STATE OF HAWAII
Department of Land and Natural Resources
Engineering Division

January 24, 2014

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

Approval to Execute a Use and Access Agreement with the
U.S. Fish and Wildlife Services for the Hanalei Stream Bank Restoration Project,
Kauai, Hawaii

The Engineering Division desires to execute a Use and Access Agreement (UAA) (Exhibit 1), between
the Department of Land and Natural Resources (Department) and the United States Fish and Wildlife
Service (USFWS).

BACKGROUND:
During a large flood event in November 1995, the Hanalei River breached its left bank and created a
split flow condition between the river and breach channel. Downstream of the breach channel, the
USFWS maintains an irrigation diversion structure designed to supply water to the Hanalei National
Wildlife Refuge. Through subsequent flooding events on the river, the breach channel has captured a
larger portion of the flow in the Hanalei River, limiting supply to this diversion structure.

On March 3, 2012, Hanalei Valley was adversely affected by the heavy wind and rains, which caused extreme flooding and subsequent damages to the breached stream bank. The runoff through the breach has created a deep and wide footprint that continues to move laterally towards the adjacent residential buildings, while continuing to wash away valuable groundcover and transporting sediment into Hanalei Bay. Also, the worsened condition of the breach has resulted in substantial loss of water in the main stream where the diversion structure sends needed water to the Hanalei taro farmers and the USFWS refuge grounds.

On March 6, 2012, Governor Neil Abercrombie signed a Proclamation which “determined that a major disaster and catastrophe” occurred on Oahu and Kauai due to heavy rains, high winds, and flooding that started on March 3, 2012. On March 8, 2012 and March 22, 2012, the Governor signed Supplemental Proclamations. The Proclamation and Supplemental Proclamations exempts this project from the State of Hawaii, Hawaii Revised Statutes, Chapter 343.

The Department is currently in the planning and design phase of a project that will repair this portion of the Hanalei River stream bank and plans to advertise and bid the project for construction in January 2014 and start construction in April 2014. CIP funding from Act 164 SLH 2011 D-3, Act 160 SLH 2012 D-3, and Act 134 SLH 2013 H-5 will be used for the construction of the project. The funds from Act 164 SLH 2011 D-3 will lapse at the end of June 2014, thus the importance of awarding a construction contract in early 2014.

ITEM L-2
Upon completion of the project, USFWS has verbally agreed to monitor, maintain, and repair this restored portion of the river bank, which is located on state-owned land to prevent future breaching of the bank. A final draft of the UAA was reviewed and approved by the State Attorney General’s office. The final UAA was sent to USFWS on December 23, 2013 for their review and signature. The construction of the project is contingent upon USFWS signing and agreeing to the terms in the UAA by January 31, 2014.

The UAA places ownership of the reinforced earthen berm structure under the USFWS, who shall be solely responsible for any repair and maintenance. The USFWS shall also be responsible for conducting regular monitoring of the structure. However, since USFWS personnel do not have any experience with such structures, the Department through its contractor will provide assistance to the USFWS in monitoring the structure for a three year period. Any assistance provided will be done at the sole discretion of the Department and is subject to funds available from Act 134, SLH 2013.

RECOMMENDATION:

1. That the Board authorize the Chairperson, subject to review and approval by the USFWS, to enter into a Use and Access Agreement with the USFWS as it pertains to the project.

2. That the Board authorize the Chairperson, subject to the mutual agreement of terms between the Department and the USFWS and the review and approval by the Department of the Attorney General, to enter into supplemental agreements to the UAA with the USFWS to address unforeseen conditions and sign the necessary documents as it pertains to the project.

Respectfully submitted,

CARTY S. CHANG
Chief Engineer

Exhibit 1

APPROVED FOR SUBMITTAL:

WILLIAM J. AILA, JR., Chairperson
Board of Land and Natural Resources
USE AND ACCESS AGREEMENT

THIS AGREEMENT is effective as of _________________,
by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, (hereinafter referred to as the "Grantor") and THE UNITED STATES FISH AND WILDLIFE SERVICE hereinafter referred to as the "USFWS").

RECITALS:

WHEREAS, the Grantor is the owner of the land identified in Tax Map Key No.(4) 5-4-002:026, and is more particularly delineated on Exhibit "A", Site Access & Staging Plan attached

EXHIBIT 1
in Exhibit "B". Any actions by the Grantor pursuant to this section shall be:

1) Undertaken at its sole discretion;
2) Conducted within a period of no longer than three years commencing from the completion of the construction of the Reinforced Earthen Berm Structure, after which the USFWS shall assume full responsibility for the monitoring of the Reinforced Earthen Berm structure; and

Notwithstanding any action undertaken by the Grantor pursuant to this section, the USFWS shall, at its sole cost and expense, inspect and monitor the reinforced earthen berm structure, maintain the structure and assist in keeping the Premises in a safe, clean, sanitary, and orderly condition. The USFWS shall not make or knowingly permit or suffer any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises, nor damage, undermine or otherwise destroy any portion of the Property and the Premises, including, without limitation, the Reinforced Earthen Berm structure or any of Grantor’s improvements situated on or near the Premises or any equipment or appurtenances relating thereto. The USFWS shall, at its sole cost and expense, repair, restore and reconstruct that portion of said Property and Premises so damaged, undermined or
Premises area; and 2) any failure on the part of the USFWS to maintain the Premises and areas adjacent thereto in the USFWS's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the USFWS to maintain the Premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the USFWS's non-observance or non-performance of any of the terms, covenants, and conditions of this Agreement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

5. **Work within or Affecting the Premises.** If the Grantor decides to perform work of any kind within, on, over, under, across, near, or affecting the Premises, the Grantor will coordinate such work with the USFWS. The USFWS shall not unreasonably prevent the Grantor from performing such work, provided, however, that the Grantor will take certain protective measures to assure that such work does not unreasonably interfere with the USFWS's use of the Premises.

6. **Assignment.** The USFWS's rights under this Agreement shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Grantor.
reasonable costs and expenses incurred in performing said cure or remedy to the USFWS, who shall pay said costs and expenses to the Grantor within 60 days after receiving notice from the Grantor. If the USFWS fails to cure said defaults or failures to perform within the required time period, the Grantor may terminate this Agreement and the USFWS's rights under this Agreement to use the Premises. If the USFWS defaults or fails to perform as required under this Agreement, the Grantor shall be entitled to all remedies available under this Agreement and by law, which remedies shall be cumulative and not exclusive.

8. **Termination.** This Agreement may be cancelled in whole or in part at any time by mutual written agreement of the parties hereto.

9. **Hazardous Materials.**

   a. **Grantor's pre-approval required.** The USFWS shall not cause or permit the presence, escape, disposal, discharge or release of any hazardous materials except as permitted by law. The USFWS shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto and/or into the Premises any such materials except to use in the ordinary course of the USFWS's business, and then only after written notice is given to the Grantor of the identity of such materials and upon the
Grantor or existing on the Premises prior to the effective date of this Agreement, upon termination of this Agreement, the USFWS shall, at its sole cost and expense, if required by law, clean up and decontaminate the Premises and remove all hazardous materials therefrom, including, without limitation, clean-up of surface and ground waters and making the soil free and clear of all such contaminants and hazardous material.

10. **Compliance With Laws.** The USFWS, at all times during the term of this Agreement, shall comply with all of the requirements of the federal, state, and county laws, statutes, ordinances, rules and regulations, now in force or which may hereafter be in force.

11. **Binding Effect.** All provisions contained in this Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and permitted assigns, and officers, agents, and employees.

12. **Singular, Plural.** All words used herein in the singular number shall extend to and include the plural. All words used in any gender shall extend to and include all gender.

13. **Headings.** The headings and captions herein are for convenience of reference only and are not intended to fully describe, define or limit the provisions of this Agreement of which they may pertain.

14. **Attorney’s Fees and Expenses.** In case the Grantor
this failure shall continue for a period of more than sixty (60) calendar days after delivery by the Grantor of a written notice of breach or default, by personal service, registered mail or certified mail to the USFWS at its last known address and to each mortgagee or holder of record having a security interest in the Premises, the Grantor may, subject to the provisions of section 171-21, Hawaii Revised Statutes, at once re-enter the Premises, or any part, and upon or without the entry, at its option, terminate this Agreement without prejudice to any other remedy or right of action for any preceding or other breach of contract; and in the event of termination, at the option of Grantor, all improvements shall remain and become the property of the Grantor or shall be removed by USFWS.

17. **Withdrawal.** The Grantor reserves the right to withdraw the Reinforced Earthen Berm structure for public use or purposes, at any time during this Agreement upon the giving of reasonable notice by the Grantor and without compensation.

18. **No Mortgage.** The USFWS shall not mortgage or pledge the Premises, any portion, or any interest in this Reinforced Earthen Berm structure without the prior written approval of the Chairperson of the Board of Land and Natural Resources and any mortgage or pledge without such approval shall be null and void.

19. **Environmental Impact Regulations.** The USFWS shall comply with all applicable federal and state environmental impact regulations.
STATE OF HAWAII

By
Name: William J. Aila, Jr.
Title: Chairperson, Board of
Land and Natural Resources

THE UNITED STATES FISH AND
WILDLIFE SERVICE

By
Name: ________________________
Title: Director
Exhibit A
Site Access & Staging Plan
# State of Hawaii
**Department of Land and Natural Resources**
**Division of Engineering**

**Job No. 500CK54A**

**Hanalei Stream Bank Restoration**

**Hanalei, Kauai, Hawaii**

**Tax Map Key 4-5-002:034**

### Prepared By:

**ACCOM**

100 Bishop St. Suite 1600
Honolulu, Hawaii 8083

**Not Approved for Construction 12/4/2013**

### Location Map

![Location Map](image)

### Index to Drawings

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### Approvals

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<td>CERT. S. DUNN, P.E.</td>
<td>ENGINEERING DRAFTSMAN</td>
<td>DEPARTMENT OF LAND AND NATURAL RESOURCES</td>
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[Note: The image contains a detailed map with various labeled sections and a legend for key points such as Hanalei Bay, Kauai, and other geographical features. The map is not fully transcribed here, but it includes various lines, labels, and symbols typical of engineering and environmental documentation.]
NOTES FOR GENERAL CONSTRUCTION

1. All construction work is to be constructed in accordance with the plans and specifications contained in this sheet. The contractor shall furnish to the architect, inspector, and the state department of health, adequate drawings and specifications. The architect or his representative shall be available at the county office of the state department of health.

2. No grading between 15 ft. to 10 ft. on any day shall be permitted. Grading operations shall be performed after the required inspection of the grading work. Grading work shall be inspected by the state department of health inspector.

3. Grading work shall be performed after the required inspection of the grading work. Grading work shall be inspected by the state department of health inspector.

4. Grading and earthwork shall be performed in accordance with the plans and specifications. The contractor shall furnish to the architect, inspector, and the state department of health, adequate drawings and specifications. The architect or his representative shall be available at the county office of the state department of health.

5. All grading, earthwork, and earth structure shall be performed in accordance with the plans and specifications. The contractor shall furnish to the architect, inspector, and the state department of health, adequate drawings and specifications. The architect or his representative shall be available at the county office of the state department of health.

HISTORICAL PRESENTATION

1. The historic resources which are pertinent, relevant, and significant shall be protected during the construction activities. The historic resources shall be protected and preserved in accordance with the plans and specifications. The contractor shall be responsible for identifying and preserving the historic resources and complying with the plans and specifications.

WATER POLLUTION AND EROSION CONTROL NOTES

1. General

a. The contractor is required to maintain the general pollution controls during construction activities. The general pollution controls shall be maintained in accordance with the plans and specifications. The contractor shall be responsible for maintaining the general pollution controls and complying with the plans and specifications.

b. The contractor shall be responsible for identifying and preserving the historic resources and complying with the plans and specifications.

c. The contractor shall be responsible for maintaining the general pollution controls and complying with the plans and specifications.

d. The contractor shall be responsible for maintaining the general pollution controls and complying with the plans and specifications.

2. Waste disposal

a. Waste materials shall be collected and stored in a secure location. The contractor shall be responsible for maintaining the general pollution controls and complying with the plans and specifications.

b. Waste materials shall be collected and stored in a secure location. The contractor shall be responsible for maintaining the general pollution controls and complying with the plans and specifications.

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WATER POLLUTION PREVENTION PRACTICES

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NOTES:
1. Excavation shall be limited to within the limits of ground shown on the construction plans. No excavation or removal of any material from the stream banks shall be allowed.
2. Any area within 15 feet of the restored stream bank (limits of grading) that has been disturbed by construction activity must be covered with a temporary erosion control blanket.

LIMITS OF GRADING (RESTORATION):

- Limits of grading, erosion control, and landscaping restoration on this sheet.
- Existing ground levels shown on the drawing.
- Proposed changes shown on the drawing.
- Existing drainage features shown on the drawing.
- Proposed drainage features shown on the drawing.

SITE AND GRADING PLAN

- Scale: 1" = 30'
1. ROCK VANE DETAIL

C-10

NOT TO SCALE

2. BANK SPUR DETAIL

C-10

NOT TO SCALE

NOT APPROVED FOR CONSTRUCTION

DEPARTMENT OF LAND AND NATURAL RESOURCES ENGINEERING DIVISION
HANAI stream Bank RESTORATION
HANAI, visual, IRREGULAR

Details

Rocks to be structure stone, class boulder, 18-30.
Exhibit B

Hanalei – Monitoring Plan

This document is intended to outline a basic plan for monitoring the Hanalei River Streambank Restoration project, once construction is complete.

General- Monitoring Frequency and Methods

1. Visual Monitoring- The project site shall be visually monitored every six months and after every major storm event. A major storm event is one that produces a flow in the Hanalei River of 6000 cfs or greater (1.5 BKF/Channel Forming Flow), as measured at the USGS gaging station (USGS 16103000). Flows in the Hanalei River can be checked on the USGS National Water Information Website (NWIS) at http://waterdata.usgs.gov/hi/nwis/uv?site_no=16103000. Visual monitoring shall be done of all components of the project, which include the following:
   - The new embankment (Plug)/Restored Stream Bank
   - Restored River Channel
   - Intake
   - Downstream breach channel/stilling basin

Visual monitoring shall consist of assessment documented with photographs. Walk each of the project areas thoroughly, noting any damage that may have occurred since the last monitoring visit. Photograph the damaged areas and record their position with a global positioning system (GPS).

2. Geomorphic evaluation- Perform a full geomorphic evaluation on an annual basis for a period of three years. While it does not necessarily require extensive survey, it should use a local control point to evaluate sedimentation concerns at the intake as well as the 500',of restored channel. Typically the USACE uses 5 yes but the reality is after vegetation is well established at 3 years, the last 2 of the 5 yes do not normally provide value and survey becomes quite difficult. Of particular importance is checking the water intake to ensure that excess sedimentation has not occurred since the last site visit.
**Exhibit C**

**Hanalei - Maintenance and Repair Plan**

This document is intended to outline a basic plan for repairing and maintaining the Hanalei River Streambank Restoration project, once construction is complete.

**General - Possible Maintenance Scenarios**

The following discussion provides potential maintenance scenarios that could occur following a major storm event and provides recommended repairs. All components of the project should be checked for potential damage at every monitoring event. If damage is observed, repairs should be implemented as noted.

1. **Maintenance Scenario - Geotextile Fabric Damaged, Rolled or Misplaced**
   
   Look for: Tearing, rolling or undermining of geotextile fabric, on banks of restored channel and on face of the plug (see example Photo 1 and Photo 2).

![Photo 1- Rolled Geotextile Fabric](image-url)
Recommended Repair/Maintenance:
Replace geotextile matting and secure to bank with landscape staples or wooden stakes. Ensure that no streambanks are bare or exposed underneath the geotextile fabric.

ii. Maintenance Scenario - Vegetation has Significant Bare Areas
Look for: Significant bare areas of vegetation on face or top of the plug, or along the stream banks of the restored channel (see example Photo 3 and Photo 4).
Photo 3 - Significant Bare Areas of Ground Cover

Photo 4 - Bare Areas near Channel

**Recommended Repair/Maintenance:** Replant bare areas of vegetation with fast-growing, deep-rooted woody vegetation.
iii. **Maintenance Scenario- Log Jams, Debris**

**Look for:** Logs or other large debris jammed up or lodged against the restored streambank or intake (see example Photo 5).

![Log Jams on riverbank](image)

Photo 5- Log Jam along the Stream Bank

**Recommended Repair/Maintenance:** Remove log jams from affected areas using hand labor if possible or heavy equipment.

iv. **Damage Scenario- Significant Erosion on the Plug, Restored River Channel**

**Look for:** Erosion on restored channel reach, downstream breach channel, or plug area

**Recommended Repair/Maintenance:** Repair significant erosion areas with backfill graded to a slope to match upstream and downstream respectively. Plant the disturbed area with vegetation. If erosion is on river bed, use bed material type (river stone) to backfill scoured areas. Some erosion sensitive areas may need to be covered with geotextile fabric.

v. **Maintenance Scenario- Significant Sedimentation at Intake**

**Look for:** Significant deposits of rock or boulder material accumulating at location of intake since last monitoring visit (see example Photo 6).
vi. **Maintenance Scenario- Displacement of Rocks in Stilling Basin**

Look for: Significant amounts of armor stone in stilling basin have been moved or displaced since last monitoring visit.

**Recommended Repair/Maintenance:** Replace missing armor stones.

vii. **Maintenance Scenario- Structure Failure**

Look for: Bank erosion immediately up and downstream of rock spurs and J-hook. Look for boulders that have been displaced and water piping around boulders (see example Photo 7).
Recommended Repair/Maintenance: Determine if structure is still functional, if only minor movement has occurred fill gaps with river stone and continue to monitor. If structure is no longer functional it may be necessary to rebuild.