the DOH determines that any portion of the Activities are violating the new State WQS, and the Applicant fails to cease the violation within 180 calendar days of notice by DOH letter.

These actions shall not preclude the DOH from taking appropriate enforcement action authorized by law.

4. The following conditions must be complied with by the Applicant's organization and its contractor(s) when conducting the Activity:
  - a. Orally report any of the following when the Applicant or its duly authorized representative becomes aware of the circumstances:
    - i. Violation of the basic water quality criteria as specified in HAR Section 11-54-4;
    - ii. Discharge or non-compliance with basic water quality criteria which may endanger health or the environment; and/or
    - iii. Unanticipated and/or unauthorized discharge including spills.

The Applicant shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

- b. Provide a written report within five days of the time the Applicant or its duly authorized representative becomes aware of the circumstance(s) reported in Item 4a. The written report shall include the following:



Mr. Rainer Bock  
June 8, 2020  
Page 3

WQC1077.FNL.20

- i. Description of the non-compliance, unanticipated bypass, or upset and its cause;
- ii. Period of non-compliance, unanticipated bypass, or upset including exact dates and times;
- iii. Estimated time the non-compliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
- iv. Steps taken or planned to reduce, eliminate, and prevent the occurrence of the non-compliance, unanticipated bypass, or upset.

Written reports must be submitted via the e-Permitting portal at:  
<https://eha-cloud.doh.hawaii.gov/epermit/>.

- c. Provide schedules and notifications as specified in the Application. The following statement must accompany all submittals:

**"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."**

- d. Comply with all requirements, specifications, schedules, procedures, drawings, and other information contained in the Application.
- e. Maintain a copy of the Application and this Section 401 WQC at the project site or in the nearby field office.
- f. Maintain records at the project site or in the nearby field office demonstrating that all Section 401 WQC requirements have been fully complied with.
- g. Ensure that all Activities are conducted in a manner that will comply with the "Basic Water Quality Criteria Applicable to All Waters" as specified in HAR §11-54-4.

Mr. Rainer Bock  
June 8, 2020  
Page 4

WQC1077.FNL.20

- h. Ensure that all material(s) placed or to be placed in State waters are free of waste metal products, organic materials, debris, and any pollutants at toxic or potentially hazardous concentrations to aquatic life as specified in HAR §11-54-4(c).
- i. Ensure that the Activities will not interfere or become injurious to any designated uses and/or existing uses of the receiving State water.
- j. Properly implement and maintain all water pollution control measures and Best Management Practices specified in the Application. All water pollution control measures must be in place and functional before any Activities begin and shall not be removed until the Activities are completed and the disturbed area water quality has returned to its pre-construction condition or better. All temporary water pollution control measures and temporary structures shall be removed following the completion of the Activities and upon verification that the affected quality of the water column has been returned/restored to the pre-project condition.
- k. Immediately report to the DOH-CWB by e-mail at: [cleanwaterbranch@doh.hawaii.gov](mailto:cleanwaterbranch@doh.hawaii.gov) and at telephone number (808) 586-4309 any spill(s) or other contamination(s) that occurs at the project site at any time following the commencement of the Activities.
- l. Ensure that debris is contained and prevented from entering or reentering State waters. All debris shall be properly removed from the aquatic environment and disposed of at an upland State and County approved site. Before the start of the Activities, a Solid Waste Disclosure Form for Construction Sites shall be completed and returned to the DOH's Solid and Hazardous Waste Branch, Office of Solid Waste Management. No construction material or construction-related materials shall be stockpiled in the aquatic environment or stored or placed in ways that will disturb the aquatic environment. The Solid Waste Disclosure Form for Construction Sites is available online at: <http://health.hawaii.gov/shwb/files/2013/06/swdiscformnov2008.pdf>.
- m. There shall be no discharge of water from the washout and cleanout of stucco, paint, concrete, form release oils, curing compounds, and other construction materials.
- n. Properly collect and remove all side cast material and dispose at an upland State and County approved site.

Mr. Rainer Bock  
June 8, 2020  
Page 6

WQC1077.FNL.20

If you have any questions, please contact Mr. Darryl Lum of the Engineering Section, CWB, at (808) 586-4309.

Sincerely,



MARIANNE ROSSIO, P.E., ACTING CHIEF  
Environmental Management Division

DCL:ak

- c: Regulatory Office, POH, COE  
[via e-mail [cepoh-ro@usace.army.mil](mailto:cepoh-ro@usace.army.mil) only]  
Ms. Linda Speerstra, POH [via e-mail [linda.speerstra@usace.army.mil](mailto:linda.speerstra@usace.army.mil) only]  
Ms. Vera Koskelo, POH [via e-mail [vera.b.koskelo@usace.army.mil](mailto:vera.b.koskelo@usace.army.mil) only]  
Mr. John Nakagawa, CZM Program, Office of Planning, DBEDT  
[via e-mail [john.d.nakagawa@hawaii.gov](mailto:john.d.nakagawa@hawaii.gov) only]  
Mr. Rainer Bock [via e-mail [rwbockhawaii@yahoo.com](mailto:rwbockhawaii@yahoo.com)]  
Mr. Paul Mancini [via e-mail [prm@mrwlaw.com](mailto:prm@mrwlaw.com) only]  
Mr. Stacy Otomo, Otomo Engineering  
[via e-mail [stacy@otomoengineering.com](mailto:stacy@otomoengineering.com) only]

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.



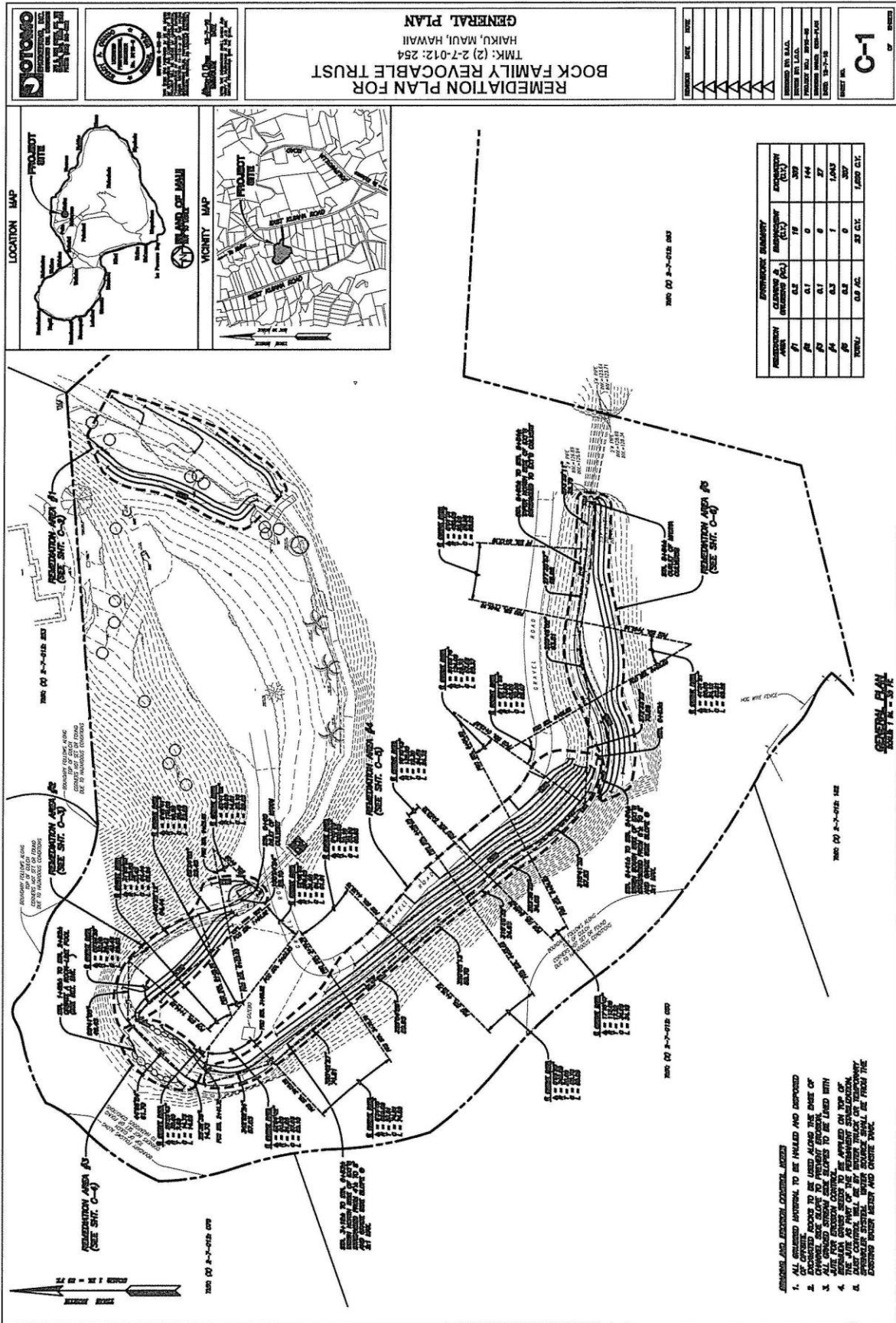
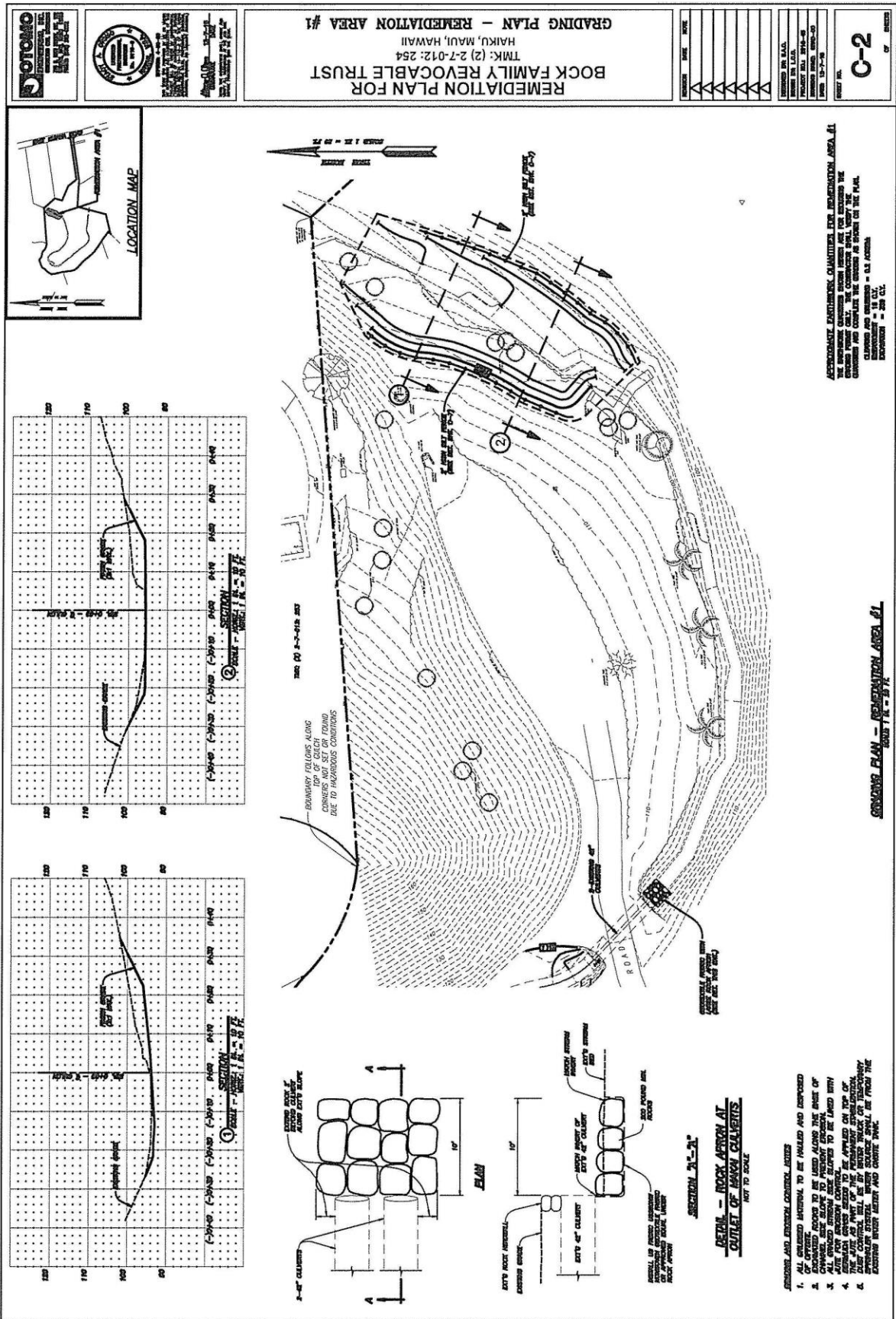
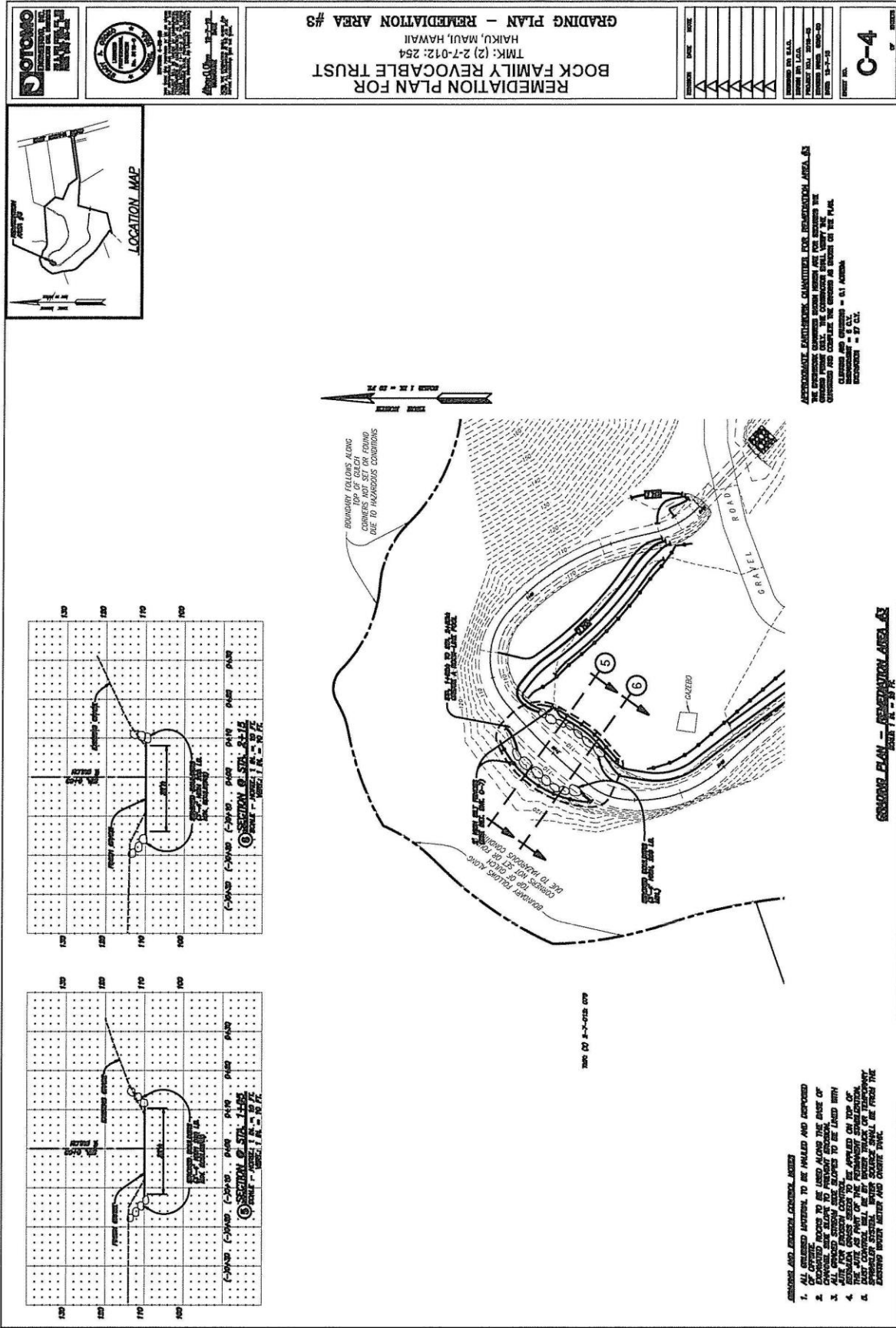


EXHIBIT 16









**REMEDATION PLAN FOR BOK FAMILIY REVOCABLE TRUST**  
 TMK: (2) 2-7-012: 254  
 HAIKU, MAUI, HAWAII

**GRADING PLAN - REMEDIATION AREA #3**

DATE	NOV 17 2020
DRAWN BY	TRACIE KAWANOE
CHECKED BY	TRACIE KAWANOE
SCALE	AS SHOWN

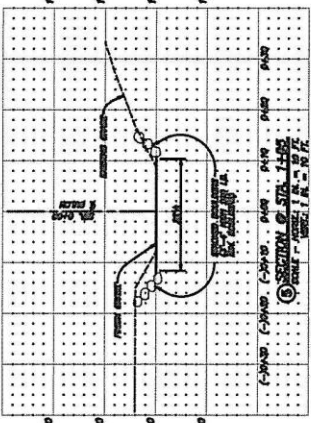
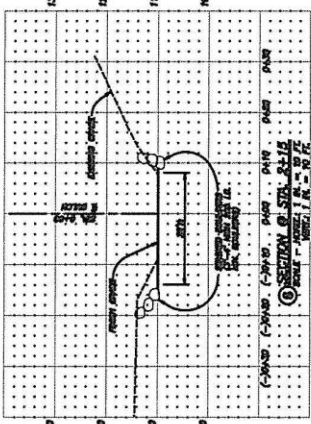
REVISION NO.	
DATE	
DESCRIPTION	
BY	
CHECKED BY	

**C-4**

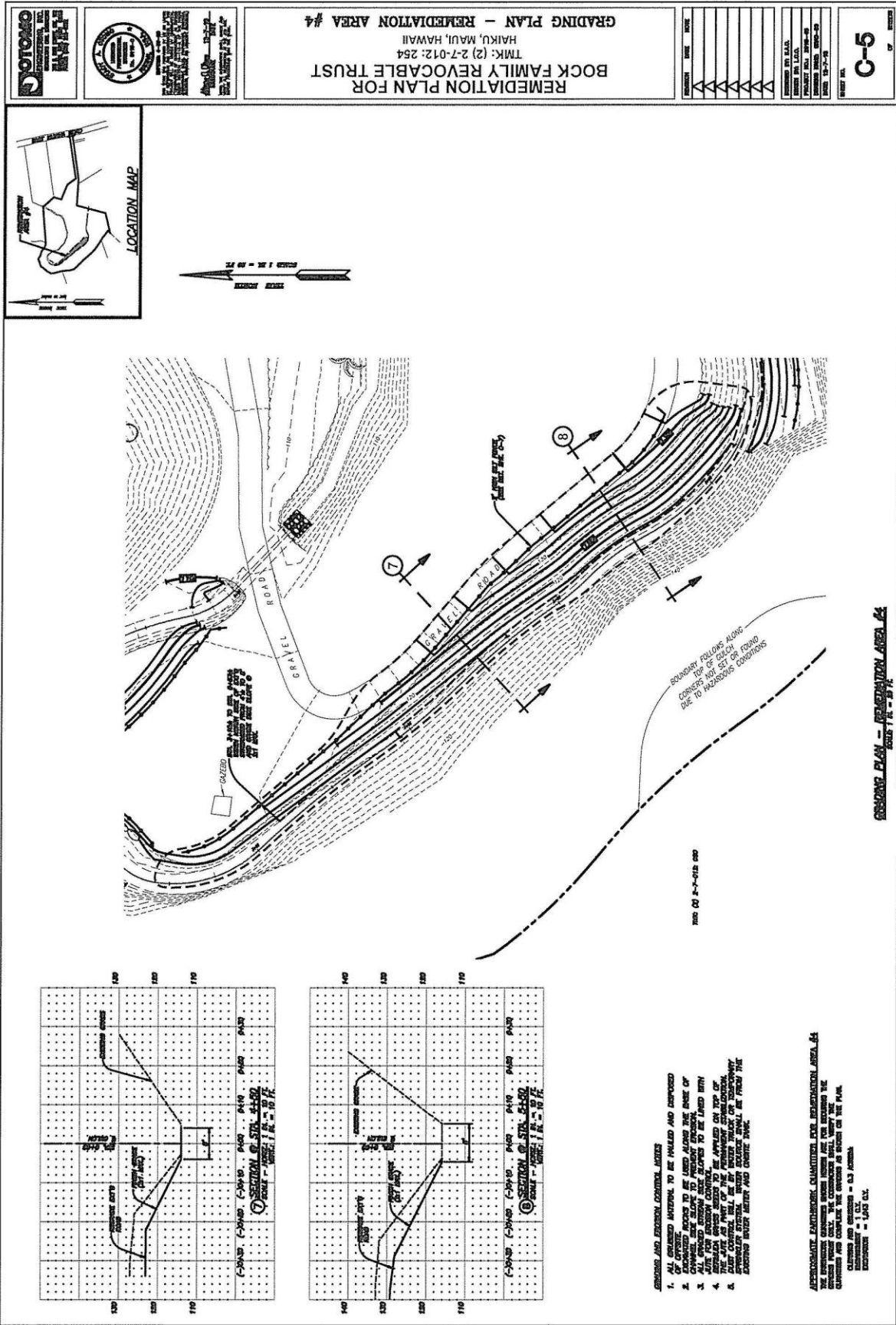
**LOCATION MAP**  
 Shows the site location within the context of the surrounding area, with a north arrow and scale of 1" = 100'.

**REMEDATION PLAN - REMEDIATION AREA #3**  
 SCALE: 1" = 20' H.K.

**APPROXIMATE PROPOSED QUANTITIES FOR REMEDIATION AREA #3**  
 THE EXISTING CHANNEL SECTIONS ARE FOR THE REMEDIATION AREA #3. THE QUANTITIES ARE APPROXIMATE AND SHOULD BE VERIFIED BY THE CLIENT AND ENGINEER = AS NOTED.  
 EXISTING CHANNEL - 5,000 CY  
 PROPOSED CHANNEL - 10,000 CY



- REVISIONS AND PROPOSED CHANNEL NOTES**
1. ALL EXISTING MATERIAL TO BE MOVED AND EXPOSED
  2. ALL EXISTING CHANNEL SECTIONS ARE FOR THE REMEDIATION AREA #3. THE QUANTITIES ARE APPROXIMATE AND SHOULD BE VERIFIED BY THE CLIENT AND ENGINEER = AS NOTED.
  3. ALL EXISTING CHANNEL SECTIONS ARE FOR THE REMEDIATION AREA #3. THE QUANTITIES ARE APPROXIMATE AND SHOULD BE VERIFIED BY THE CLIENT AND ENGINEER = AS NOTED.
  4. EXISTING CHANNEL SECTIONS TO BE APPLIED ON TOP OF EXISTING CHANNEL.
  5. EXISTING CHANNEL SHALL BE IN EXISTENT TRACK OF EXISTING CHANNEL.
  6. EXISTING CHANNEL SHALL BE IN EXISTENT TRACK OF EXISTING CHANNEL.



**NOTES**

1. ALL GRADING MATERIAL TO BE PLACED AND COMPACTED IN PLACE.

2. CHANNEL BANK SLOPE TO BE MAINTAINED THROUGHOUT.

3. ALL GRADING MATERIAL TO BE PLACED AND COMPACTED TO THE PROPOSED BENCH.

4. REMEDIATION WORK SHALL BE APPLIED ON TOP OF EXISTING GRASS AND SOIL.

5. PROPOSED CHANNEL BANK SHALL BE MAINTAINED FROM THE EXISTING WATER BENCH AND CENTER LINE.

**LOCATION MAP**

1/4" = 10' HORIZ. SCALE  
1" = 10' VERT. SCALE

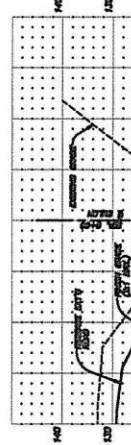
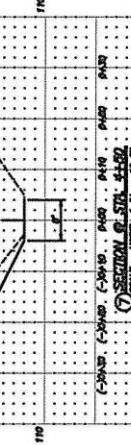
**REMEDIATION PLAN FOR BOCK FAMILY REVOCABLE TRUST**  
TMK: (2) 2-7-012: 254  
HAIKU, MAUI, HAWAII

**GRADING PLAN - REMEDIATION AREA #4**

NO.	DATE	REVISION

DESIGNED BY: B.A.L.  
CHECKED BY: L.L.L.  
DRAWN BY: J.B.  
SCALE: 1" = 10' H.  
DATE: 11-17-20

PROJECT NO. **C-5**



BOUNDARY FLOODING ALONG TOP OF SLOPE CONCEPTS SET FOR FLOODING DUE TO IRREGULAR CONDITIONS

DATE: 03-27-2020 09:00

**GRADING PLAN - REMEDIATION AREA #4**  
SCALE: 1" = 10' H.

**APPROXIMATE FERTILIZER QUANTITIES FOR REMEDIATION AREA #4**

THE FOLLOWING QUANTITIES WERE DETERMINED FOR THE REMEDIATION WORK AND ARE FOR INFORMATION ONLY. THESE QUANTITIES ARE BASED ON THE ASSUMPTIONS AND CONDITIONS SET FORTH IN THE PLAN.

CHANNEL AND GRASSING - 0.3 ACRE  
REVEGETATION - 1.0 ACRE







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).

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

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 offshore 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.