

**MEMORANDUM OF AGREEMENT
(BIKE PATH EASEMENT)**

This **Memorandum of Agreement** (“**MOA**”) is entered into this 8th day of January, 2016 (“**Effective Date**”), by and between the **West Loch Fairways Association** (“**WLFA**”), a Hawaii nonprofit corporation, and the **City and County of Honolulu**, a municipal corporation of the State of Hawaii (“**City**”).

RECITALS

- A. WLFA owns that certain real property identified as Tax Map Key No. (1) 9-1-064:116, situated at West Loch Fairways in Ewa Beach, Oahu, State of Hawaii, and more particularly described in the attached **Exhibit “A”** (the “**WLFA Property**”).
- B. There is currently located on a portion of the WLFA Property a paved bicycle and pedestrian pathway as shown on the attached **Exhibit “B”** (“**Bike Path**”).
- C. City desires to open the Bike Path for public use to connect with other existing City bicycle and pedestrian paths.
- D. WLFA is willing to convey to City a non-exclusive right of access and perpetual easement over and across the Bike Path and a portion of WLFA Property more particularly shown in **Exhibit “D”** attached hereto (“**Bike Path Easement**”) for operation of a public bicycle and pedestrian path in exchange for the City repairing or replacing the irrigation system that provides irrigation water to: (i) the Bike Path Easement and (ii) the greenbelt that is a portion of TMK (1) 9-1-0 64:116 and situated mauka or west of the Bike Path Easement

NOW, THEREFORE, in consideration of the foregoing recitals and the following covenants, the sufficiency of which is mutually agreed to, and subject to the terms and conditions herein, WLFA and City agree to the following:

1. **Right to Enter.** WLFA shall permit the City immediate access to and use of the Bike Path and the Bike Path Easement as a bicycle and pedestrian path open for the general public in accordance with the terms and conditions of the Entry Permit attached hereto as **Exhibit “C”**. WLFA and City agree to execute the Entry Permit concurrently with this MOA.
2. **Subdivision of Bike Path Easement.** WLFA agrees to assist and cooperate with City in the subdivision of an easement for bicycle and pedestrian purposes over and across the Bike Path and the Bike Path Easement. WLFA will provide the City Department of Planning and Permitting with an authorization for the City to subdivide or designate the Bike Path Easement, or, if requested by the City, will execute and submit the necessary the subdivision application.

3. **Grant of Easement.** Upon approval of the subdivision and/or designation of the Bike Path Easement, WLFA agrees to grant to the City a perpetual, non-exclusive easement for the use, maintenance, operation, repair, reconstruction, replacement, alteration, enlargement, inspection, relocation, renewal and removal of a bicycle and pedestrian pathway over and across the Bike Path Easement in the form substantially similar to Exhibit "E" attached hereto ("**Grant of Easement**").
4. **Agreement to Cooperate.** WLFA and City agree to assist and cooperate with each other to accomplish the terms and conditions of this MOA, including but not limited to:
 - a. WLFA will support any resolution before the City Council to approve the City's acceptance of the Grant of Easement for the Bike Path Easement; and
 - b. WLFA will execute any and all other necessary documents reasonably requested by the City to accomplish the terms and intent of this MOA.
5. **Duration and Termination.** The MOA shall commence upon the Effective Date and terminate upon the occurrence of any of the following:
 - a. The recordation of the Grant of Easement in favor of the City;
 - b. A default has occurred and the non-defaulting party has elected to terminate as provided in Section 6 below; or
 - c. Both parties have mutually agreed in writing to terminate.
6. **Default.** If either party fails to perform its obligations under this MOA, the non-defaulting party may terminate this MOA immediately by written notice and/or may pursue any other remedies to which the party is entitled by law or under this MOA.
7. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this MOA by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

West Loch Fairways Association
c/o Associa Hawaii
Pacific Guardian Center – Mauka Tower
737 Bishop Street, Suite 3100
Honolulu, Hawaii 96813
Telephone: (808) 836-0911

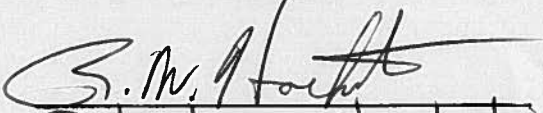
City and County of Honolulu
Department of Transportation
Attention: Chris Sayers
650 South King Street, 2nd Floor
Honolulu, HI 96813
Telephone: (808) 768-8335

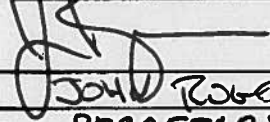
8. **Headings/Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.
9. **Exhibits.** The Exhibits hereto and each and every provision thereof are incorporated by this reference.
10. **Governing Law.** This MOA shall be governed by and construed under the laws of the State of Hawaii.
11. **Counterparts.** This MOA may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.
12. **No Partnership.** No joint venture or other partnership relationship exists between WLFA or the City. Neither WLFA nor the City has any fiduciary relationship hereunder to the other.
13. **Entire Agreement.** This MOA and the exhibits hereto contain the entire agreement and understanding between WLFA and the City concerning the subject matter of this MOA and supersede any and all prior communications, representations, or agreements, both verbal and written, made by WLFA or the City concerning the Bike Path Easement or the other matters which are the subject of this MOA. The parties acknowledge that each party and its counsel have reviewed the MOA and participated in its drafting and therefore the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed or applied in the interpretation of this MOA.

[END OF TEXT; SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, WLFA and the City have caused this MOA to be executed as of the day and year first above written.

West Loch Fairways Association

By: 
Its Robert W. Hochstein
Its PRESIDENT

By: 
Its JOHN ROGERS
Its SECRETARY

City and County of Honolulu

By: _____
Kirk Caldwell
Mayor

APPROVED AND RECOMMENDED:

Department of Facility Maintenance

Ross S. Sasamura, P.E.
Director and Chief Engineer

Department of Transportation Services

Michael D. Formby, Director

Department of Parks and Recreation

Michele K. Nekota, Director

Department of Design and Construction

Robert J. Kroning, Director

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

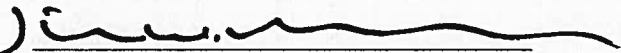
IN WITNESS WHEREOF, WLFA and the City have caused this MOA to be executed as of the day and year first above written.

West Loch Fairways Association

By: _____
Its _____

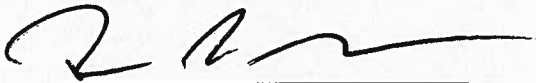
By: _____
Its _____

City and County of Honolulu

By: 
Kirk Caldwell
Mayor

APPROVED AND RECOMMENDED:

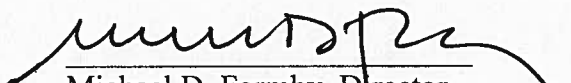
Department of Facility Maintenance


Ross S. Sasamura, P.E.
Director and Chief Engineer

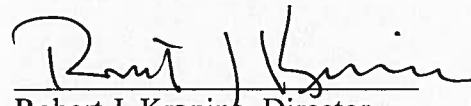
Department of Parks and Recreation


Michele K. Nekota, Director

Department of Transportation Services


Michael D. Formby, Director

Department of Design and Construction


Robert J. Kroning, Director

APPROVED AS TO FORM AND LEGALITY:


Deputy Corporation Counsel

DESCRIPTION OF PROPERTY

ITEM 1

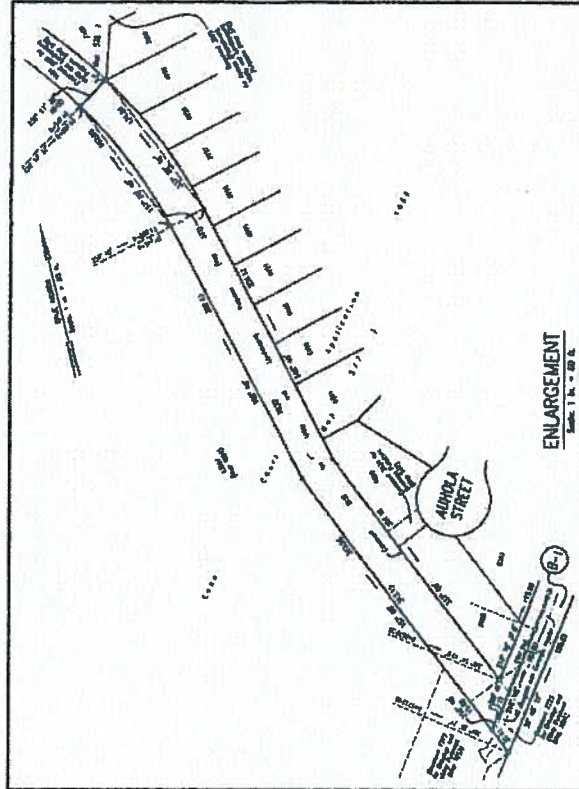
Being Lot 6975, area 27,935 square feet, as shown on Map 576, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069 of the Trustees under the Will and Estate of James Campbell, deceased and being a portion of the land described in Transfer Certificate of Title No. 593,445, issued to West Loch Fairways Association.

Situate at Honouliuli, Ewa, Oahu, Hawaii.

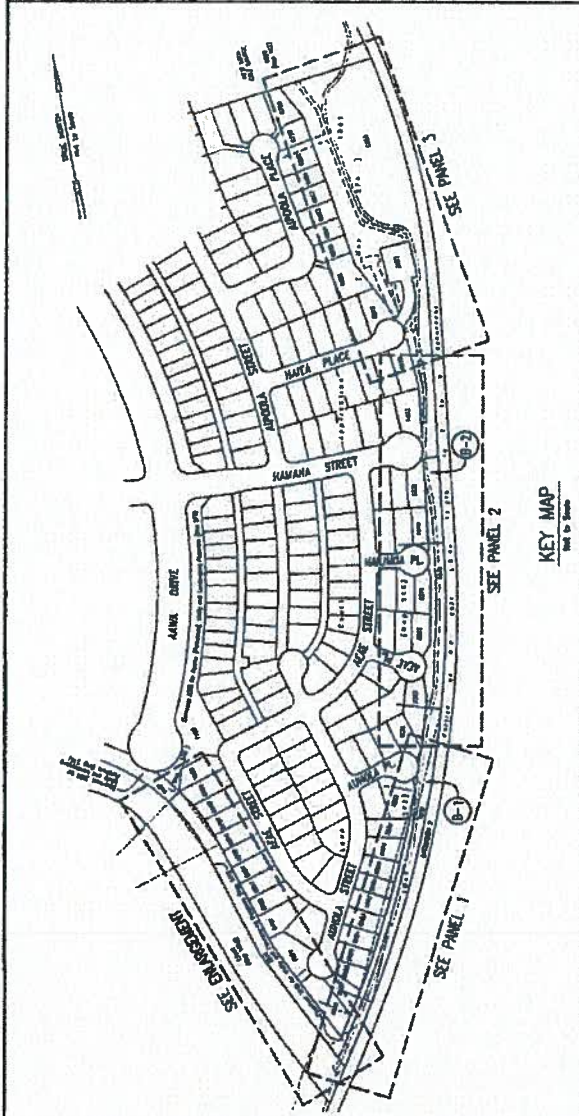
ITEM 2

Being Lot 7030, area 70,710 square feet, as shown on Map 577, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069 of the Trustees under the Will and Estate of James Campbell, deceased and being a portion of the land described in Transfer Certificate of Title No. 593,445, issued to West Loch Fairways Association.

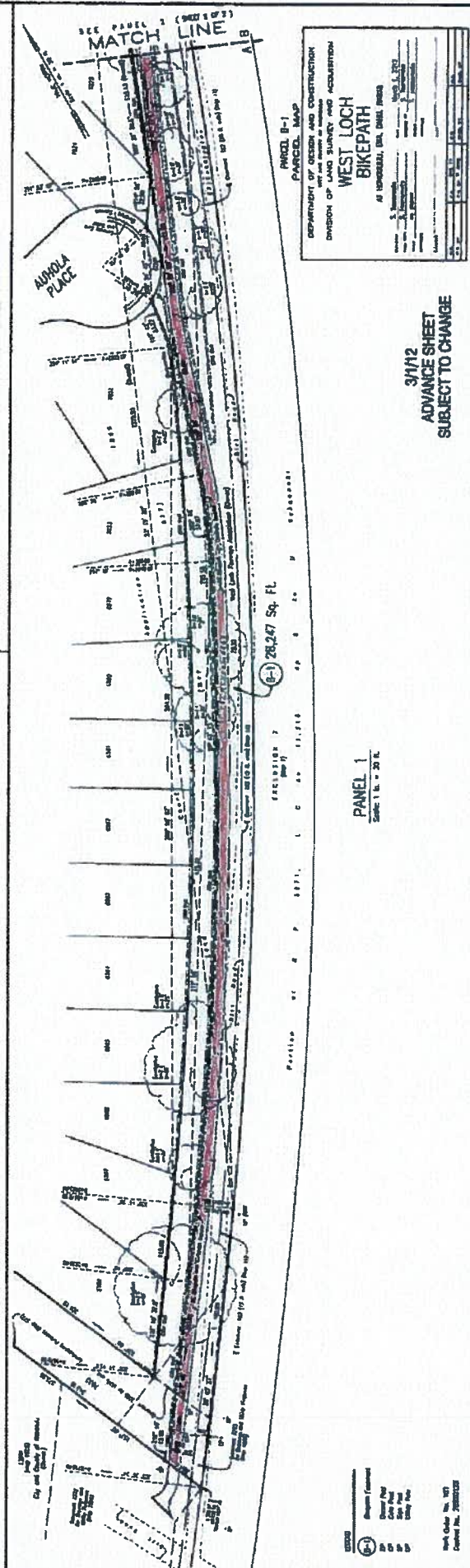
Situate at Honouliuli, Ewa, Oahu, Hawaii.



ENLARGEMENT
Scale: 1 in. = 20 ft.



KEY MAP
Scale: 1 in. = 20 ft.



Parcel B-1
28,247 Sq. Ft.

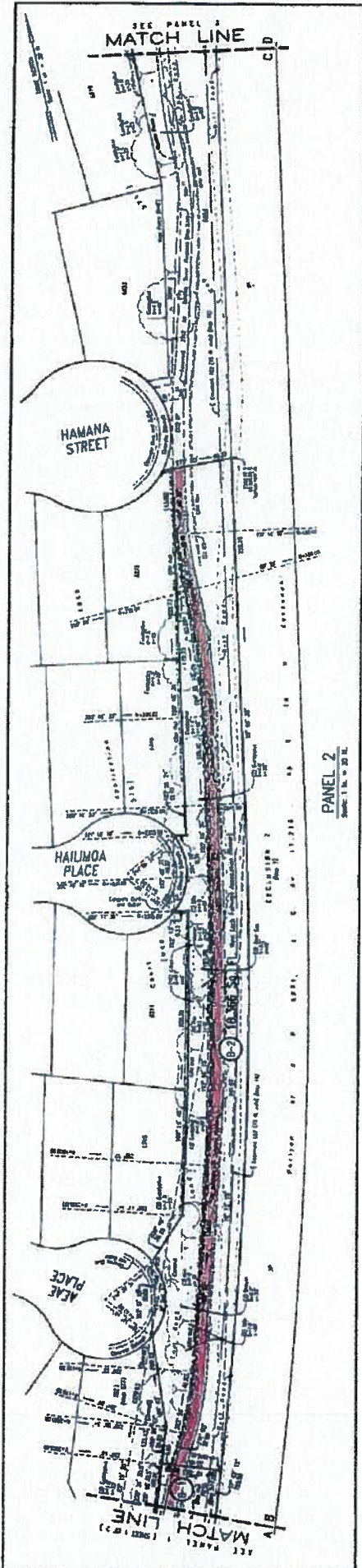
PANEL 1
Scale: 1 in. = 20 ft.

PARCEL MAP
DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF LAND SURVEY AND ACQUISITION

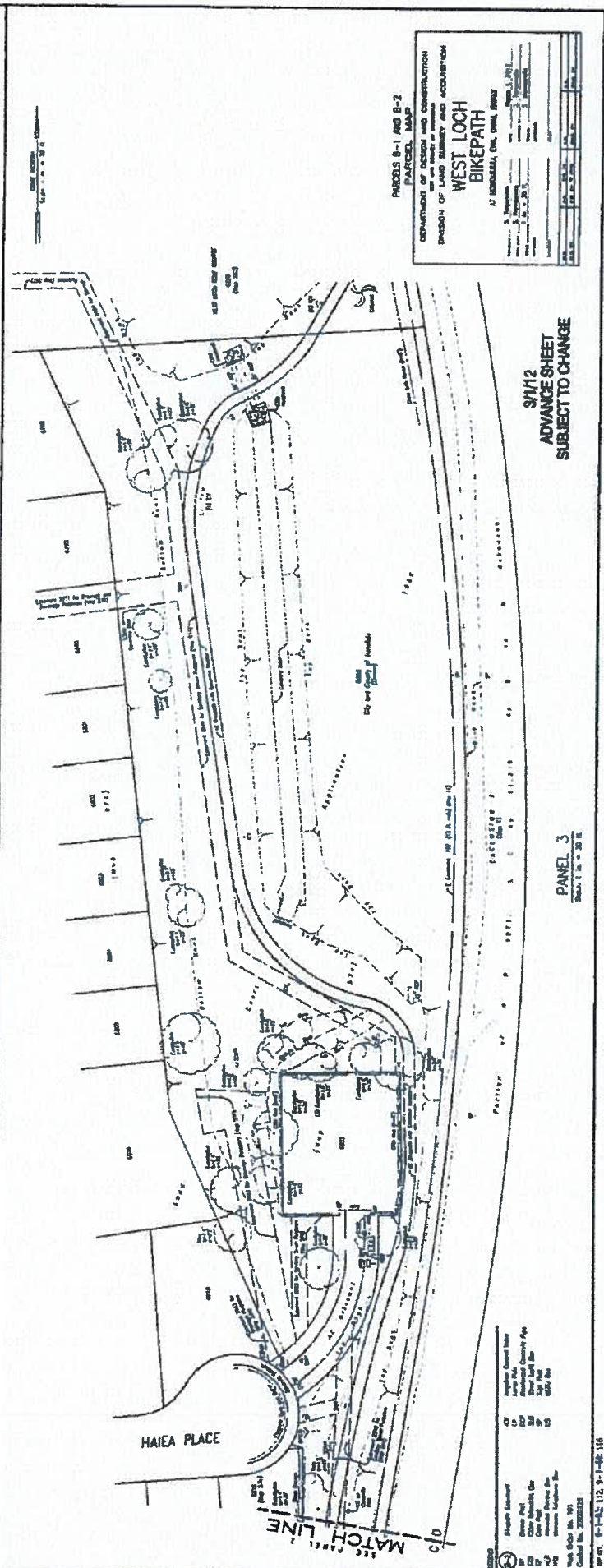
WEST LOCH BIKEPATH
AT WOODBRIDGE, DALLAS, TEXAS

Project No.	100-1-100
Map No.	100-1-100
Scale	1 in. = 20 ft.
Date	3/1/12
Drawn by	[Name]
Checked by	[Name]
Approved by	[Name]

3/1/12
ADVANCE SHEET
SUBJECT TO CHANGE



PANEL 2
Sheet 11 of 20



PANEL 3
Sheet 12 of 20

SHEETS B-1 AND B-2
 PARCEL MAP
 DEPARTMENT OF DECISION AND CONSTRUCTION
 DIVISION OF LAND SURVEY AND ACQUISITION
WEST LOCH BIKEPATH
 AT HONOLULU, HAWAII

Project No.	100-100000000
Sheet No.	11
Date	10/1/2011
Scale	AS SHOWN
Author	J. [Name]
Checked	[Name]
Approved	[Name]
Discipline	LAND SURVEYING
Division	LAND SURVEY AND ACQUISITION
Department	DEPARTMENT OF DECISION AND CONSTRUCTION

3/1/12
 ADVANCE SHEET
 SUBJECT TO CHANGE

Project Name: West Loch Bikepath
 Location: Honolulu, Hawaii
 Date: 10/1/2011
 Scale: As Shown
 Author: J. [Name]
 Checked: [Name]
 Approved: [Name]
 Discipline: Land Surveying
 Division: Land Survey and Acquisition
 Department: Department of Decision and Construction

ENTRY PERMIT

This **Entry Permit** (“**Permit**”) is entered into as of this _____ day of _____, 2015 (“**Effective Date**”), by and between **West Loch Fairways Association** (“**WLFA**”), a Hawaii nonprofit corporation, and the **City and County of Honolulu**, a municipal corporation of the State of Hawaii, by and through its Department of Transportation Services (“**City**”).

RECITALS

A. WLFA owns that certain real property identified as Tax Map Key No. (1) 9-1-064:116, situated at West Loch Fairways in Ewa Beach, Oahu, State of Hawaii, and more particularly described in **Exhibit “A”** attached hereto and incorporated herein (the “**WLFA Property**”).

B. There is currently located on a portion of the WLFA Property a paved bicycle and pedestrian pathway as shown on the attached **Exhibit “B”** (“**Bike Path**”).

C. City desires to open the Bike Path for public use to connect with other existing City bicycle and pedestrian paths.

D. WLFA is willing to convey to City a non-exclusive right of access and perpetual easement over and across the Bike Path and a portion of WLFA Property more particularly described in **Exhibit “C”** attached hereto (“**Bike Path Area**”) for operation of a public bicycle and pedestrian path, in exchange for the City repairing or replacing the irrigation system that provides irrigation water to: (i) the Bike Path Area and (ii) the greenbelt that is a portion of TMK (1) 9-1-0 64:116 and situated mauka or west of the Bike Path Area.

E. Subject to the terms and conditions of this Permit and to that certain Memorandum of Agreement (Bike Path Easement) between WLFA and the City dated _____, 2015 (“**MOA**”), prior to the designation and grant of the easement, WLFA is willing to allow City immediately to open and maintain the Bike Path for the use and enjoyment of the general public.

TERMS AND CONDITIONS

NOW, THEREFORE, WLFA and the City hereto agree as follows:

1. Grant of Permit. Upon the terms and conditions described herein, WLFA hereby grants to City a revocable Permit for the following purposes:

a. Use of Bike Path. City may use, maintain, operate, repair, reconstruct, replace, alter and enlarge the Bike Path for the use and enjoyment of the general public for bicycle and pedestrian purposes.

b. Bike Path Irrigation. Upon execution of this Permit, so long as the MOA is in full force and effect and WLFA is compliant with terms of the MOA, City shall conduct a one-time repair and/or replacement of WLFA's irrigation system located in the Bike Path Area servicing the Bike Path ("**Bike Path Irrigation**"). The City agrees that, except where caused by WLFA's noncompliance with the MOA or with this Permit, or where delayed or hindered in or prevented from performance by reason not the fault of the City, the repair or replacement shall be completed no later than January 1, 2018. WLFA and City agree that WLFA shall maintain ownership of the entire irrigation system and that this repair/replacement is not intended to transfer any ownership and maintenance obligations of the irrigation system to the City. All work shall be coordinated with WLFA to minimize any negative impact to WLFA's existing irrigation system.

c. Term. This Permit will commence upon the Effective Date and unless so terminated as provided herein, terminate upon the recordation of a grant of easement over and across the Bike Path in favor of the City.

d. Reserved Rights. WLFA reserves the right to access and use the Bike Path Area at any time and for any purpose, so long as such uses and purposes do not unreasonably interfere with the City's use and the general public's access over and across the Bike Path Area.

2. City's Covenants. City hereby covenants and agrees that:

a. Due Care and Diligence. City will use due care and diligence to keep the Bike Path in a good and safe condition and repair and will exercise its rights under this Permit in a manner that will occasion only such interference with the use of the land as is reasonably necessary.

b. Restoration. Upon completion of any work performed on or within the Bike Path Area, City shall remove all its equipment and unused or surplus materials, if any, and shall leave the Bike Path Area in a clean and sanitary condition.

c. Observance of Laws. City shall observe and comply with all laws, ordinances, rules, and regulations now or hereafter made by the federal, state, and local governments affecting or applicable to the Bike Path and this Permit.

3. Indemnification. Except to the extent caused by the negligence or intentional acts or omissions of WLFA or its employees, agents, consultants, contractors and other representatives, City will indemnify WLFA against any and all damages to the Bike Path Area, and against all claims, actions and proceedings by whomsoever brought on account of injuries or death or persons or damage to property, caused by City's failure to use due care in maintaining the Bike Path Area in good and safe condition and repair.

4. Termination and Remedies. This Permit may be mutually terminated by both parties in writing. City acknowledges that this Permit only grants a license and that City has no rights as an owner, purchaser or tenant of the Property, the Bike Path, or the Bike Path Area by virtue hereof. In the event WLFA and City do not enter into a Grant of Easement, upon termination of this Permit, City shall peaceably surrender and deliver up possession to WLFA of the Bike Path and WLFA has the right to discontinue public access to the Bike Path.

5. General Provisions.

a. Governing Law. This Permit shall be governed by the laws of the State of Hawaii.

b. Successors and Assigns. This Permit shall be binding upon and inure to the benefit of City and WLFA and their respective successors and permitted assigns.

c. Amendment. No supplement, modification or amendment of this Permit shall be binding unless in writing and executed by the parties hereto.

d. Headings. The headings of this Permit are for purposes of reference only and shall not limit or define the meaning of the provisions hereof.

e. Counterparts. This Permit may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

f. Exhibits. The Exhibits hereto and each and every provision thereof are incorporated by this reference.

g. Notice. Any notice required or permitted by the provisions of this Permit to be given shall be written and shall either be personally delivered or mailed postage prepaid by certified mail, return receipt requested, to the party at the address and to the person designated by each party below. No other method of notification shall be effective.

West Loch Fairways Association
c/o Associa Hawaii
Pacific Guardian Center – Mauka Tower
737 Bishop Street, Suite 3100
Honolulu, Hawaii 96813
Telephone: (808) 836-0911

City and County of Honolulu
Department of Transportation
Attention: Chris Sayers
650 South King Street, 2nd Floor
Honolulu, HI 96813
Telephone: (808) 768-8335

IN WITNESS WHEREOF, the parties hereto have executed this Permit on the day and year first above written.

West Loch Fairways Association

By: _____
Its _____

By: _____
Its _____

**City and County of Honolulu
Department of Transportation Services**

By: _____
Michael D. Formby
Director

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

DESCRIPTION OF PROPERTY

ITEM 1

Being Lot 6975, area 27,935 square feet, as shown on Map 576, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069 of the Trustees under the Will and Estate of James Campbell, deceased and being a portion of the land described in Transfer Certificate of Title No. 593,445, issued to West Loch Fairways Association.

Situate at Honouliuli, Ewa, Oahu, Hawaii.

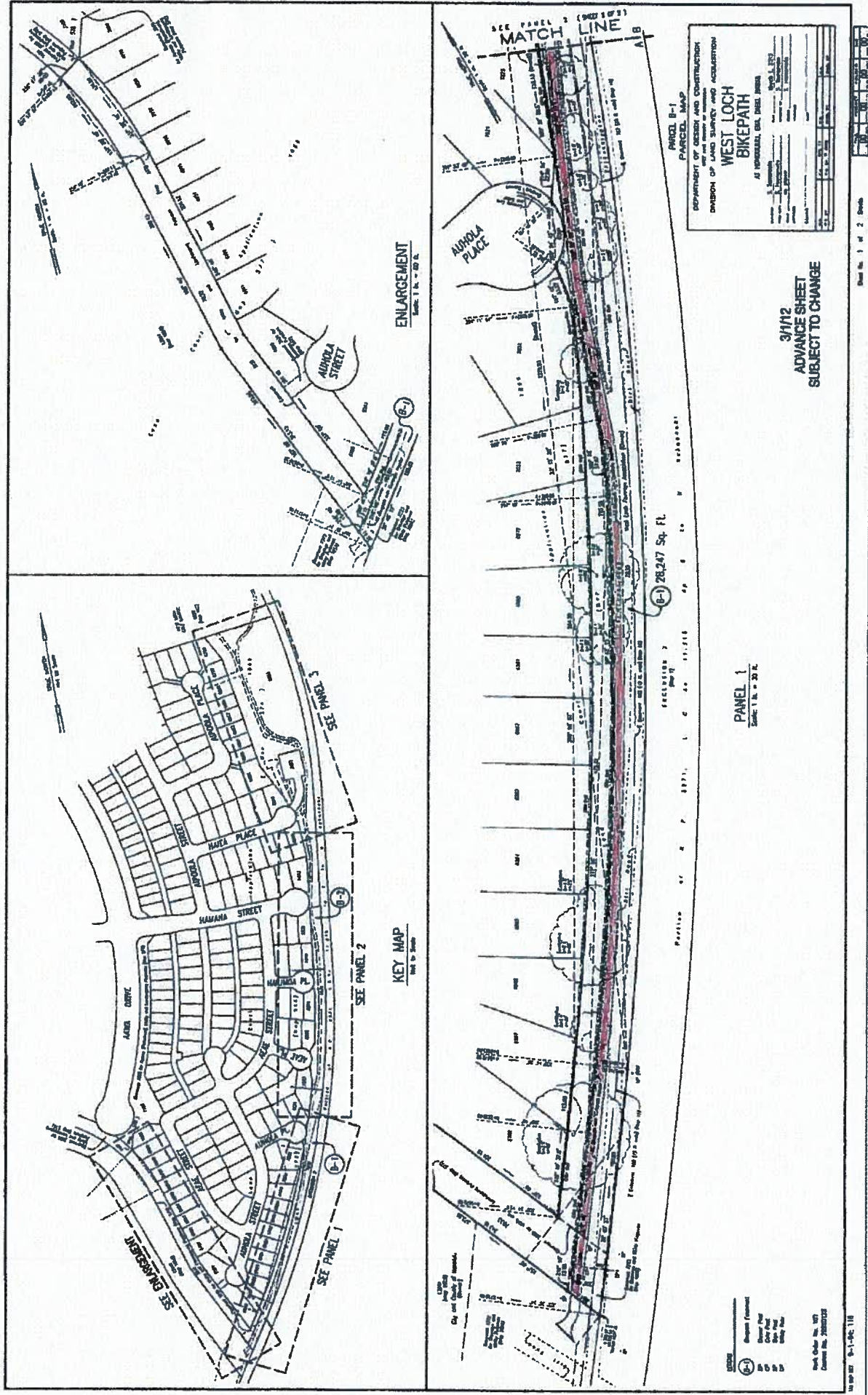
ITEM 2

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Situate at Honouliuli, Ewa, Oahu, Hawaii.

EXHIBIT B

DIAGRAM OF BIKE PATH



**PARCEL B-1
PARCEL MAP**
 DEPARTMENT OF CREDIT AND CONSTRUCTION
 DIVISION OF PLANNING AND DEVELOPMENT
**WEST LOCH
BIKEPATH**
 AT HONOLULU, OAHU, HAWAII

Project No.	100-1-00-118
Sheet No.	1 of 2
Scale	AS SHOWN
Date	11/19/10
Drawn by	J. M. ...
Checked by	...
Approved by	...

**3/1/12
ADVANCE SHEET
SUBJECT TO CHANGE**

PANEL 1
Scale: 1" = 20' ±

ENLARGEMENT
Scale: 1" = 20' ±

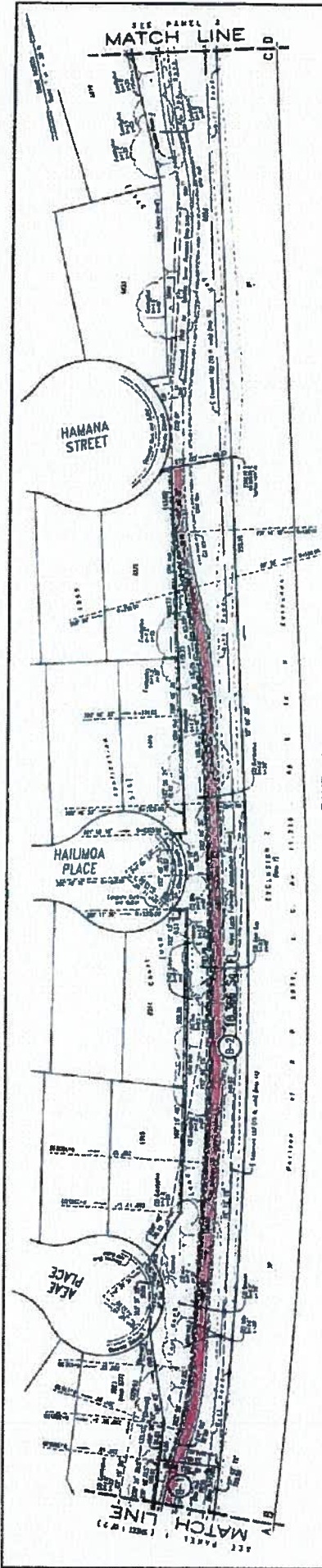
KEY MAP
Scale: 1" = 20' ±

LEGEND

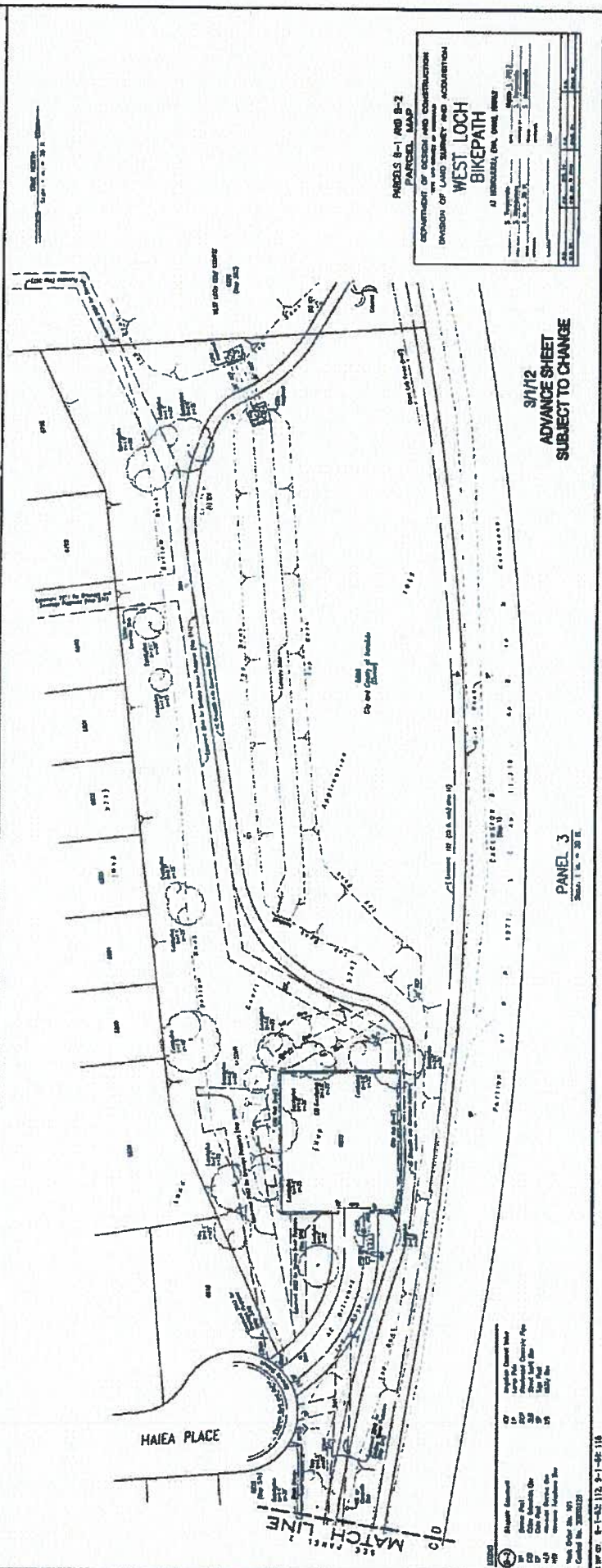
(A)	Proposed Concrete
(B)	Proposed Asphalt
(C)	Proposed Gravel
(D)	Proposed Earth
(E)	Proposed Existing

North Arrow No. 107
 Contract No. 20090225
 Date: 11/19/10

EXHIBIT B



PANEL 2
SECTION 11.0 20' E



3/1/12
ADVANCE SHEET
SUBJECT TO CHANGE

PANEL 3
SECTION 11.0 20' E

PARCELS B-1 AND B-2
PARCEL MAP

DEPARTMENT OF PUBLIC WORKS
DIVISION OF LAND SURVEY AND ACQUISITION

WEST LOCH
BIKEPATH

12 HONOLULU, OAHU, TERRITORY

Project No.	12-112-01-00-110
Sheet No.	2 of 2
Date	3/1/12
Scale	AS SHOWN
Author	
Checker	
Engineer	
Surveyor	

- 1. Boundary
- 2. Easement
- 3. Right of Way
- 4. Proposed
- 5. Existing
- 6. Utility
- 7. Other
- 8. Proposed
- 9. Existing
- 10. Utility
- 11. Other
- 12. Proposed
- 13. Existing
- 14. Utility
- 15. Other

EXHIBIT C

DIAGRAM OF BIKE PATH AREA

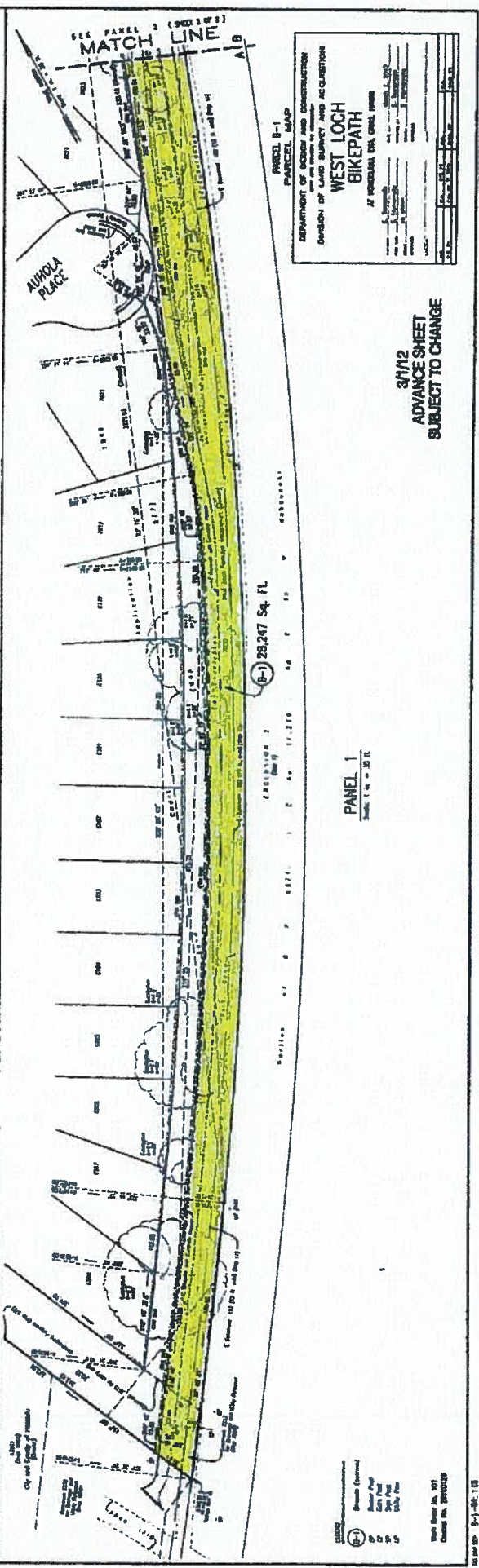
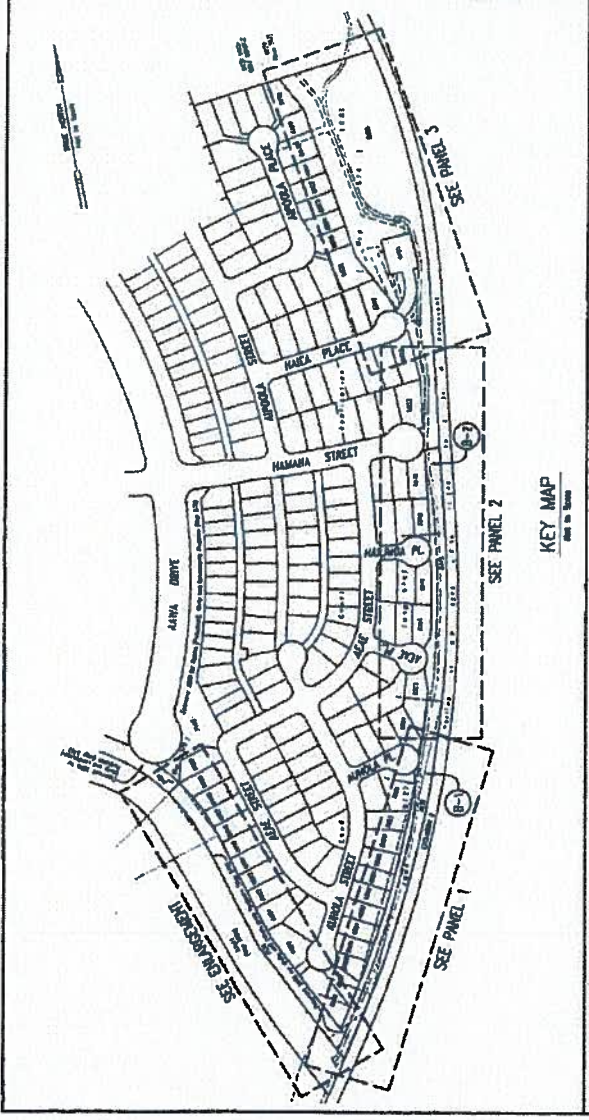
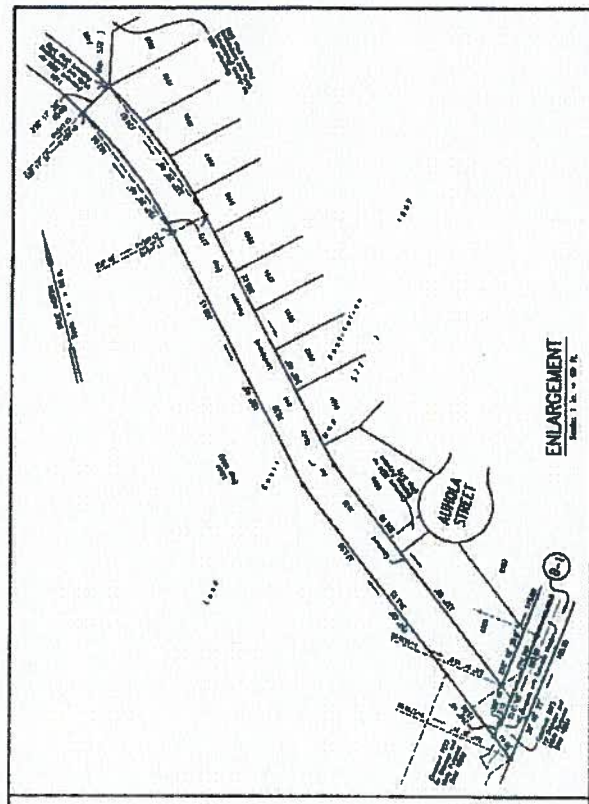
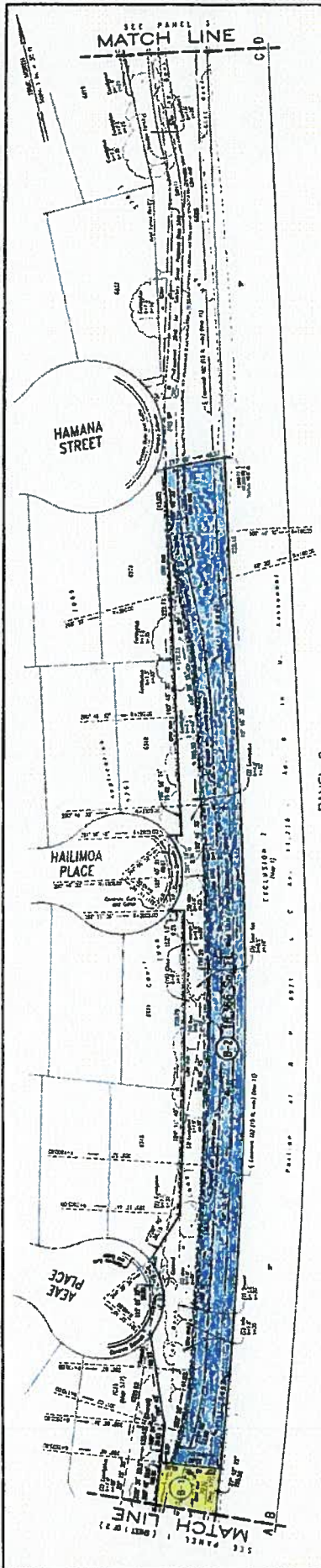
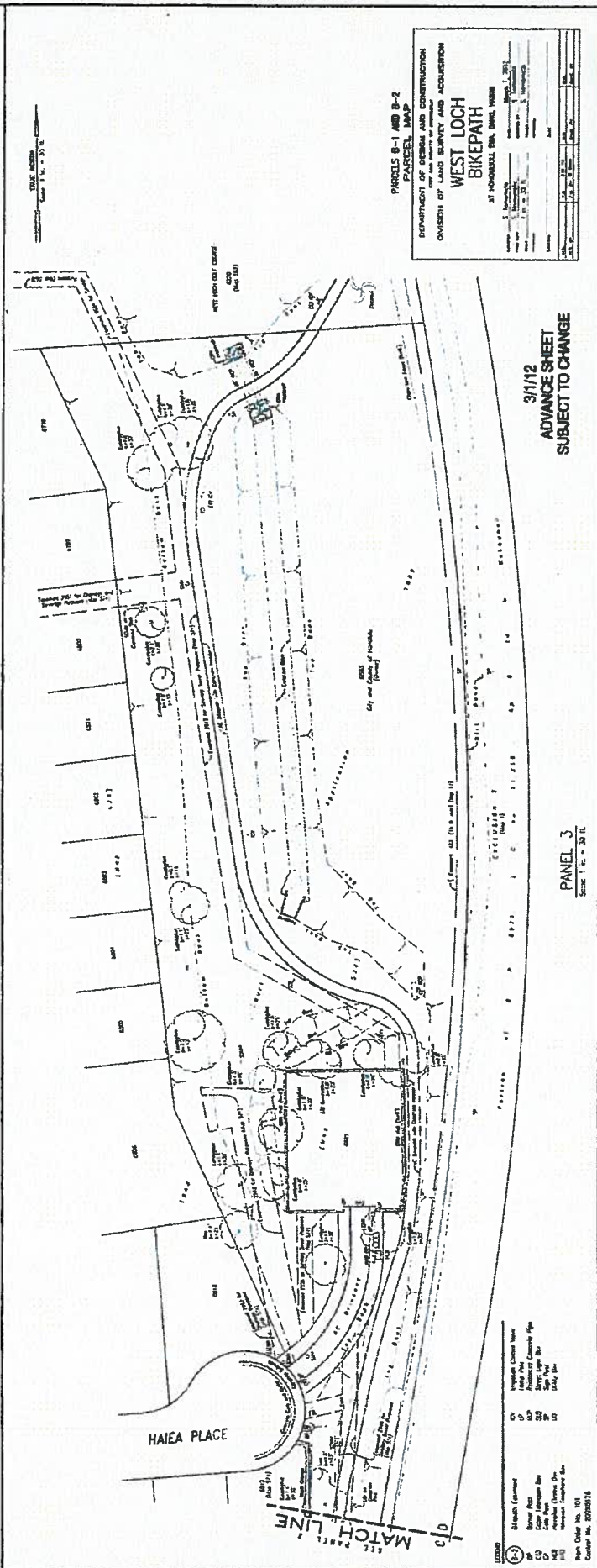


EXHIBIT C



PANEL 2
Scale: 1" = 30' N.



PANEL 3
Scale: 1" = 30' N.

**PARCELS B-1 AND B-2
PARCELS MAP**

DEPARTMENT OF PUBLIC WORKS AND CONSTRUCTION
DIVISION OF LAND SURVEY AND ACQUISITION

**WEST LOCH
BIKEPATH**

AT HONOLULU, CITY AND COUNTY OF HONOLULU

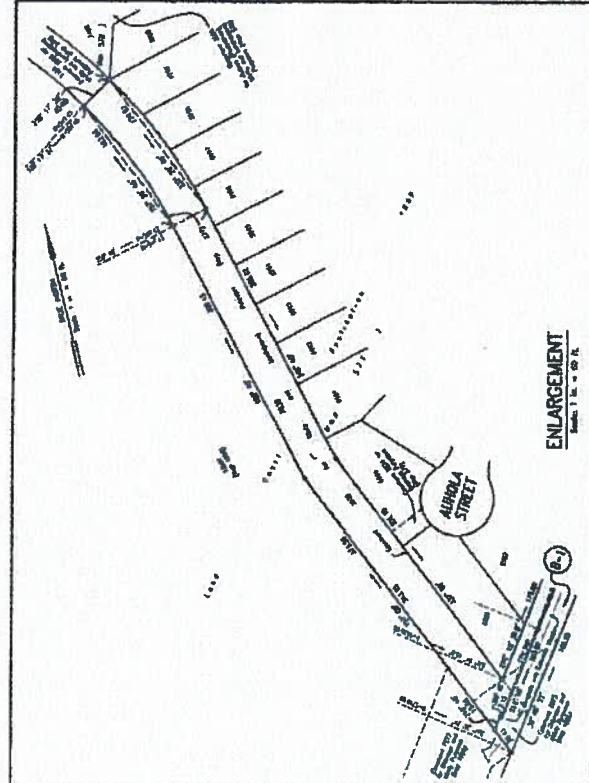
Project No. 101
Contract No. 20020128

Scale: 1" = 30' N.

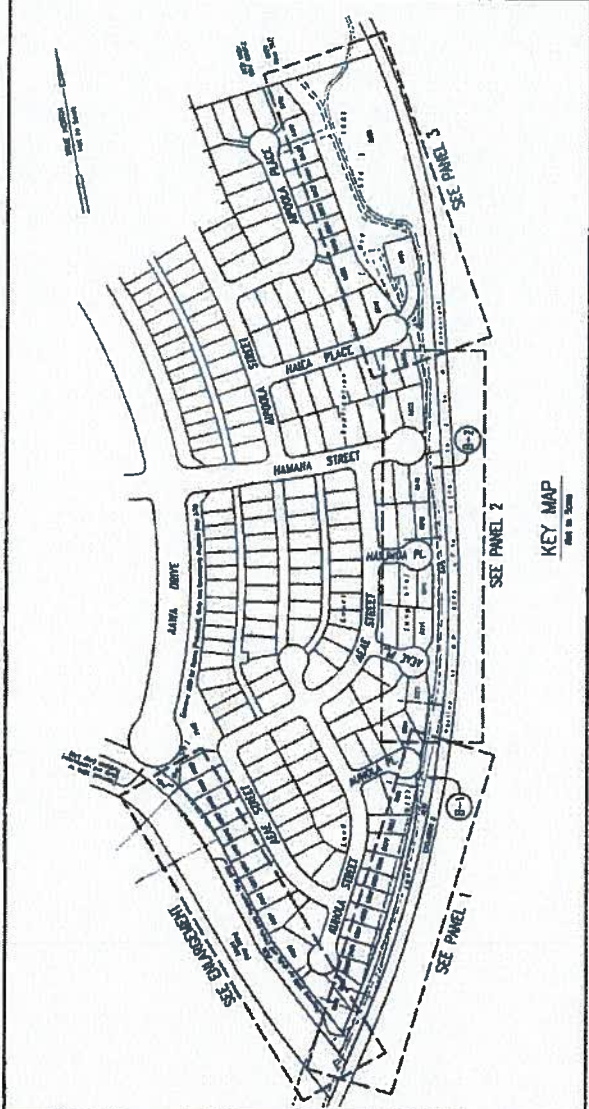
Sheet No. 2 of 2

3/1/12
ADVANCE SHEET
SUBJECT TO CHANGE

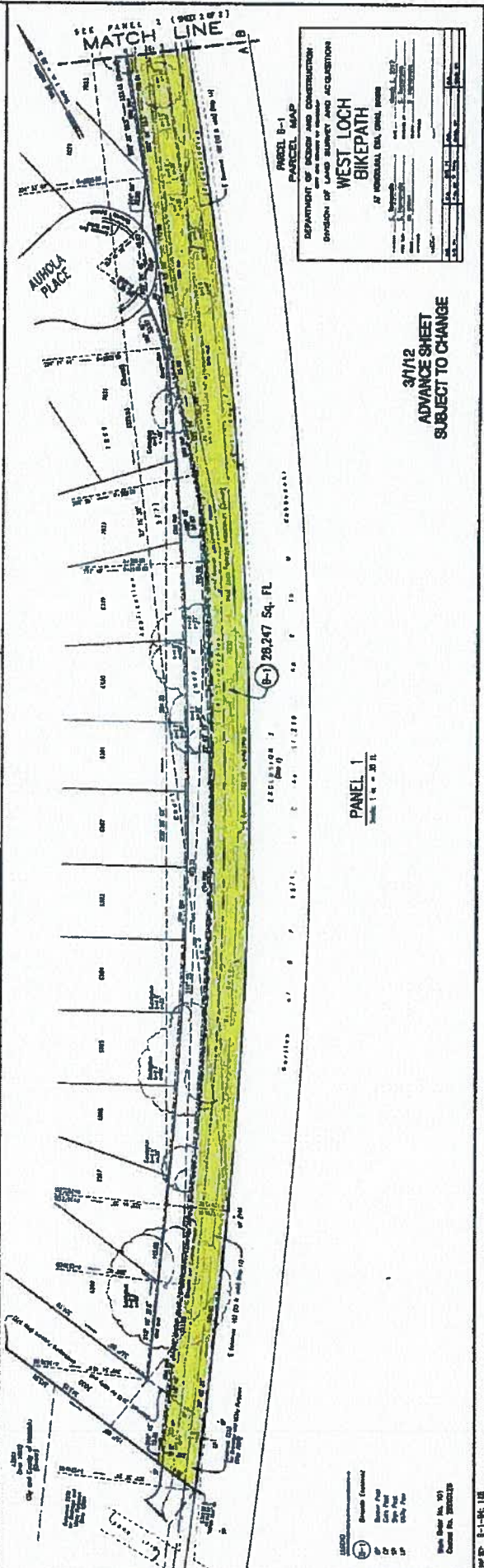
- LEGEND
- ① Station (Corner)
 - ② Station (Center)
 - ③ Station (Face)
 - ④ Station (Back)
 - ⑤ Station (Side)
 - ⑥ Station (Top)
 - ⑦ Station (Bottom)
 - ⑧ Station (Left)
 - ⑨ Station (Right)
 - ⑩ Station (Other)
- ① Station (Corner)
② Station (Center)
③ Station (Face)
④ Station (Back)
⑤ Station (Side)
⑥ Station (Top)
⑦ Station (Bottom)
⑧ Station (Left)
⑨ Station (Right)
⑩ Station (Other)



ENLARGEMENT
Scale: 1 in. = 20 ft.



KEY MAP
Scale: 1 in. = 20 ft.



PANEL 1
Scale: 1 in. = 20 ft.

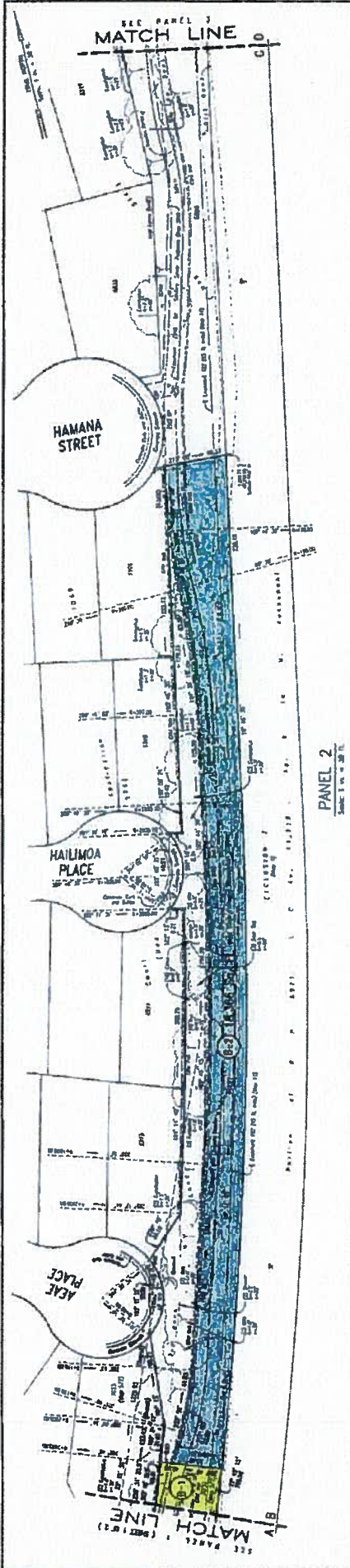
PARCEL MAP
DEPARTMENT OF REVENUE AND CONSTRUCTION
DIVISION OF LAND SURVEY AND ACQUISITION

WEST LOCH BIKEPATH

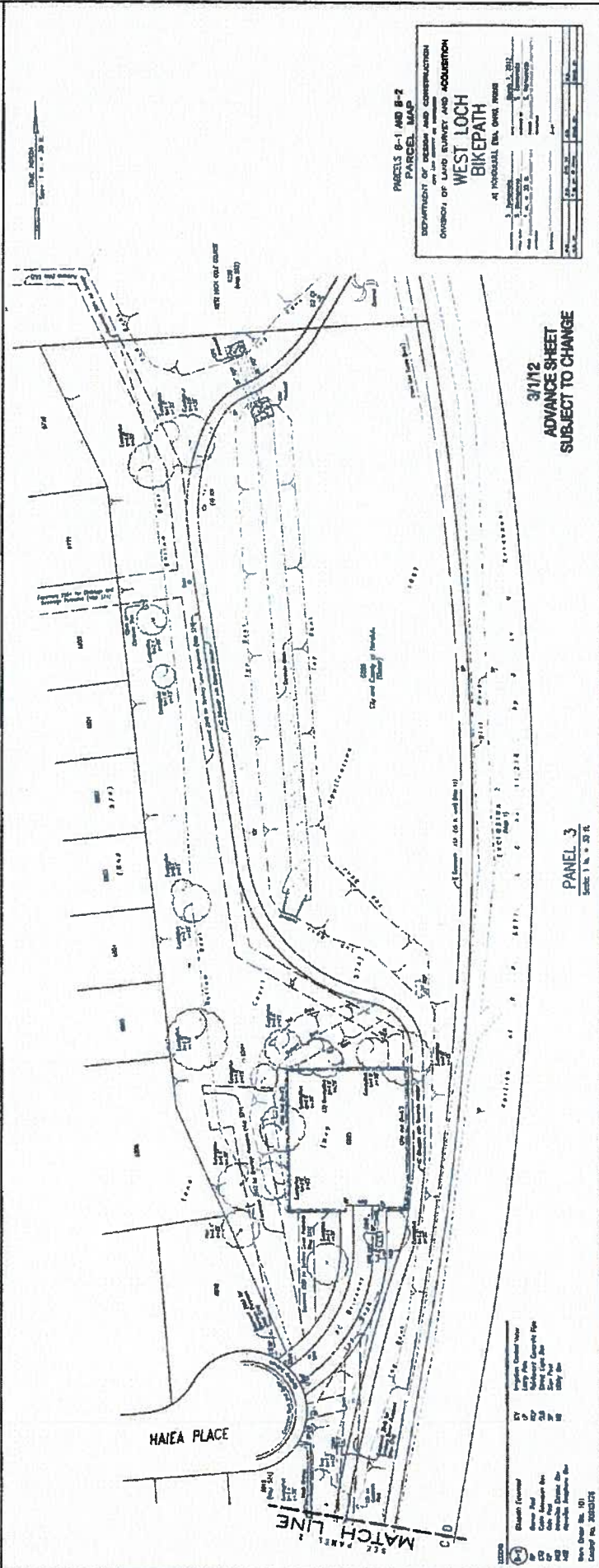
AP ORIGINAL SURVEY

DATE	3/11/12
BY	J. J. JONES
FOR	STATE OF FLORIDA
PROJECT	WEST LOCH BIKEPATH
SECTION	1
TOWNSHIP	1
RANGE	1
COUNTY	1
STATE	FL

3/11/12
ADVANCE SHEET
SUBJECT TO CHANGE



PANEL 2
SCALE: 1 IN. = 20 FT.



PANEL 3
SCALE: 1 IN. = 20 FT.

PANELS B-1 AND B-2
 PARCEL MAP
 DEPARTMENT OF PUBLIC WORKS AND CONSTRUCTION
 DIVISION OF LAND SURVEY AND ACQUISITION
WEST LOCH BIKEPATH
 AT HONOLULU, HAWAII
 PROJECT NO. 112, B-1-B-C
 DATE: 11/11/15
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

3/1/12
 ADVANCE SHEET
 SUBJECT TO CHANGE

Legend:
 [Symbol] Existing (Green)
 [Symbol] Proposed (Red)
 [Symbol] Right-of-Way (Blue)
 [Symbol] Utility (Black)
 [Symbol] Easement (Yellow)

Land Court System

Regular Court System

To: City and County of Honolulu
Department of Design and Construction
Purchasing Division
530 South King Street, Room 115
Honolulu, Hawaii 96813

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TMK: 9-1-064-116 (por.)

GRANT OF EASEMENT

THIS INDENTURE made this _____ day of _____, 20___, by and between WEST LOCH FAIRWAYS ASSOCIATION, a Hawaii nonprofit corporation whose business address is 800 Bethel Street, Suite 501, Honolulu, Hawaii, hereinafter called the "Grantor" and the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose business and post office address is Honolulu Hale, Honolulu, Hawaii, hereinafter called the "Grantee";

EXHIBIT E

W I T N E S S E T H:

WHEREAS, the Grantor is the owner of that certain real property located in West Loch Fairways in Ewa Beach, Hawaii, identified by Tax Map Key Parcel No. (1) 9-1-064:116 (por.) ("Property");

WHEREAS, the Grantee has requested non-exclusive and perpetual easement rights for use by the general public for bicycle path and pedestrian purposes, over, across and upon Easement _____, located on Property and as more particularly described on Exhibit "A" attached to ("Bike Path Easement");

WHEREAS, the Grantor is willing to convey to Grantee rights to use the Bike Path Easement on the terms and conditions hereinafter stated; and

WHEREAS, the City Council, by Resolution No. ____-_____, adopted _____, _____, approved the acceptance of the Bike Path Easement for use, maintenance, operation, repair, reconstruction, replacement, alteration, enlargement, inspection, relocation, renewal and removal of a bicycle and pedestrian pathway for use of the general public;

NOW, THEREFORE, the Grantor, in consideration of the sum of ONE AND NO/100 DOLLAR (\$1.00), to it paid, the receipt of which is hereby acknowledged, and of the covenants of the Grantor and Grantee hereinafter contained, does hereby grant, bargain, sell, and convey unto the Grantee a nonexclusive and perpetual right to the Bike Path Easement for the use, maintenance, operation, repair, reconstruction, replacement, alteration, enlargement, inspection, relocation, renewal and removal of the existing bicycle and pedestrian pathway for use and enjoyment of the general public herein called the "Bike Path", together with the right of ingress and egress as may be deemed necessary for all such uses and purposes.

IT IS MUTUALLY UNDERSTOOD AND AGREED that the aforementioned easement is granted subject to the following terms and conditions:

1. All work in connection with the use, maintenance, operation, repair, reconstruction, replacement, alteration, enlargement, inspection, relocation, renewal or removal of the Bike Path and/or Bike Path Easement shall be done without cost or expense to the Grantor and its assigns.

2. The Bike Path Easement may be used for all purposes necessary or incidental to the Grantee's use, maintenance, operation, repair, reconstruction, replacement, alteration, enlargement, inspection, relocation, renewal or removal of the a public trail and right-of-way primarily for bicycles and pedestrians connecting to the Grantee's bicycle and walking trails adjacent to the Bike Path Easement.

3. In the exercise of its rights granted hereunder, the Grantee shall comply with all statutes, ordinances, rules, and regulations of the Federal, State, and City and County governments or any agency thereof.

4. The Grantor shall not erect or locate any obstruction or structure, or plant any trees over the Bike Path Easement nor shall any activities be undertaken that unreasonably interfere with the Grantee's intended use thereof. Grantor and Grantee recognize, however, that there are existing trees adjacent to the Bike Path Easement that Grantor must periodically trim.

5. The Grantee may remove any fences, buildings or structures, or cut down, trim or remove any trees, shrubs, bushes, roots or other plantings that interfere with the operation of or access to Bike Path Easement. The Grantee shall not be responsible for the replacement of or repair of any such fences, buildings, structures, trees, turf, gardens, shrubs, landscaping or other improvements removed during the exercise of the rights given herein.

6. The Grantor reserves to itself and its assigns rights-of-way for all purposes across, over and/or under the Bike Path Easement; provided, however, that such rights shall be used in a manner that shall not unreasonably interfere with the use and enjoyment by the Grantee of the easement rights granted herein. In the event that Grantee erects a fence, wall, or gate that may restrict access to the Bike Path Easement or Grantor's property adjacent to the Bike Path Easement, Grantee agrees to provide Grantor a key or other means of access to the restricted area.

7. The Grantor shall not use, nor permit other persons to use, the Bike Path Easement in violation of any applicable laws governing the Bike Path Easement.

8. The Grantee shall keep the Bike Path Easement reasonably clean and the Bike Path in reasonably good condition and shall promptly make all repairs to the Bike Path which it deems necessary. Upon completion of any work performed in or upon the Bike Path Easement, the Grantee shall remove therefrom all equipment and unused or surplus materials, if any.

9. The Grantee will indemnify Grantor for any and all loss or damages to property of Grantor and/or for injury to or death of persons, when such loss or damage, injury or death arises or proximately results from or is alleged to have arisen or proximately results from the negligent acts or willful conduct of Grantee, its agents, employees or contractors, in connection with the rights and obligations of the Grantee hereunder. Nothing herein shall be interpreted to require Grantee to indemnify, and save harmless Grantor against such injuries, death, loss or damages resulting from the negligence or intentional acts or omissions of the Grantor, its agents, employees, affiliates, or subcontractors.

10. If at any time the area across which the Bike Path Easement is hereby granted, or any part thereof, shall be condemned or taken for public use by any governmental authority, the Grantee shall have the right to claim and recover from the condemning authority such compensation as is payable for all unrecoverable improvements placed within the Bike Path

Easement by the Grantee; however, all other payments made or to be made for such taking shall be payable to the Grantor.

11. Any public utilities shall be permitted to cross the Bike Path if approved in writing by the Grantee and provided that such is done in a manner that does not then or later unreasonably interfere with the Grantee's intended use of the easement area; however, no electrical transformers, switching equipment, junction boxes, or any other such facilities or equipment shall be erected either above or below ground on the easement area due to such crossings.

13. No change or addition to, or termination of this Grant or any part hereof shall be valid unless made in writing and signed by or on behalf of the party charged therewith, and any mortgagee of such party.

14. The parties hereto agree that this Grant may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Grant, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

15. The term "Grantor" wherever used herein shall be held to mean and include the West Loch Fairways Association and its successors and assigns, and that the term "Grantee" wherever used herein shall be held to mean and include the City and County of Honolulu, its successors and assigns, and that this instrument shall be binding upon and inure to the benefit of the parties hereto and said respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officers duly authorized on the day and year first above written.

WEST LOCH FAIRWAYS ASSOCIATION

By _____
Its Grantor

CITY AND COUNTY OF HONOLULU

By _____
Its Department of Design and Construction Grantee

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel