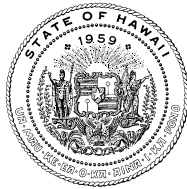


JOSH GREEN, M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



DEAN MINAKAMI  
EXECUTIVE DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM  
**HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**

677 QUEEN STREET, SUITE 300  
HONOLULU, HAWAII 96813  
PHONE: (808) 587-0620  
FAX: (808) 587-0600

IN REPLY REFER TO:  
**23:PECB/90**

December 21, 2023

Ms. Mary Alice Evans, Interim Director  
Office of Planning and Sustainable Development  
P.O. Box 2359  
Honolulu, Hawaii 96804-2359

Dear Ms. Evans:

Subject: Determination of No Additional Environmental Review to Satisfy Chapter 343, Hawaii Revised Statutes for the Kaulana Mahina Apartments Drainage Improvements  
10 Piha Poepoe Way; Wailuku, Maui  
Tax Map Key (2) 3-5-001:064

Pursuant to Section 11-200.1-11, Hawaii Administrative Rules (HAR), this letter serves as notification and a request for publication in the next issue of *The Environmental Notice* that the Hawaii Housing Finance and Development Corporation (HHFDC) has determined no additional environmental review is required for the subject Project.

The Kaulana Mahina Apartments Project (Project, and formerly known as the Wailuku Apartment Rental Housing Project) is under construction. In 2018, the *Wailuku Apartment Rental Housing Project Final Environmental Assessment* (FEA) was published as a Finding of No Significant Impact (FONSI) with HHFDC as the approving agency. It was recently determined that constructing an earthen levee or concrete flood barrier as disclosed in the FEA/FONSI would not provide sufficient capacity to convey stormwater flows downstream without adversely affecting flooding characteristics along Waiale Road. Instead, a concrete-lined channel with expanded capacity design is now proposed to meet the needs of the Project.

After careful analysis as described in the attachment, HHFDC is invoking Section 11-200.1-11, Hawaii Administrative Rules, that the FEA/FONSI is applicable to the drainage improvements component of the Project and that additional environmental review is not required.

Sincerely,

Delmond J.H. Won  
Executive Assistant

Attachment

# **DRAINAGE IMPROVEMENTS AT KAULANA MAHINA APARTMENTS DETERMINATION OF NO ADDITIONAL ENVIRONMENTAL REVIEW NOTICE**

The Kaulana Mahina Apartments Project (Project, formerly known as the Wailuku Apartment Rental Housing Project) situated at Tax Map Key (2) 3-5-001:064, is currently under construction. The *Wailuku Apartment Rental Housing Project Final Environmental Assessment*<sup>1</sup> (FEA) published as a Finding of No Significant Impact (FONSI) in the July 23, 2018, edition of the Environmental Review Program's *The Environmental Notice*. The trigger for preparation of the EA was the use of county lands for utility and roadway improvements. The approving agency for the EA was the Hawaii Housing Finance and Development Corporation (HHFDC).

The Project was recommended for a 201H approval by HHFDC and subsequently approved through Resolution No. 18-187 by the Maui County Council pursuant to Section 201H-38, Hawaii Revised Statutes (HRS). The 201H approval granted amendments to or waivers of certain requirements relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of dwellings thereon.

The Project consists of 195 affordable units and 129 market rate units located within nine three-story buildings consisting of studios, one-, two-, and three-bedroom units with floor areas ranging between 400 square feet and 950 square feet. A total of 661 parking stalls are included. The Project includes a community center/leasing office building, swimming pool, barbeque area, and four children play areas.

Access to the property is proposed through a new access driveway along Waiale Road and a new access drive via a cross intersection with the Kuikahi Drive entry to the Kehalani Village Center.

## **AS PROPOSED IN THE FEA/FONSI (2018)**

Drainage improvements proposed for the Project, as described in the FEA/FONSI, included improving a natural drainageway between Honoapiilani Highway and Waiale Road, along the property's southern border. See Exhibit A. Improvements to this mauka to makai drainageway were described as follows in the FEA/FONSI:

*The PER noted that the potential flooding hazard from the under-sized natural drainageway will be mitigated either by (1) improving the drainageway to increase its capacity or (2) constructing an earthen levee or concrete flood barrier (wall) between the drainageway and apartment complex to confine stormflows to the gully. (FEA/FONSI, page 65)*

The Preliminary Engineering Report (PER), included as Appendix B of the FEA/FONSI, further notes:

*The entire increase in peak storm runoff attributable to development of the project site will be directed to the Waiale Detention basin which, having already been designed and*

---

<sup>1</sup> [files.hawaii.gov/dbedt/erp/EA\\_EIS\\_Library/2018-07-23-MA-FEA-Wailuku-Apartment-Rental-Housing.pdf](https://files.hawaii.gov/dbedt/erp/EA_EIS_Library/2018-07-23-MA-FEA-Wailuku-Apartment-Rental-Housing.pdf)

*constructed to accommodate the post-development runoff from TMK 3-5-001: 064 (the Wailuku Apartments project site), will fully mitigate this increase in peak flow. (FEA/FONSI, Appendix B)*

### **CURRENT PLAN (2023)**

At the request of the County of Maui, Department of Public Works (DPW), a more recent drainage analysis was prepared by Warren S. Unemori Engineering, Inc. This analysis indicates that constructing an earthen levee or concrete flood barrier (wall) between the drainageway and apartment complex to confine stormflows to the gully does not provide sufficient capacity to convey stormwater flows downstream without adversely affecting flooding characteristics along Waiale Road. DPW requested that improving the drainageway to increase capacity be examined as a possible engineering alternative.

According to the Drainage Report (Revised 2023), improving the drainageway to increase its capacity represents the technically feasible engineering alternative to prevent adverse downstream flooding impacts. The proposed improvements include the construction of a combination of a concrete channel along a portion of the natural drainageway and earthen levee for the rest.

The new drainage system will increase water flow capacity by 610 cubic feet per second (cfs) to 1,450 cfs. The approximate limits of the partially improved drainageway are shown in Exhibit B and Exhibit C. The drainage improvement typical sections are shown in Exhibit D. The concrete channel will be 350 feet in length with a maximum width of 22 feet and maximum depth of 7 feet. Excavation of 900 cubic yards will be required. The concrete channel will limit inundation, provide efficient flow conveyance, have lower maintenance requirements, and prevent channel erosion.

The need for pursuing the improved drainageway was reviewed and approved by DPW. By Memorandum of Understanding (MOU) dated August 8, 2022 between BIT WAILUKU LLC, which includes Wailuku APT LLC (formerly known as Legacy Wailuku LLC, who was the Applicant for the EA), and Maui County, the County agreed to obtain funding for the drainage channel improvements, as well as all permits and approvals needed for the construction of the drainage channel improvements. For their part, BIT WAILUKU LLC agreed to prepare engineering design and construction documents for the drainage channel improvements and to grant an easement to Maui County for the lands over which the drainage channel improvements are to be constructed. See Exhibit E.

By letter dated September 6, 2023, DPW, Engineering Division, confirmed that the Wailuku Apartments Drainage Channel Improvements is a DPW Capital Improvement Program (CIP) project (DPW Job No. 23-40). The use of county funds for the drainage improvements falls within the same EA trigger category that was applicable for the original project, which is: the proposed use of state or county lands or the use of state or county funds.

### **ENVIRONMENTAL ANALYSIS**

The FEA/FONSI addressed potential impacts and mitigation measures of the build-out of the entire Project, including the original drainage system. Below is a summary of relevant environmental analysis of the drainage improvements based on the changes of the original drainage system as proposed in the FEA/FONSI and the current plan:

1. *Archeological.* An Archaeological Assessment Report (AAR) was prepared by Archaeological Services Hawaii, LLC with fieldwork conducted in March 2017 for the

FEA/FONSI. The survey addressed the entire Project site. The AAR consisted of a pedestrian survey with mechanical test excavations. A total of 11 backhoe trenches were excavated across the parcel and were negative for buried cultural remains and intact dune matrices.

The site has been extensively altered through drainage improvements comprised of a retention trench on the western portion of the parcel, previous sugar cane cultivation, and past sand mining activity where no inland sand dunes appear to be in existence today. Despite these alterations, the subject vicinity is positioned within a culturally sensitive area, and near traditional burial features and a few historic period sites; a historic roadbed (Site 5963), a sugar cane flume (Site 5967), and the Kama Ditch (Site 5474). However, none of these sites are located on the Project site.

The negative results for buried cultural remains exemplify the disturbances that occurred on the site. The AAR concluded the probability of encountering *in situ* cultural remains is low; however, given the property's proximity to known, unmarked traditional sand burials, disturbed burial features and/or remnant historic properties may exist.

The Applicant has prepared an archaeological monitoring plan in compliance with the State Historic Preservation Division recommendation for archaeological monitoring.

2. *Drainage.* On the Project site along the southern boundary is a natural drainageway that originates in the West Maui Mountains. It then crosses under Honoapiilani Highway through a culvert crossing. The drainageway continues along the southern property boundary and exits through another culvert under Waiale Road where it empties into a dry overflow basin in the Waiale Reservoir.

The proposed drainage system for the Project will consist of a combination of concrete channel along a segment of the natural drainageway and the rest will be improved with an earthen levee. This proposed system will connect to the existing drainage inlet at Waiale Road and discharge to a plantation reservoir downstream of the Project site. This reservoir was formerly used for sugar cane irrigation and is currently owned and maintained by Wailuku Water Company.

There are no adverse impacts on Waiale Road and downstream properties because the Waiale Reservoir can accommodate the increased water flows.

In addition, the Applicant will obtain all required permits and comply with permit conditions to mitigate construction-related impacts.

## **CONSULTATIONS**

The Applicant has consulted with the County of Maui, Department of Public Works and the Disability and Communication Access Board on this Project.

## **DETERMINATION OF NO ADDITIONAL REVIEW**

Section 11-200.1-11, Hawaii Administrative Rules (HAR), provides that when an agency is considering whether a prior exemption, an environmental assessment (EA) with a finding of no significant impact, or an accepted environmental impact statement (EIS) satisfies Chapter 343, HRS, for a proposed action, the agency may determine that additional environmental review is not required if it meets the following three criteria:

1. The proposed action was a component of, or is substantially similar to, an action that received an exemption, an EA with a finding of no significant impact, or an accepted EIS.
2. The proposed action is anticipated to have direct, indirect, and cumulative effects similar to those analyzed in a prior exemption, an EA with a finding of no significant impact, or an accepted EIS.
3. In the case of an EA with a finding of no significant impact or an accepted EIS, the proposed action was analyzed within the range of alternatives.

The Project met the above criteria in the following ways:

1. The drainage improvement associated with the apartment project was included as a component of the proposed action assessed in the FEA/FONSI. Specifically, the FEA/FONSI noted that the undersized natural drainageway could be mitigated by improving the drainageway to increase its capacity.
2. The scope of the proposed Kaulana Mahina Project has not substantially changed and the environmental setting and probable environmental impacts, as described in the FEA/FONSI, have not substantially intensified or changed. The project location, and more specifically, the location of the drainage improvements, remain the same. There are no changes in the impacts associated with drainage channel improvements except for positive benefits accrued due to the increased drainage capacity and anticipated reduced flooding impacts along Waiale Road.
3. The improvement to the drainageway to increase its capacity was considered within the range of alternatives presented in the FEA/FONSI.

HHFDC analyzed the Project and concludes it will have the same level of environmental impacts as disclosed in the FEA/FONSI. As the approving agency for this Project, HHFDC invokes Section 11-200.1-11, HAR, that additional environmental review is not required.

**List of Exhibits:**

- Exhibit A – Drainage Improvements Map from FEA/FONSI
- Exhibit B – Inundation Limits after the Drainage Channel Improvements
- Exhibit C – Plan and Profile Drainage Channel
- Exhibit D – Drainage Details
- Exhibit E – Memorandum of Understanding between Applicant and Maui County

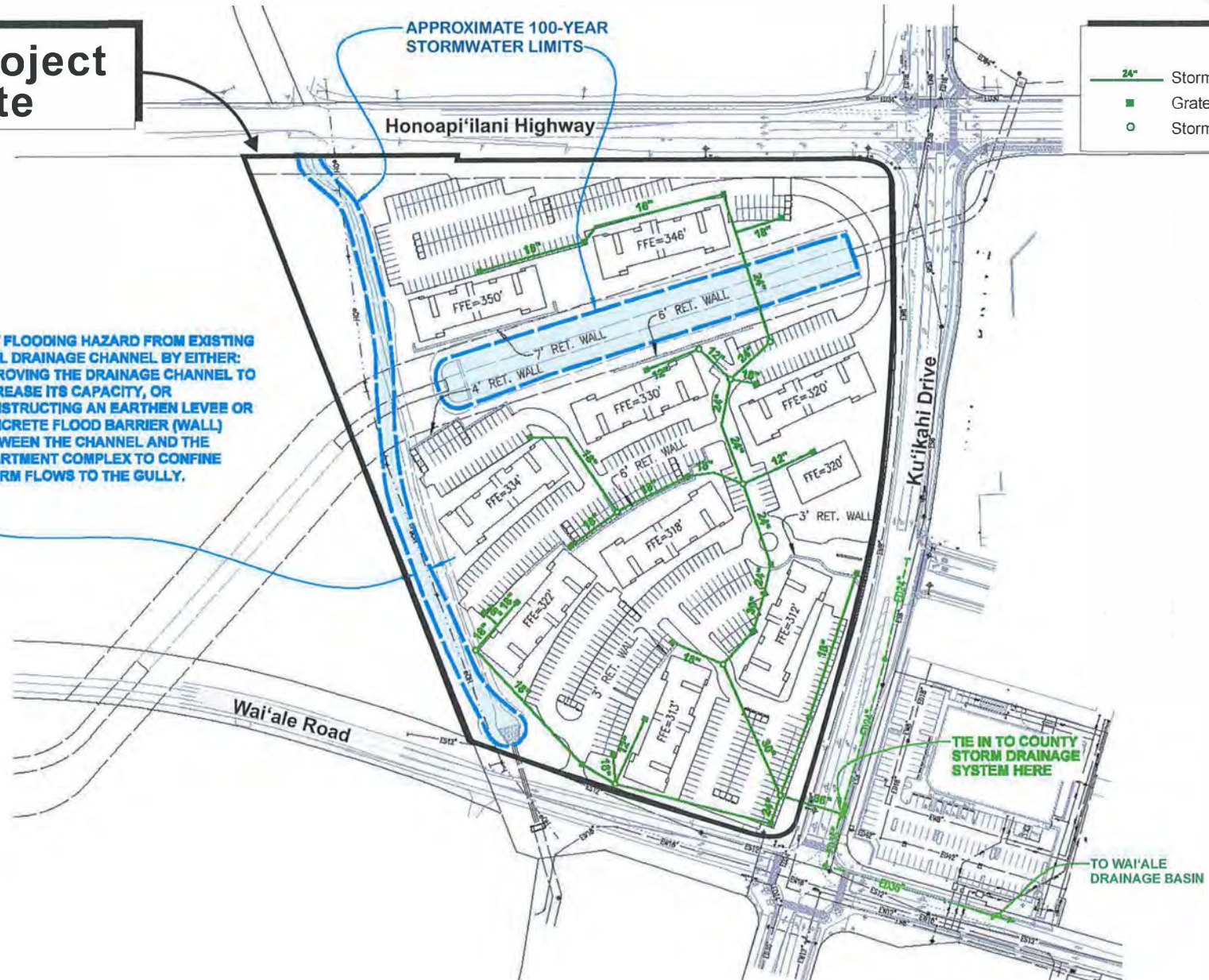
# Project Site

APPROXIMATE 100-YEAR STORMWATER LIMITS

Honoapi'ilani Highway

REMEDY FLOODING HAZARD FROM EXISTING NATURAL DRAINAGE CHANNEL BY EITHER:  
 1) IMPROVING THE DRAINAGE CHANNEL TO INCREASE ITS CAPACITY, OR  
 2) CONSTRUCTING AN EARTHEN LEVEE OR CONCRETE FLOOD BARRIER (WALL) BETWEEN THE CHANNEL AND THE APARTMENT COMPLEX TO CONFINE STORM FLOWS TO THE GULLY.

KEY	
24"	Storm Drain Pipe with Diameter
■	Grated Drop Inlet Catch Basin
○	Storm Drain Manhole



Source: Warren S. Unemori Engineering, Inc.

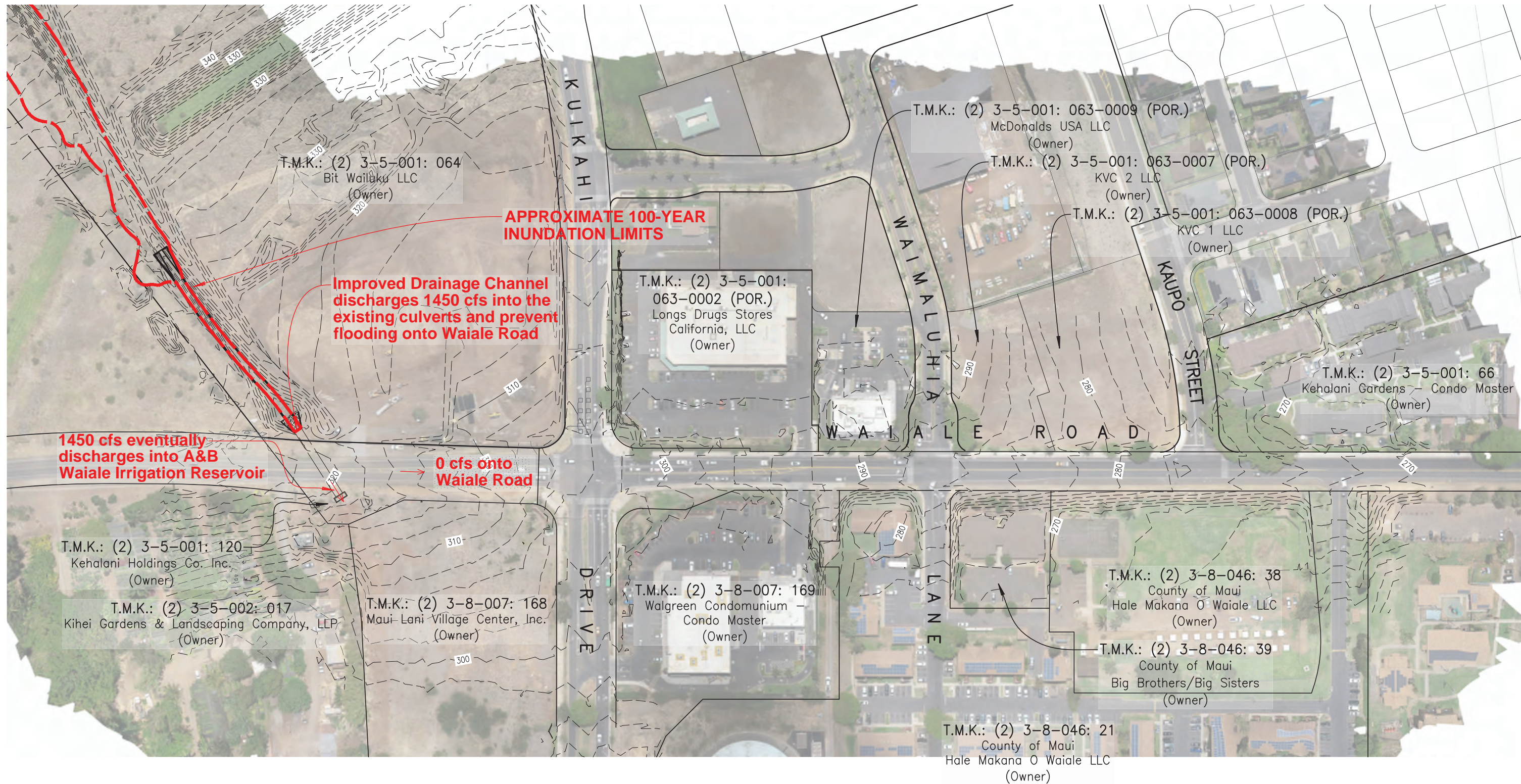
## EXHIBIT A

### Wailuku Apartment Rental Housing Project Drainage Improvements Map

NOT TO SCALE



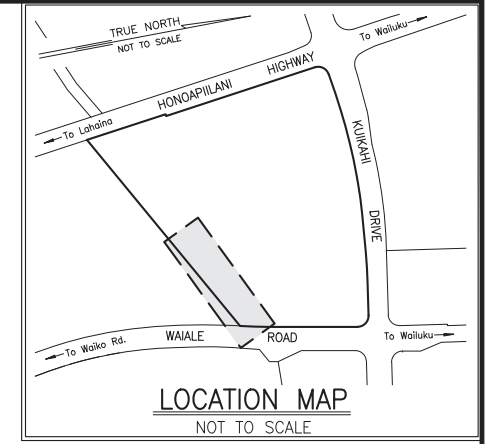
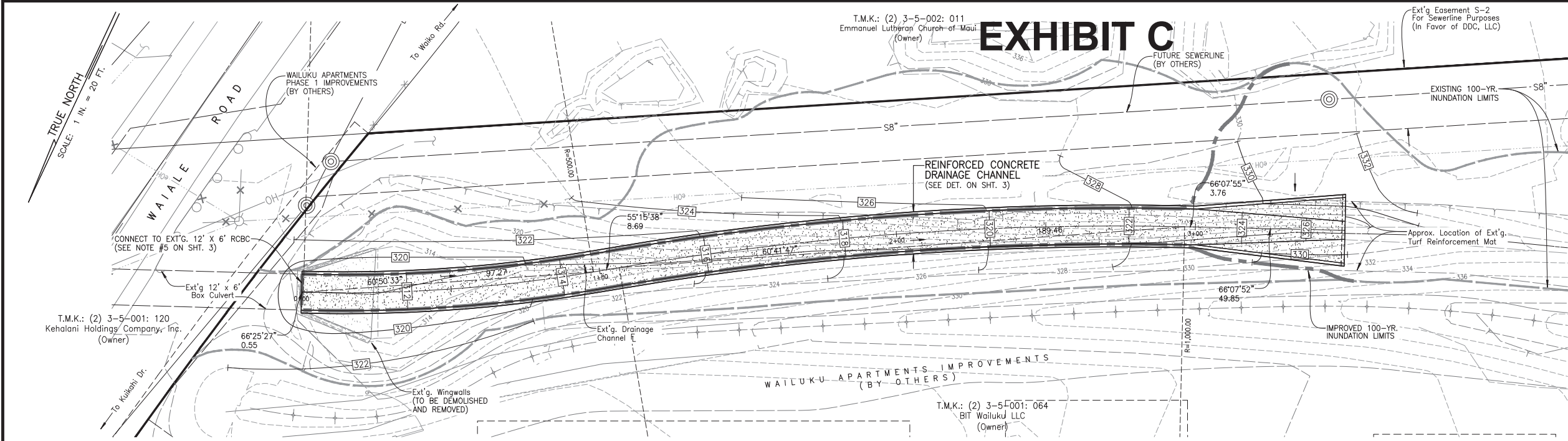
TRUE NORTH  
SCALE: 1 IN. = 150 FT.



## EXHIBIT B

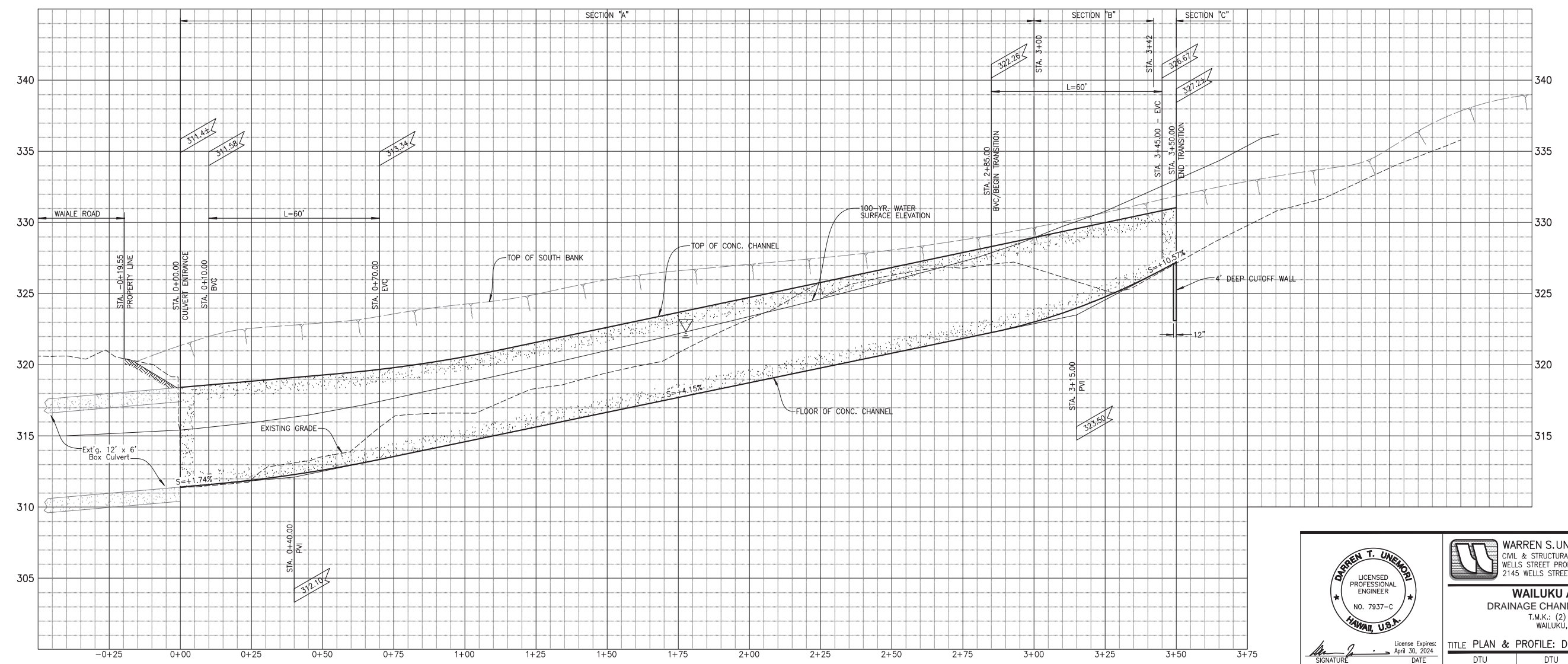
Inundation Limits after the Drainage Channel Improvements

V:\Proidata\19proj\19052\dwg\exhibits\Drainage Report\Figures\Mass Grading\Inundation Limits-00.dwg



- LEGEND:**
- EXISTING GRADE W/ ELEVATION
  - FINISH GRADE W/ ELEVATION
  - TOP OF BANK

**PLAN**  
SCALE: 1 IN. = 20 FT.



**PROFILE - DRAINAGE CHANNEL**  
SCALE: HORIZ. 1" = 20'  
VERT. 1" = 4'

**DARREN T. UNEMORI**  
LICENSED PROFESSIONAL ENGINEER  
NO. 7937-C  
HAWAII, U.S.A.

SIGNATURE: *[Signature]* DATE: April 30, 2024

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY OBSERVATION AS DEFINED IN SECTION 16-115-2 OF THE HAWAII ADMINISTRATIVE RULES FOR PROFESSIONAL ENGINEERS, ARCHITECTS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS.

**WARREN S. UNEMORI ENGINEERING, INC.**  
CIVIL & STRUCTURAL ENGINEERS/LAND SURVEYORS  
WELLS STREET PROFESSIONAL CENTER, SUITE 403  
2145 WELLS STREET, WAILUKU, MAUI, HAWAII 96793

**WAILUKU APARTMENTS**  
DRAINAGE CHANNEL IMPROVEMENTS  
T.M.K.: (2) 3-5-001: 064  
WAILUKU, MAUI, HAWAII

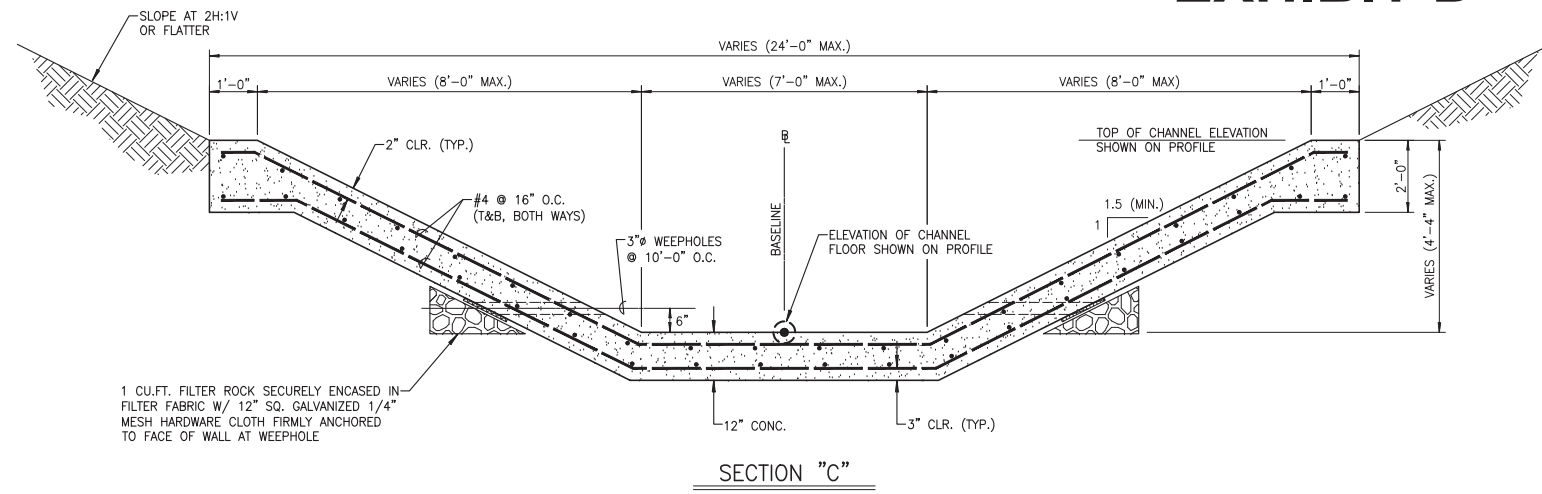
**TITLE PLAN & PROFILE: DRAINAGE CHANNEL**

DTU DESIGNED BY	DTU CHECKED BY	19052.50 JOB NUMBER	<b>2</b> SHEET
MLR DRAWN BY	DTU APPROVED BY	Nov. 15, 2022 DATE	
SCALE 1 IN. = 20 FT.		DATE OF SHEETS	

V:\Projects\19052.dwg\complan\DRAINAGE\_CHANNEL\_PL-channel-00.dwg



# EXHIBIT D

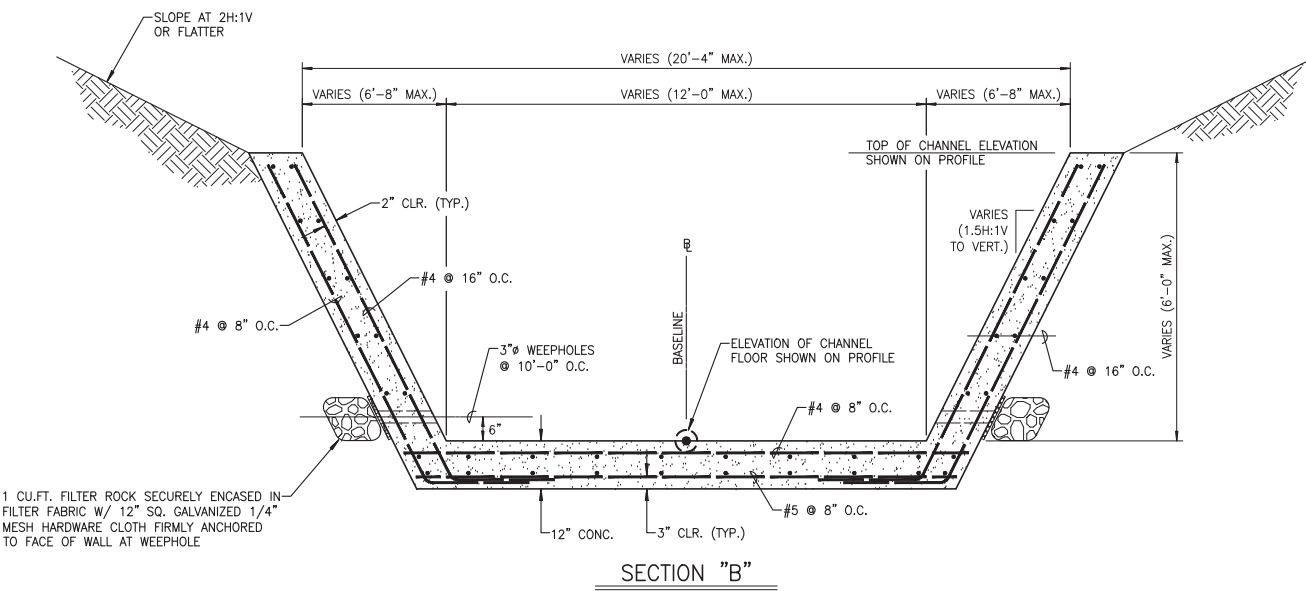


1 CU.FT. FILTER ROCK SECURELY ENCASED IN FILTER FABRIC W/ 12" SQ. GALVANIZED 1/4" MESH HARDWARE CLOTH FIRMLY ANCHORED TO FACE OF WALL AT WEEPHOLE

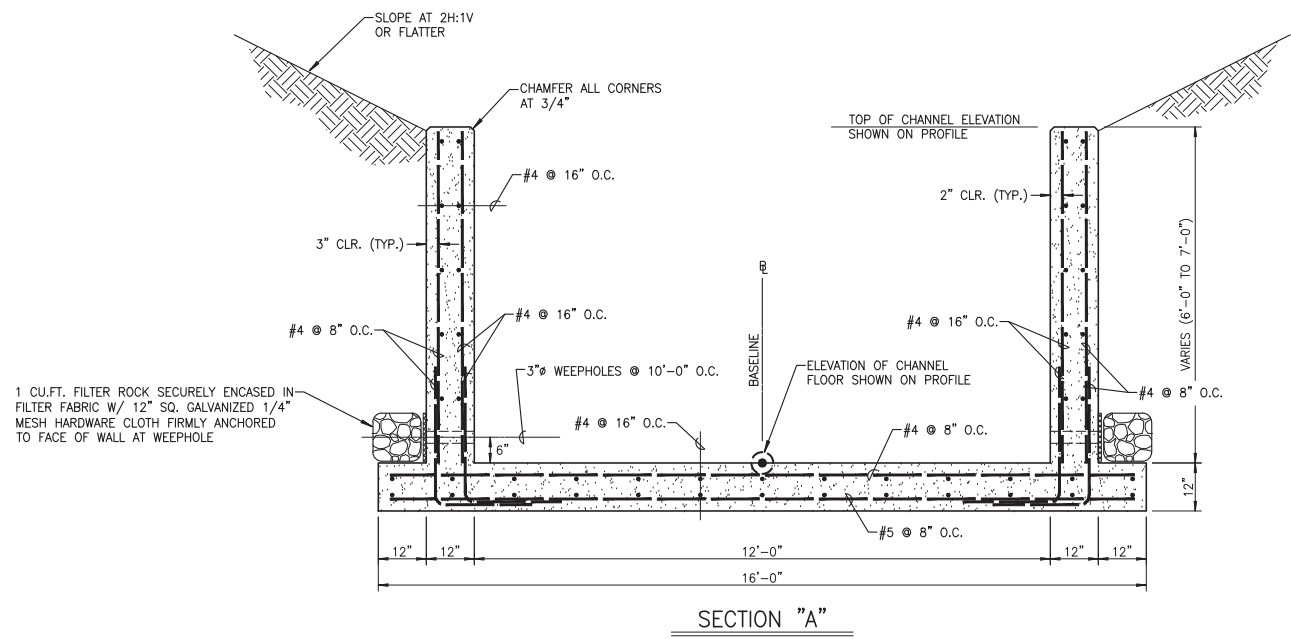
CONCRETE:  $f'_c = 4,000$  PSI  
REINFORCEMENT: ASTM A615 GRADE 60

**NOTES:**

- DRAINAGE CHANNEL GEOMETRY IS VARIABLE. REFER TO PLAN & PROFILE FOR CHANNEL DIMENSIONS.
- REFER TO PLAN & PROFILE FOR CHANNEL FLOOR LONGITUDINAL SLOPE.
- CHANNEL SHALL BE UNDERLAIN BY FIRM, UNYIELDING AND COMPACTED STRUCTURAL BEARING. REFER TO SUBGRADE REQUIREMENTS CONTAINED IN THE GEOTECHNICAL REPORT AND PROJECT SPECIFICATIONS.
- TRANSVERSE REINFORCEMENT SHALL BE ALIGNED RADIIALLY FOR CONSTRUCTION ON CURVES.
- CONNECT TO EXISTING BOX CULVERT WITH #6 DOWELS SPACED AT 16" ON CENTER. DOWELS REQUIRED ON SIDEWALLS AND FLOOR. EMBED DOWELS 8" (MIN.) AND EPOXY. PROVIDE 1/2" PREMOLDED JOINT FILLER MATERIAL.



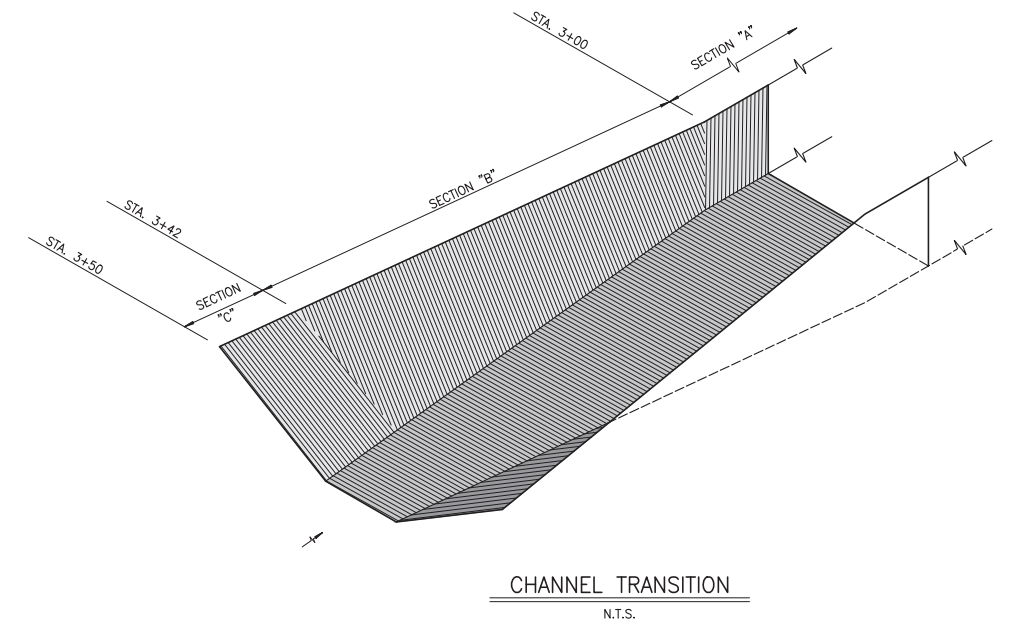
1 CU.FT. FILTER ROCK SECURELY ENCASED IN FILTER FABRIC W/ 12" SQ. GALVANIZED 1/4" MESH HARDWARE CLOTH FIRMLY ANCHORED TO FACE OF WALL AT WEEPHOLE



1 CU.FT. FILTER ROCK SECURELY ENCASED IN FILTER FABRIC W/ 12" SQ. GALVANIZED 1/4" MESH HARDWARE CLOTH FIRMLY ANCHORED TO FACE OF WALL AT WEEPHOLE

TYPICAL SECTION - DRAINAGE CHANNEL

SCALE: 1/2" = 1'-0"



DEREK T. ONO  
LICENSED PROFESSIONAL ENGINEER  
NO. 14830-C  
HAWAII, U.S.A.

**WARREN S. UNEMORI ENGINEERING, INC.**  
CIVIL & STRUCTURAL ENGINEERS/LAND SURVEYORS  
WELLS STREET PROFESSIONAL CENTER, SUITE 403  
2145 WELLS STREET, WAILUKU, MAUI, HAWAII 96793

**WAILUKU APARTMENTS**  
DRAINAGE CHANNEL IMPROVEMENTS  
T.M.K.: (2) 3-5-001: 064  
WAILUKU, MAUI, HAWAII

TITLE: DRAINAGE DETAILS

DESIGNED BY DTU	CHECKED BY DTU	JOB NUMBER 19052.50	<b>3</b> SHEET
DRAWN BY MLR	APPROVED BY DTU	DATE Nov. 15, 2022	

SCALE: AS SHOWN

SIGNATURE: *Derek Ono* DATE: April 30, 2024  
 THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY OBSERVATION AS DEFINED IN SECTION 16-115-2 OF THE HAWAII ADMINISTRATIVE RULES FOR PROFESSIONAL ENGINEERS, ARCHITECTS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

V:\Projects\19052.dwg complians\DRAINAGE\_CHANNEL\_det-drain-00.dwg

# EXHIBIT E

## MEMORANDUM OF UNDERSTANDING Resolution of Post-Grading Drainage Issues

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into this 8th day of August, 2022, by and between BIT WAILUKU LLC, a Delaware limited liability company, whose address is c/o Legacy Partners Residential LLC, 950 Tower Lane, Suite 900, Foster City, California 94404 (“Developer”), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Hawaii 96793 (“County”). Developer and County are collectively referenced herein as the “Parties”.

### WITNESSETH:

WHEREAS, Developer intends to develop its Wailuku Apartment Rental Housing Project consisting of 324 rental units, a majority of which will be residential workforce housing units, on land identified for real property tax purposes as tax map key (2) 3-5-001:064, Wailuku, Maui, Hawaii (the “Project”).

WHEREAS, the Department of Public Works (“DPW”) during its review of the Mass Grading Permit Application for the Project, GT2021-0182 (the “Application”), identified certain drainage issues on the Project site.

WHEREAS, recognizing the need for the Project to commence work in accordance with Resolution 18-187, as amended by Resolution 19-212, DPW agreed to allow those certain drainage issues to be addressed post-grading.

NOW THEREFORE, in consideration of the mutual benefits that will accrue to Developer and County, the Parties agree as follows:

- A. Developer agrees:
1. Developer shall cause the Mass Grading Drainage Report included in the Application to be revised so that it depicts the post-grading inundation limits on Waiale Road that will exist upon completion of the mass grading as currently proposed
  2. Developer shall cause to be prepared, at Developer’s cost, construction plans (the “Construction Plans”), consistent with County requirements and specifications for the necessary channel improvements, in the location generally shown on Exhibit A, attached hereto and made a part hereof, to safely pass the 100-year storm flow through the Project site without affecting abutting or downstream properties (the “Channel Improvements”), subject to approval by DPW. Preparation of construction plans shall include all necessary engineering services required to complete the design or as may be required for permit approval of the improvements, such as the preparation of drainage reports.
  3. Upon DPW’s approval of the Construction Plans, Developer shall create an easement over the area where the Channel Improvements are anticipated to be constructed (the

“Easement Area”). Developer shall grant the easement to the County of Maui upon demand.

4. Developer shall:

- a. Provide bidding and construction services by the design professional of record for the Channel Improvements to support the County and/or its vendors during the construction; and
- b. Provide project management services as necessary to support the County and/or its vendors in obtaining all permits and approvals, including an environmental assessment, if necessary, required to construct the Channel Improvements. Developer shall not be responsible for the costs related to the issuance of permits or environmental assessment for the Channel Improvements.

B. DPW agrees:

1. To issue a conditional approval of the Mass Grading Drainage Report included in the Application upon DPW's approval of the revised Mass Grading Drainage Report as contemplated in Item A.1, above.
2. To proceed with the issuance of the Phase I Mass Grading Permit associated with the Application.
3. To use its best efforts to obtain construction funding for the Channel Improvements, which shall be in the form of an appropriation of the Maui County Council.
4. To obtain, subject to appropriation of such funds by the Maui County Council, at no cost to Developer, all permits and approvals for the construction of the Channel Improvements, including an environmental assessment, if necessary.

C. The Parties jointly agree:

1. DPW will withhold final approval of Phase I Mass Grading Permit until the Mass Grading Drainage Report is revised as contemplated in Item A.1, above, to address those certain outstanding drainage issues to DPW's satisfaction.
2. Further permits and approvals, including Certificate of Occupancy, shall be contingent upon Developer's compliance with the terms of this MOU.
3. Developer shall maintain all landscaped and vegetated areas within the Easement Area in perpetuity. Developer shall maintain areas of the Project site abutting the easement area so there is no adverse impact on the Channel Improvements. DPW shall be responsible for all other maintenance related to the Channel Improvements.
4. The construction permits for the Channel Improvements shall be kept separate from the Grading, Work-On-County-Highway and Building Permit applications

currently associated with the Project so that construction of the Channel Improvements and affordable housing project can proceed independently of one another.

5. Prior to the issuance of construction permits for Phases 1-3 of the Project (Permits G T2022-0034 and WTP T2022-0010), Developer shall be, at a minimum, under contract for the work contemplated under Items A.1 to A.3, above.
6. When an application is made for the certificate of occupancy for the last building in Phase 2 of the Project, Developer shall request a determination from the County, in writing, specifying whether the County intends to commence with construction of the Channel Improvements and the terms for providing the services described under Item A.4., above. The Developer shall not be required to provide said services in the event that the County does not respond to the Developer prior to issuance of the final certificate of occupancy for the Project.

D. General Terms

1. Governing Law. This MOU shall be governed by, and construed and interpreted in accordance with the laws of the State of Hawaii, and the courts of the State of Hawaii shall have exclusive jurisdiction in any action to interpret or enforce this MOU.
2. Nondiscrimination. No person performing work under this MOU, including any subcontractor, employee, or agent of the either party, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
3. Compliance with Laws. The Parties shall comply with all of the requirements of all municipal, state and federal authorities and observe all municipal, state and federal laws now in force or which may be in force.
4. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this MOU.
5. Waiver. No party to this MOU shall be deemed to have waived the exercise of any right or any obligation hereunder, unless such waiver is made expressly and in writing.
6. Entire Agreement. This MOU constitutes the entire agreement between the parties hereto and supersedes all other prior or concurrent oral or written letters, agreements, or understandings.
7. Successors and Assigns. This MOU shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. No Partnership. The Parties agree that nothing in this MOU should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between them.
9. No Party Deemed the Drafter. Each party has thoroughly reviewed and revised this MOU and has had the advice of counsel prior to the execution hereof, and the Parties agree that neither party shall be deemed to be the drafter of this MOU.
10. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original and said counterparts shall together constitute one and the same instrument.

*(SIGNATURES ON THE FOLLOWING PAGE)*

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first above mentioned.

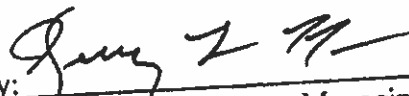
**DEVELOPER:**

**BIT WAILUKU LLC,**  
a Delaware limited liability company

By: **Wailuku APT LLC,**  
a Delaware limited liability company,  
its Managing Member

By: **Legacy/Pier Wailuku LLC,**  
a Delaware limited liability company,  
its Manager

By: **Legacy Partners 2717 LLC,** a  
Delaware limited liability company,  
its Manager

By:   
Kerry L. Nicholson, a Managing  
Member

COUNTY:

*Jordan Molina*  
Digitally signed by  
Jordan Molina, Director  
of Public Works  
Date: 2022.08.21 15:10:50  
-10'00'

---

JORDAN MOLINA  
Director of Public Works

Approved as to Form and  
Legality:

/s/ Michael J. Hopper  
Deputy Corporation Counsel  
County of Maui

TRUE NORTH

SCALE: 1 IN. = 1000 FT.

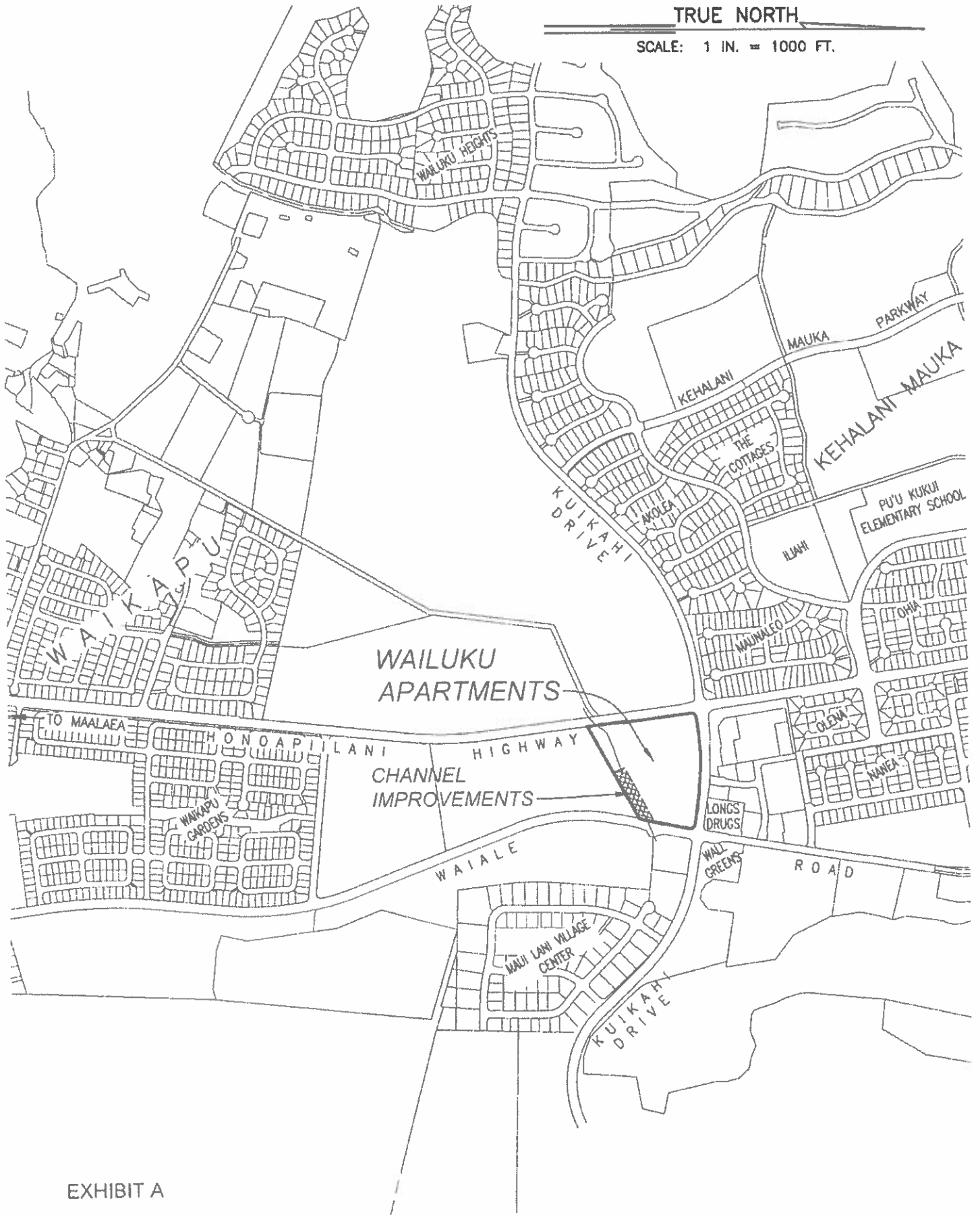


EXHIBIT A