

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

December 14, 2012

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

PSF No.: 06od-230

OAHU

Amend Prior Board Action of March 23, 2007, Item D-4, Request Approval to Enter into a Use and Occupancy Agreement with the City and County of Honolulu for Retaining Wall, Including Drainage and Erosion Control Improvements Purposes and Authorize the Issuance of Construction and Management Right-of-Entry by Revising the Project Area, Honolulu, Oahu, Tax Map Key:(1) 2-5-012:portions of 004 and 014, and (1) 2-5-019:portions of 005 and 009.

BACKGROUND:

At its meeting of March 23, 2007, under agenda item D-4, the Board approved as amended the staff recommendation by adding “including drainage and erosion control improvements” in the submittal. The amendment makes it clear that the City will own, and have the duty to repair and maintain the improvements into perpetuity. Accordingly, the Board authorized the Chairperson to enter into a Use and Occupancy Agreement ("Agreement") with the City and County of Honolulu ("City") for retaining wall, including drainage and erosion control improvements purposes. A copy of the 2007 submittal is attached as **Exhibit 1**.

Around July 2008, the City decided to put on hold the project until further notice, notwithstanding the Agreement had been reviewed and approved by the Department of the Attorney General. In short, the Agreement was never consummated.

For the Board's information, the 2007 approval pertained to a Use and Occupancy Agreement due to the lack of survey monuments in the subject area to prepare the map and description normally required for an easement¹.

In December 2010, the City has revised the improvements² including an expansion of the original requested area. For ease of comparison, copy of maps showing the current and the previous location are attached as **Exhibits 2 and 3** respectively.

¹ See first full paragraph on page 3 of the 2007 submittal.

Meanwhile, staff noted that the City will undergo the environmental assessment process. Therefore, the processing of the documentation was not done.

By way of letter dated July 28, 2011, the City informed the Department that construction for the above project will last for about 12 months and the project area is 12,350 square feet, more or less (as colored yellow) on Exhibit 2.

Recently, the City advised the staff that the compliance of Chapter 343, HRS for the project is evidenced by the publication of the FONSI on the Environmental Notice on August 23, 2012.

Staff recommends the Board amend its prior action by replacing the map referenced in the Agreement with Exhibit 2 herein.

RECOMMENDATION: That the Board amend its prior action of March 23, 2007, item D-4 by

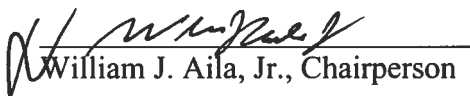
1. Replacing the map to be attached to the Use and Occupancy Agreement with the map attached as Exhibit 2 herein; and
2. All terms and conditions listed in its March 23, 2007 approval to remain the same.

Respectfully Submitted,



Steve Lau
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

AMENDED

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

March 23, 2007

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

PSF No.:06OD-230

OAHU

Request Approval to Enter into a Use and Occupancy Agreement with the City and County of Honolulu for Retaining Wall Purposes and Authorize a Construction and Management Right-of-Entry, Honolulu, Oahu, Tax Map Key: (1) 2-5-19:portion 5.

APPLICANT:

City and County of Honolulu, Department of Design and Construction whose business and mailing address is 650 South King Street, 11th Floor, Honolulu, Hawaii 96813.

LEGAL REFERENCE:

Section 171-13 and 95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Makiki and Tantalus situated at Honolulu, Oahu, identified by Tax Map Key: (1) 2-5-19:portion 5, as shown on the attached map labeled Exhibit A.

AREA:

.200 acres, more or less.

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: P-1

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES _____ NO x

CURRENT USE STATUS:

Vacant and unencumbered.

as Amended
**APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
March 23, 2007**

EXHIBIT " L "

Encumbered by General Lease No. S-4304, Karen Perkins, Lessee, for access and utility purposes. Lease to expire on May 18, 2035.

Encumbered by Honolulu Watershed Forest Reserve.

Encumbered by Grant of Non-Exclusive Easement bearing Land Office Deed No. S-28092 to Hawaiian Electric Co., Inc. for utility purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove retaining wall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson and/or the City and County of Honolulu.

CONSIDERATION:

Gratis. Government agency.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Declared exempt on October 20, 2006 by Eugene C. Lee, P.E. City and County of Honolulu, Director of the Department of Design and Construction. (Exhibit B)

DCCA VERIFICATION:

Not applicable. Applicant is a government agency.

APPLICANT REQUIREMENTS:

Not Applicable.

REMARKS:

The City and County of Honolulu, Department of Design and Construction are planning to construct safety improvements on a section of Tantalus Drive. The City's consultant, Shigemura, Lau, Sakanishi, Higuchi & Associates, Inc., requested review of the construction plans and right of entry authorization and construction easement from the division of Forestry and Wildlife in a letter dated November 1, 2006. (Exhibit C) The project is anticipated to start in March 2008. By undated letter from Mr. Paul Conry, Administrator indicated there was no major concerns with the Project, but recommended the City (1) establish a

property right-of-way for this section of Tantalus Drive and (2) establish a permanent easement approximately 15 feet wide beyond the proposed 50 feet right-of-way or request the transfer of fee title of this section from the State. (Exhibit D)

The City discovered other problems. It would be difficult to conduct a full survey of the proposed area due to the lack of survey monuments and Tantalus Drive has no survey maps to follow.

Therefore, the City staff asked that requirement be waived and instead of an easement document be used, a Use and Occupancy Agreement be established using the construction plan. The Agreement will make the City responsible for the maintenance of the retaining wall area. Upon execution, staff plans to record the Agreement at the Bureau of Conveyances.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited and their statements are listed below:

DHHL	No objections
DLNR DOFAW	City should be responsible for maintaining landscaped areas affected by the improvements and other improved areas surrounding the Tantalus retaining wall.
DLNR OCCL	Refer to July 22, 2005 letter. Exhibit E.
City DPP	No objections
OHA	No objections

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the Chairperson to negotiate the terms of the Use and Occupancy Agreement.
3. Approve the Use and Occupancy Agreement with the City and County of Honolulu covering the subject area for retaining wall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

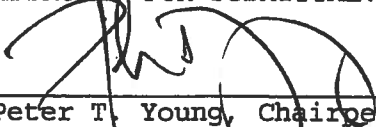
- A. The standard terms and conditions of the most current use and occupancy agreement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of a construction and management right-of-entry to City and County of Honolulu and their contractors covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



u Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



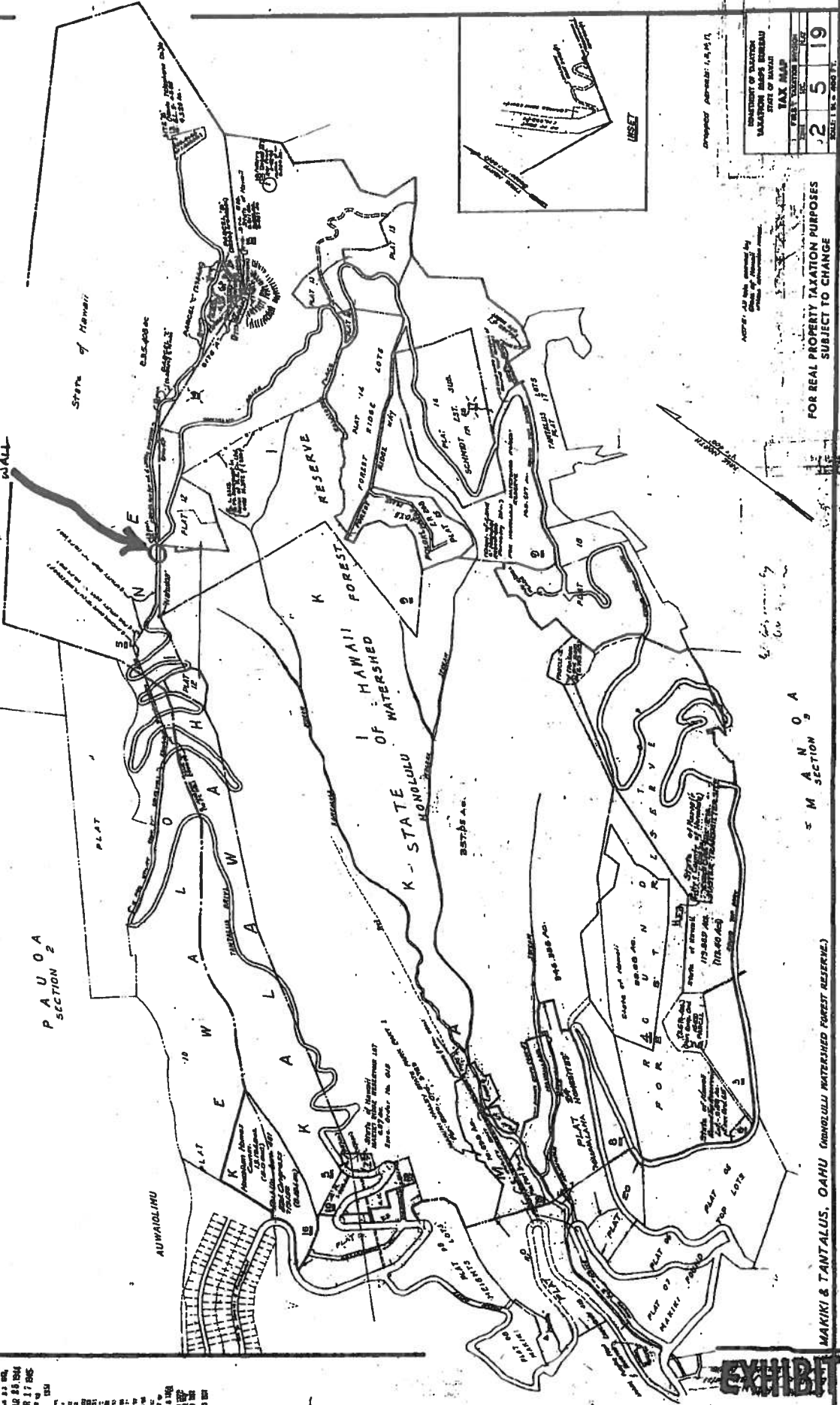
Peter T. Young, Chairperson

Approved As Amended. Pursuant to the City's request, the Land Board amended Staff's Submittal by replacing "retaining wall" with "retaining wall, including drainage and erosion control improvements" on the (a) Title of the Submittal on page 1; (b) Character of Use on page 2; (c) Remarks section on page 3; and (d) Recommendation 3 on page 3.

This amendment is intended to make clear that the City will own, and have the duty to repair and maintain into perpetuity, the retaining wall and the drainage and erosion control improvements.

PARET LOCATIONS
HIGHWAY STRUCTURE
IMPROVEMENTS -
TANTALUS RETAINING
WALL

PAUOA
SECTION 2



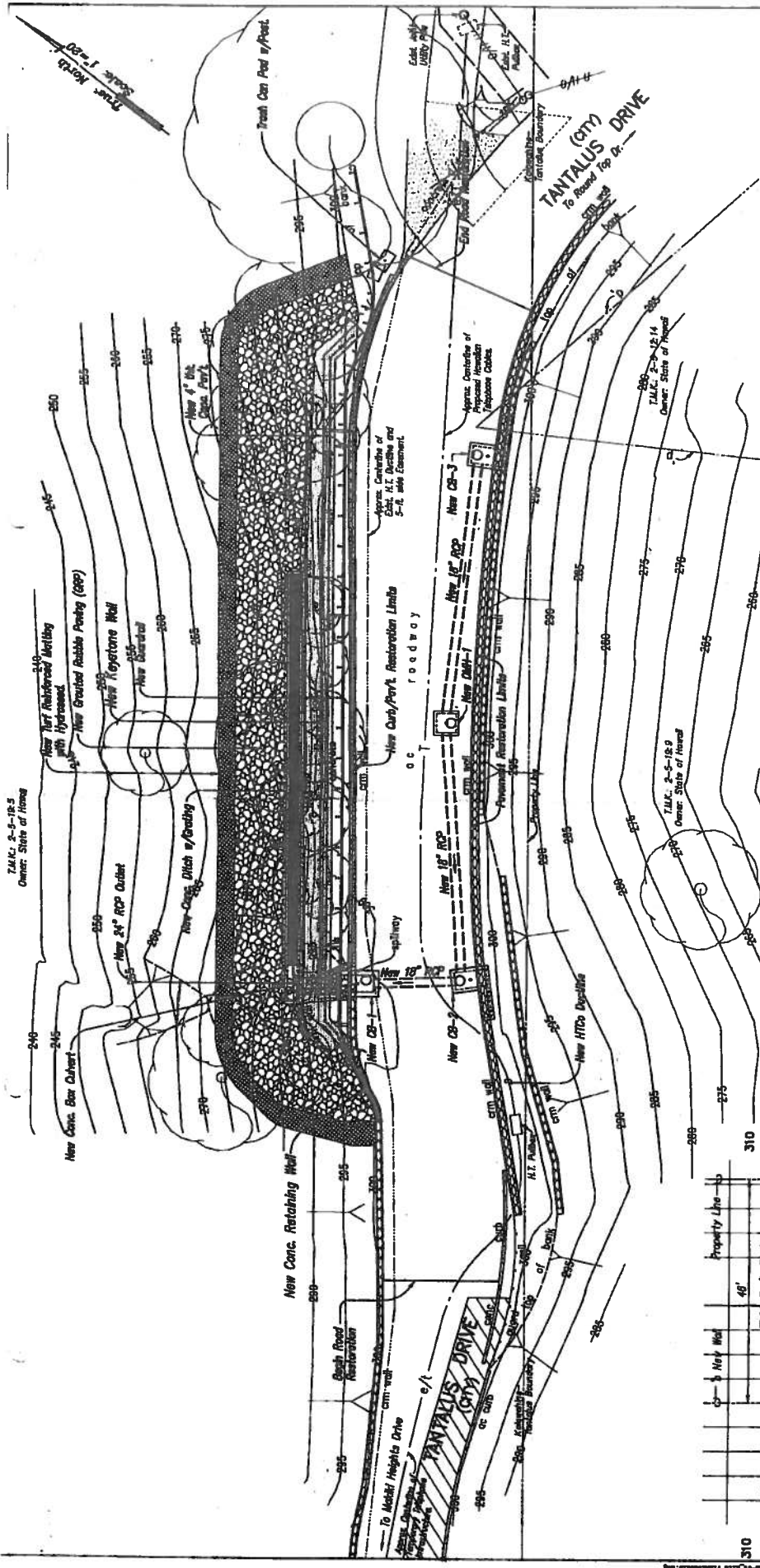
FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION BUREAU OF LANDS TAX MAP	
2	5
19	

- 1011000
- 1011001
- 1011002
- 1011003
- 1011004
- 1011005
- 1011006
- 1011007
- 1011008
- 1011009
- 1011010
- 1011011
- 1011012
- 1011013
- 1011014
- 1011015
- 1011016
- 1011017
- 1011018
- 1011019
- 1011020
- 1011021
- 1011022
- 1011023
- 1011024
- 1011025
- 1011026
- 1011027
- 1011028
- 1011029
- 1011030
- 1011031
- 1011032
- 1011033
- 1011034
- 1011035
- 1011036
- 1011037
- 1011038
- 1011039
- 1011040
- 1011041
- 1011042
- 1011043
- 1011044
- 1011045
- 1011046
- 1011047
- 1011048
- 1011049
- 1011050

EXHIBIT A

T.M.C. 2-5-18-5
Owner: State of Hawaii



DESIGNED BY	APPROVED	DATE	BY
DRAWN BY	CHECKED BY	DATE	BY
SCALE	PROJECT NO.	DATE	BY
JOB NO.	21-00	FILE	DATE

DEPARTMENT OF PUBLIC WORKS AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU
CIVIL DIVISION
HONOLULU, HAWAII

SITE PLAN

**HIGHWAY STRUCTURE IMPROVEMENTS-
TANTALUS RETAINING WALL**

SITE PLAN
SCALE: 1" = 20'

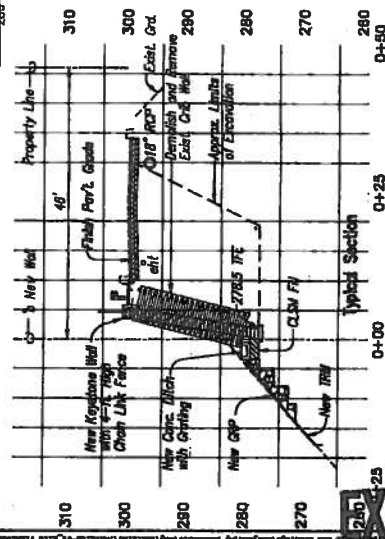
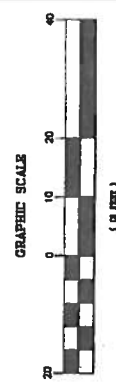


EXHIBIT "A"

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
PHONE: (808) 523-4564 • FAX: (808) 523-4567
WEB SITE: www.honolulu.gov



MUFI HANNEMANN
MAYOR

EUGENE C. LEE, P.E.
DIRECTOR

CRAIG I. NISHIMURA, P.E.
DEPUTY DIRECTOR

CDD-A 06-178373

October 20, 2006

DECLARATION OF EXEMPTION

from the preparation of an environmental assessment under the authority of Chapter 343, HRS, and Chapter 11-200, HAR

Project Title: *Highway Structure Improvements Tantalus Retaining Wall*

Job Number: 21-06

Project Description: *To repair a damaged crib wall for a portion of Tantalus Drive roadway. Work to include the demolition of an existing crib wall and construction of a segmental retaining wall. Drainage and erosion control improvements are also being proposed.*


Exemption Class: 1

Exempt Item Number: 16

Exempt Item Description: *Street repair and cleaning*

Date of Agency Exemption List: *February 19, 1992*

I have considered the potential effects of the above listed project as provided by Chapter 343, HRS, and Chapter 11-200 HAR. I declare that this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.


EUGENE C. LEE, P.E.
Director

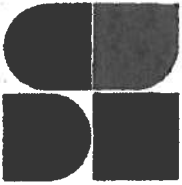
Date: 10/24/06

KS:DT:dk

Original: CDD-A
Copy: CDD - Environmental Documentation

EXHIBIT "B"

1916 Young Street • 2nd Floor
Honolulu, HI 96826
PH (808) 942-9100
FAX (808) 942-1899



SHIGEMURA, LAU, SAKANASHI, HIGUCHI & ASSOCIATES, INC.

November 1, 2006

Howard K.C. Lau
Craig H. Sakanashi
Wayne K. Higuchi
Beverly Ishii-Nakayama

Mr. Paul Conry, Administrator
Forestry and Wildlife Division
Department of Land and Natural Resources
1151 Punchbowl Street, Room 325
Honolulu, HI 96813

Subject: Highway Structures Improvements – Tantalus Retaining Wall,
Vicinity of 3798 Tantalus Drive
TMK: 2-5-019:005
Honolulu, Oahu, Hawaii

Dear Mr. Conry:

Attached for your review and comment is a copy of our updated construction documents for the City and County of Honolulu. These drawings supersede the set submitted to you on October 11, 2006. The design has been modified in response to preliminary comments from the DLNR's Engineering Division. Our understanding was that there was objection to our single point drainage outlet at the base of our retaining wall. The design has been modified by adding a concrete box culvert at the single point drainage outlet, that will collect the discharge water and distribute it to a drainage ditch that runs parallel to the retaining wall. The ditch will have drain pipes that will allow the water to discharge in a sheetflow-like manner to minimize the effect of the water downslope of our project.

Construction of this project is still anticipated to start in 2007 after the completion of the Round Top Drive Emergency Road Repairs Project. As stated in our previous letter, the City and County of Honolulu maintains this road, but the Division of Forestry and Wildlife has management jurisdiction over this land. Therefore, we are requesting a right of entry authorization and construction easement for this project.

Please feel free to call me at 942-9100 should you have any questions or require additional information. We are also available to meet with you and your staff to discuss the project. Our contact at the Department of Design and Construction is Mr. Scott Nakamatsu of the Civil Division (Phone No. 527-5084)

Sincerely yours,

Wayne Higuchi, S.E.

cc: Mr. Eric Hirano – DLNR – Engineering Division
Mr. Scott Nakamatsu (transmittal only)

EXHIBIT "C"

ED#1610

LINDA LINGLE
GOVERNOR OF HAWAII



PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813
TEL (808) 587-0166 FAX (808) 587-0160

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Mr. Wayne Higuchi, S.E.
Shigemura, Lau, Sakanashi,
Higuchi and Associates, Inc
1916 Young Street, 2nd Floor
Honolulu, Hawaii 96826

Dear Mr. Higuchi:

**Highway Structures Improvements – Tantalus Retaining Wall,
Vicinity of TMK: 2-5-019:005
Honolulu, Oahu, Hawaii**

Thank you for the opportunity to review and comment on the subject project provided to us on November 1, 2006.

In general, we do not have any major concerns with the proposed improvements for the subject project, which will provide safety improvements to this section of Tantalus Drive. But, we believe the following comments and issues would need to be worked between you and the City and County of Honolulu (City) prior to a construction Right-of-Entry and an easement for the repair and maintenance of the retaining wall project area as requested:

General Comments:

1. Overall project is acceptable as proposed in accordance with your plans submitted on November 1, 2006.
2. Sheet C-5. Any new turf reinforcing matting with hydroseed should be submitted to our office for review and approval prior to installation

Issues (Refer to comments on Sheet C-5):

1. Generally, for Tantalus Drive there are no existing documents, to our knowledge, which distinguishes actual ownership. Through the operation of law and adoption by the City Council, the City owns and maintains Tantalus Drive along with appurtenances (drainage structures, signs, guardrails, etc.)

EXHIBIT "D"

Mr. Wayne Higuchi
Page 2

necessary for its safe and efficient operation which would normally fall within some specified right of way. On most maps and/or drawings in the Tantalus and Round Top Drive area, typical right-of-ways are shown to be approximately 50' or 60' wide, which we understand conforms to the City's Traffic Standards Manual. We recommend that you notify the proper City agency to coordinate establishment of a proper right-of-way for this section of Tantalus Drive with the Department of Land and Natural Resources' (DLNR) Land Division. Establishing a right of way shall be at no cost to the State.

2. We also recommend that you notify the proper City agency to establish a permanent easement approximately 15' wide beyond the proposed 50' right-of-way or to transfer fee title of this area to the City for the proper ownership, operation, and maintenance of the proposed improvements. Once again, this should be coordinated through DLNR's Land Division, which will also be at no cost to the State.

If there are questions regarding our comment on the new turf and hydroseed, please contact Mr. Patrick Costales of my staff at 973-9787. To coordinate land disposition issues, please have the proper City agency contact Ms. Charlene Unoki of our Land Division at 587-0426.

We realize that this project is necessary for the safe and efficient operation of Tantalus Drive. Normally, land dispositions do take a lot of time and effort. If the project must proceed prior to all land dispositions being completed, we are open to discuss options for conditional approvals, which would allow the project to move forward into construction.

Once again, thank you for this opportunity to comment. If there are any questions, please call me at 587-4182.

Sincerely,


PAUL CONRY
Administrator

Attachment: Set of Plans Dated 11/1/06

c: DLNR Land Division
DLNR Engineering Division
DLNR Office of Conservation and Coastal Lands

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

Correspondence: OA 05-256

Wayne Higuchi, S.E.
Shigemura, Lau, Sakanashi, Higuchi & Assoc.
1916 Young Street, 2nd Floor
Honolulu, Hawaii 96826

JUL 22 2005

Dear Mr. Higuchi:

SUBJECT: Rehabilitation/Replacement of an Existing Crib Wall Located in the Vicinity of
Honolulu, Island of Oahu, TMK: (1) 2-5-019:005

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your correspondence dated June 23, 2005 regarding the rehabilitation or replacement of an existing crib wall located in the vicinity of .

According to your information, a study was drafted for the City and County of Honolulu to investigate the feasibility of rehabilitating the existing crib wall. The subject wall is 16 to 20 feet tall and 120 feet long. The age of the wall is unknown. The existing asphalt curbs were installed at a later date to prevent runoff from discharging into Makiki Valley. Based upon the study, the preliminary recommendation is to reconstruct the wall with a segmental retaining wall. Drainage and erosion control improvements are also being proposed.

The OCCL notes the subject wall appears to lie within the Resource subzone of the Conservation District and may be a nonconforming structure. Pursuant to the Hawaii Administrative Rules (HAR) § 13-5-37, Non-conforming uses, this chapter shall not prohibit the continuance of, or repair of nonconforming uses. We believe the crib wall is part of the road structure and the road has not been destroyed to an extent of more than fifty per cent of its replacement cost at the time of destruction.

Pursuant to § 13-5-27 (HAR), P-10, the drainage and erosion control improvements appear to be accessory structures to an existing facility as identified in the exempt classes established in § 11-200-8. Therefore the rehabilitation/replacement of the crib wall and the accessory drainage and erosion control improvements will not require the filing of a Conservation District Use Application.

However, we would like to review final construction plans prior to the commencement of the project. In addition, you should contact the Division of Forestry and Wildlife who has management jurisdiction over the subject area. Furthermore, the Makiki/Punchbowl/Tantalus Neighborhood Board and the Tantalus Community Association should be notified of the proposed action and road closures.

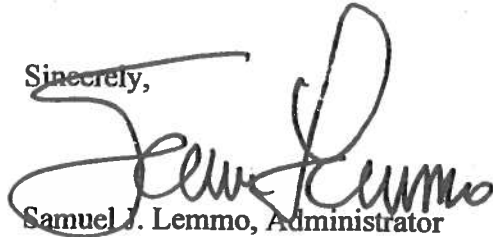
EXHIBIT "E"

Wayne Higuchi, S.E.
Shigemura, Lau, Sakanashi, Higuchi & Assoc.

Correspondence: OA 05-256

Should you have any questions, please feel free to contact Tiger Mills of our Office of Conservation and Coastal Lands staff at 587-0382.

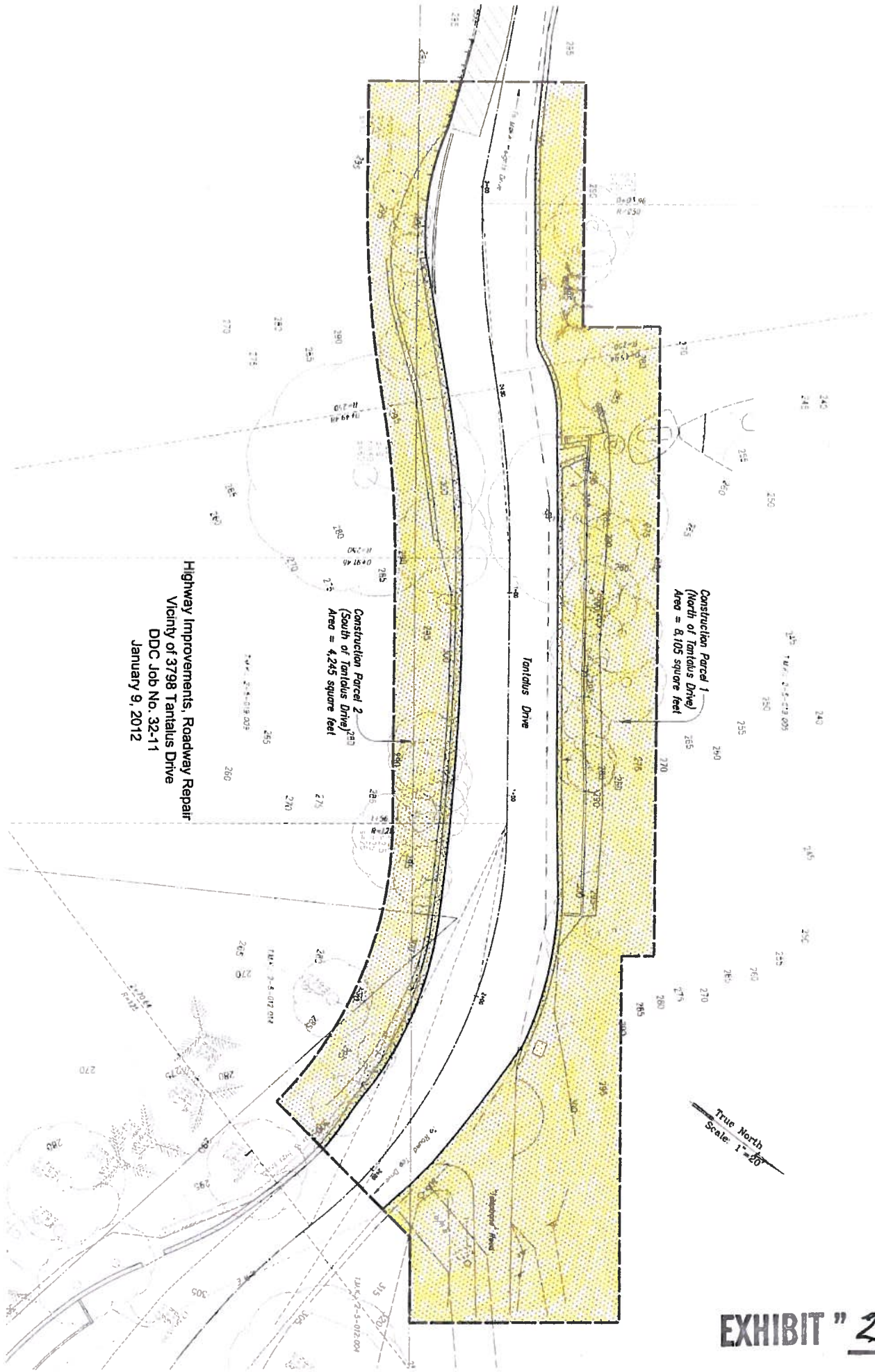
Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

cc: Chairperson
ODLO
DOFAW
City and County of Honolulu, Department of Planning and Permitting

EXHIBIT "E"



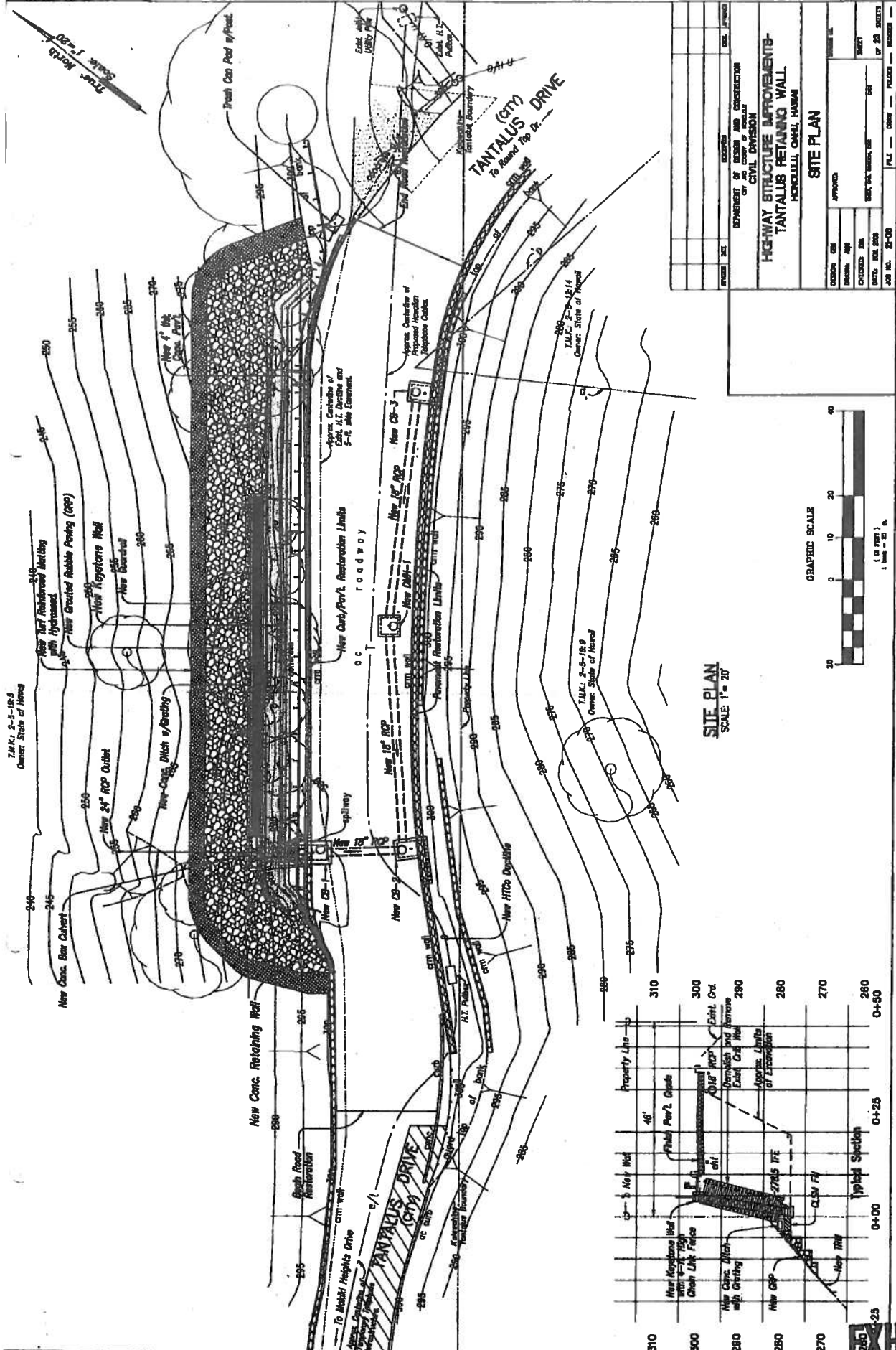
Highway Improvements, Roadway Repair
 Vicinity of 3798 Tantulus Drive
 DDC Job No. 32-11
 January 9, 2012

Construction Parcel 2
 (South of Tantulus Drive)
 Area = 4,245 square feet

Construction Parcel 1
 (North of Tantulus Drive)
 Area = 8,105 square feet

True North
 Scale: 1" = 60'

T.M.K. 2-3-15-3
Owner: State of Hawaii



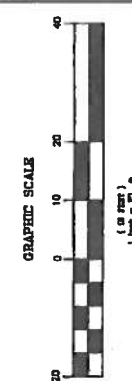
NO.	DATE	DESCRIPTION	BY	CHK.

DEPARTMENT OF HIGHWAY AND CONSTRUCTION
CIVIL DIVISION

**HIGHWAY STRUCTURE IMPROVEMENTS-
TANTALUS RETAINING WALL**
HONOLULU, OAHU, HAWAII

SITE PLAN

DESIGNED BY: _____ APPROVED: _____
 DRAWN BY: _____
 CHECKED BY: _____ DATE: _____ OF 23 SHEETS
 JOB NO. 21-00 FILE NO. 21-00



SITE PLAN
SCALE 1" = 20'

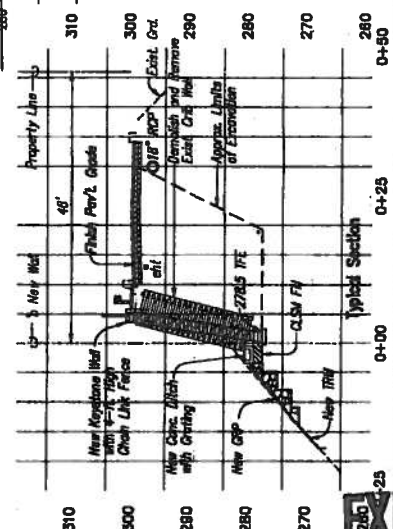


EXHIBIT 13