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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, DEPARTMENT OF HEALTH, STATE OF HAWAII, Plaintiffs, v. DEPARTMENT OF TRANSPORTATION, STATE OF HAWAII Defendant.	CIVIL ACTION NO. CV05 00636 HG KSC CONSENT DECREE WITH APPENDICES A - G

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The United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this matter alleging that the Hawai`i Department of Transportation ("HDOT") has violated provisions of the Clean Water Act ("Act"), 33 U.S.C. §§1251– 1387, and the regulations promulgated pursuant to the Act, including the conditions and limitations of the Hawai`i General Construction Activities Storm Water Permit, HAR 11-55 Appendix C; the Hawai`i General Industrial Activities Storm Water Permit, HAR 11-55 Appendix B; HDOT's Honolulu International Airport NPDES permit, Permit No. HI0021440; and HDOT's Municipal Separate Storm Sewer System NPDES permit ("MS4") for Oahu, Permit No. HI0021245 (to be reissued as No. HIS000001). The State of Hawai`i, on behalf of the Hawai`i Department of Health ("DOH"), joined in the Complaint to bring claims against Defendants for violations of State law.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby ADJUDGED, ORDERED, AND DECREED as follows:

I. GENERAL PROVISIONS

1. Jurisdiction and Venue. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 33 U.S.C. §§1319 & 1365 and pursuant to 28 U.S.C. §§ 1331, 1345, 1355 & 1367. The Complaint states claims upon which relief may be granted under 33 U.S.C. §1319 and under applicable provisions of State law. Venue is proper in this District under 33 U.S.C. § 1319(b) and under 28 U.S.C. §§ 1391(b) and (c) & 1395(a), because the defendant may be found here and because the transactions and occurrences giving rise to the Complaint occurred here. For purposes of the Decree, HDOT consents to and will not contest the Court's exercise of personal jurisdiction over HDOT or venue in this District.

2. Parties Bound. The obligations of this Consent Decree apply to and are binding upon the United States and DOH and upon HDOT and any successors agencies or other entities or persons otherwise bound by law. Within 10 business days of entry of this Decree, HDOT shall provide a copy of this Decree to each Manager, each Project Superintendent, and each firm retained by HDOT to implement this Decree. If, more than 10 business days after entry of this Decree, a Manager, Project Superintendent, or other person or firm becomes an employee of HDOT or is retained by HDOT to implement provisions of this Decree, HDOT shall provide such person or firm a copy of the Decree within 10 business days of such employment or retention.

3. Definitions. Except as specifically provided in this Decree, definitions for the terms used in this Decree shall be incorporated from the Clean Water Act and the regulations promulgated pursuant to the Act. Whenever terms listed below are used in this Decree, the following definitions apply:

a. "Acceptable evidence", for the purposes of Paragraphs 21.c and 24.b, below includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods or services for which payment is made. Canceled drafts do not constitute acceptable evidence unless such drafts specifically identify and itemize the individual costs of the goods or services for which payment is made.

b. Best Management Practices ("BMPs") shall have the meaning set forth in 40 C.F.R. § 122.2 which states that BMPs "mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of 'waters of the United States'." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage."

c. BMP Program Plan ("BMPPP") shall mean a programmatic chapter under the Storm Water Management Program Plan ("SWMPP") that meets the terms and conditions of the MS4 permit and the requirements of Section V of this Consent Decree (Injunctive Relief).

d. "Clean Water Act" or "Act" shall mean the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251–1387.

e. "Connection Permit" shall mean a permit issued by HDOT for physical connections into its Oahu MS4.

f. "Critical deficiencies" for purposes of Paragraph 10.g.(2) shall mean those deficiencies that pose an immediate threat for the discharge of pollutants to the storm drain system, surface waters, or State waters. Critical deficiencies include, but are not limited to, the following examples:

(1) Any observed discharge, or evidence of discharge, of untreated storm water or non-storm water to the storm drain system, surface waters, or State waters generated by the construction activity.

(2) Absence of linear barriers and/or perimeter controls required by the BMP Plan.

(3) There are identified storm drain inlets, surface waters, or State waters within or adjacent to the project site in close proximity to disturbed soil areas without control measures in place that pose an immediate threat of untreated storm water discharges.

(4) Work in an active stream channel or other surface water body without proper implementation of required BMPs.

(5) Presence of any spilled oil or hazardous materials near to unprotected storm drain inlet, surface waters, or State waters.

g. "Day" shall mean a calendar day unless otherwise specified to be a working day. "Business Day" shall mean a day other than a Saturday, Sunday, State or Federal legal holiday. In computing a prescribed period of time, the day of the event shall not be included. If a stated time period expires on a Saturday, Sunday, State or Federal legal holiday, it shall be extended to include the next working day.

h. "Discharge Permit" shall mean a permit issued by HDOT for discharges into its Oahu MS4.

i. "DOH" shall mean the Hawai`i Department of Health and any of its successor departments, agencies, or instrumentalities.

j. "Encroachment permit project" shall mean a construction project undertaken by a third party within one of HDOT's rights-of-way and that requires the issuance by HDOT of a "Permit to Perform Work Upon State Highways".

k. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments, agencies, or instrumentalities.

l. "General Construction Activities Storm Water Permit" refers to the permit issued by DOH for Construction Activities, HAR 11-55 Appendix C.

m. "General Industrial Activities Storm Water Permit" refers to the permit issued by DOH for Industrial Activities, HAR 11-55 Appendix B.

n. "High Priority Watersheds" shall mean those depicted at Appendix A which is incorporated herein by reference.

o. "Industrial Activity" shall have the meaning set forth in 40 C.F.R. § 122.26(b)(14)(i)-(xi), excluding 40 C.F.R. § 122.26(b)(14)(x).

p. "Inspection" for purposes of Paragraph 10.k.(2) shall mean, at a minimum,

(1) Visual inspection of the inlet(s) and/or point of connection to the MS4 for evidence of the presence of pollutants or other illegal discharges;

(2) Visual inspection of the tributary area for potential sources of pollutants exposed to stormwater and the presence of BMPs, if any, employed to prevent the discharge of those pollutants to the MS4; and

(3) Discussion with a facility representative to ensure that they know the difference between allowable discharges to the MS4 and pollutant discharges which are not allowed to be discharged to the MS4.

q. "Major deficiencies" for purposes of Paragraph 10.g.(2) shall mean those deficiencies that are significant problems which could result in the discharge of pollutants to the storm drain system, surface waters, or State waters. Major deficiencies include, but are not limited to, the following examples:

(1) No Best Management Practices (BMP) Plan or NPDES permit (if required).

(2) Linear barriers and/or perimeter controls in areas tributary to a water body or drain inlet are installed as required by the BMP Plan, but are not functional. This includes silt fences that are not anchored properly, have collapsed, been driven over or overwhelmed by accumulated sediment.

(3) Hazardous materials or waste is stored within the project without containment or implementation of BMPs.

(4) Oil, fuel, or brake or transmission fluid spills covering more than one square yard and/or adjacent to protected storm drain inlets, surface waters, or State waters.

(5) Any discharge of sediment or other deleterious material resulting from dewatering operations conducted without implementation of required BMPs for dewatering.

(6) Sediment tracking more than 50 feet from project ingress/egress location(s).

(7) Expansion of the active disturbed soil area limit without written approval.

(8) Soil stabilization and sediment controls are not installed in accordance with applicable construction site BMP Plan.

(9) Sediment controls are installed in accordance with the BMP Plan, but there is a large unstabilized disturbed soil area with insufficient controls downgradient to prevent the discharge of untreated storm water to the storm drain system, surface waters, or State waters if a rain event generates runoff.

(10) Dust from project site visibly blowing off the site and into storm drain conveyances or adjacent surface water bodies.

r. "Master Consultant" shall mean the consultant or consultants procured by HDOT in order to provide various functions in support of the requirements of this Consent Decree.

s. "Minor deficiencies" for purposes of Paragraph 10.g.(2) shall mean those deficiencies that do not pose a threat for discharge of untreated storm water or pollutants to the storm drain system, surface waters, or State waters, but are not in strict conformance with the SWPPP or BMP Plan. Minor deficiencies include, but are not limited to, the following examples:

(1) BMP Plan does not reflect current operations and an amendment is recommended.

(2) BMPs are not deficient, but are not consistent with the BMP Plan.

(3) Linear barriers and/or perimeter controls are installed as required by the BMP Plan, but require minor maintenance. For example, a silt fence which is not anchored properly throughout the entire length or an inlet protection device with some accumulated silt.

(4) Soil stabilization or sediment controls are installed as required by the BMP Plan, but not properly maintained.

(5) Site inspections by project staff are not being conducted at the required frequencies.

(6) Non-storm water or waste management BMPs improperly maintained.

(7) Oil, fuel, or brake or transmission fluid spills covering less than one square yard and not adjacent to storm drain inlets, surface waters, or State waters.

(8) Evidence of active wind erosion on unstabilized slopes/stock piles.

(9) Minor tracking less than 50 feet from project ingress/egress locations.

(10) Major deficiencies which are corrected prior to the inspector leaving the site.

t. "MS4 Permit" refers to the NPDES permit issued by DOH to HDOT Highways Division for discharges from HDOT's municipal separate storm sewer system on the Island of Oahu and designated as Permit No. HI0021245 and to be reissued as No. HIS000001.

u. "Notice of Intent" shall mean a request for coverage under a General Permit.

v. "Parties" means the United States, on behalf of EPA; the State, on behalf of DOH; and HDOT.

w. "Responsible Officer" shall mean an official of HDOT in charge of storm water program functions for either the Highways Division or the Airports Division, or any other person who performs similar policy or decision making functions for HDOT and is authorized as set forth at 40 C.F.R. § 122.22.

x. "SEPs" shall mean the Supplemental Environmental Projects to be performed under this Decree and more fully described in Section VII, below.

y. "Service Contractor" shall mean the contractor or contractors procured by HDOT in order to provide various services in support of the requirements of this Consent Decree.

z. "Site" shall mean any location in the State of Hawai`i that HDOT owns, leases, or operates, and at which there is or will be construction resulting in ground-disturbing activities greater than or equal to one acre or that is otherwise subject to the NPDES storm water construction regulations set forth at 40 C.F.R. § 122.26(b)(14)(x) or 40 C.F.R. § 122.26(b)(15).

aa. Site-Specific BMP Plan shall mean a plan for controlling pollutants in storm water discharges from Sites that meets the requirements of the General Construction Activities Storm Water Permit and Section V of this Consent Decree.

bb. "State" shall refer to the State of Hawai`i.

cc. "SWPCP" shall mean a Storm Water Pollution Control Plan, a plan for controlling pollutants in storm water discharges from locations that meets the requirements of the General Industrial Activities Storm Water Permit and Section V of this Consent Decree.

dd. "SWMPP" shall mean a Storm Water Management Program Plan developed and implemented as required by HDOT's MS4 permit and modified as required by this Consent Decree.

II. COMPLIANCE WITH THE CLEAN WATER ACT

4. HDOT shall fully comply with all requirements of the Clean Water Act, as well as with the terms and conditions of all applicable NPDES Permits, including the Highways Division Oahu District Municipal Separate Storm Sewer System ("MS4") permit; the Honolulu International Airport NPDES permit, Permit No. HI0021440; the Hawai`i General Industrial

Activities Storm Water permit, HAR 11-55 Appendix B; and the Hawai`i General Construction Activities Storm Water permit, HAR 11-55 Appendix C.

III. APPROVAL PROCESS

5. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA and DOH shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

a. If the submission is approved pursuant to Paragraph 5.(a), HDOT shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 5.(b) or (c), HDOT shall, upon written direction of EPA and DOH, take all actions required by the approved plan, report, or other item that EPA and DOH determine are technically severable from any disapproved portions, subject to HDOT's right to dispute only the specified conditions or the disapproved portions, under Section X of this Decree (Dispute Resolution).

b. If the submission is disapproved in whole or in part pursuant to Paragraph 5.(c) or (d), HDOT shall, within 30 business days or such other time as agreed to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, HDOT shall proceed in accordance with the preceding Subparagraph.

6. Any Stipulated Penalties applicable to the original submission, as provided in Section VIII of this Decree, shall accrue during the 30-day period or other period specified for resubmission, but shall not be payable unless the resubmission is untimely or is disapproved in whole; provided that, if the original submission was so deficient as to constitute a material breach

of HDOT's obligations under this Decree, the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

7. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA and DOH may again require HDOT to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to HDOT's right to invoke Dispute Resolution and to the right of EPA and DOH to seek Stipulated Penalties as provided in the preceding Paragraphs.

IV. CERTIFICATION OF REPORTS AND SUBMISSIONS

8. Except as otherwise expressly provided in this Consent Decree, any report or other document submitted by HDOT pursuant to this Decree that makes any representation concerning compliance or noncompliance with any requirement of this Decree, the Act or its implementing regulations, or any applicable permit, shall be certified by a Responsible Officer of HDOT. The certification shall be in the following form:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

V. INJUNCTIVE RELIEF

<u>Highways Division Oahu District MS4</u>

<u>Compliance with December 2003 SWMPP and Additional Requirements</u>

9. Upon entry of this Consent Decree, HDOT shall fully and completely implement its December 2003 Storm Water Management Program Plan ("SWMPP"). In addition, HDOT shall also comply with the additional requirements set out below at Paragraphs 9.a - 9.g. For each of these additional requirements, HDOT shall make and submit the necessary modifications

to its SWMPP and implement those modifications upon submittal. HDOT shall make additional modifications as requested by EPA and DOH, in accordance with Section III (Approval Process).

a. Debris Removal Best Management Program

(1) Within 60 days of entry of this Consent Decree HDOT shall modify, and implement accordingly, the Street Sweeping Schedule as set out as Table II-1 of the December 2003 SWMPP so as to provide for the sweeping of all state highway segments on Oahu (shoulders and medians) at least as frequently as set forth in this Paragraph. A list of roadway segments and their respective minimum sweeping frequencies is set out at Appendix B and incorporated herein by reference. HDOT may propose revisions to this modified Street Sweeping schedule when it submits the revised SWMPP in accordance with Paragraph 10.f below.

(2) Within 60 days of entry of this Consent Decree, HDOT shall modify, and implement accordingly, the Storm Drainage Structure Inspection Schedule as set out as Table II-2 of the December 2003 SWMPP so as to provide for the inspection and necessary cleaning, as provided for at Pages DR3-1 and DR3-2, of all state highway storm drainage system gutters, swales, open channels/ ditches, culverts, drain inlets, catch basins, manholes, outfalls, and other accessible discharge points that are appurtenant to all state highway segments on Oahu according to the requirements of this Paragraph. The minimum inspection and cleaning frequencies required by this Subparagraph are set out at Appendix C and incorporated herein by reference. HDOT may propose revisions to this modified Storm Drainage Structure Inspection Schedule when it submits the revised SWMPP per Paragraph 10.f, below.

(3) Within two years of entry of this Consent Decree, HDOT shall develop and implement a comprehensive asset management system for the Oahu

District's storm drain system and related appurtenances, including maintenance equipment, to ensure appropriate debris removal and system maintenance. The asset management system shall include justification of its priorities on the basis of potential impacts to water quality and shall, at a minimum, include identification of the number and location of all drain inlets and outfalls. HDOT shall use this asset management system to establish priorities and to schedule and track appropriate system maintenance and debris removal program activities, such as street sweeping, catch basin cleaning, and green waste and accumulated soil removal. The asset management system shall be included in the modified SWMPP upon its completion.

b. Construction Activities BMP Program

(1) Within 90 days after entry of this Decree, HDOT shall provide a copy of the current edition of the City and County of Honolulu's "Best Management Practices Manual for Construction Sites in Honolulu" ("CCH Manual"), to all appropriate staff involved in construction, including contractors and in-house employees (including employees of the Maintenance Section who are either directly or indirectly involved in the implementation of activities under either the SWMPP and/or this Consent Decree), those involved in work done pursuant to encroachment permits, and those involved in erosion control projects. For the purposes of this Subparagraph, it shall be sufficient for HDOT to provide to the offices listed in Appendix G, at a minimum, the number of CCH Manuals specified in Appendix G. Within 90 days after entry of the Consent Decree, any Contractor (either professional consultant or construction contractor) involved with construction at HDOT facilities or within State Highways rights-of-way shall be required to obtain the CCH Manual.

(2) HDOT shall provide annual training on the Construction BMP Program Plan to all staff with construction storm water responsibilities, including construction engineers, maintenance staff, and plan reviewers. This training shall be specific to HDOT activities (including the proper installation and maintenance of approved BMPs), policies, and procedures. The first annual training shall be conducted by no later than September 15, 2005 or within 30 days after entry of this Decree, whichever is later.

(3) Beginning 30 days after entry of this Decree, HDOT shall not allow construction to commence on any contract, in-house, or encroachment permit project unless and until it (a) has verified that the project has received from DOH a Notice of General Permit Coverage under the Hawai`i General Construction Activities Storm Water permit (unless the project will disturb less than one acre of land) and has satisfied any other applicable requirements of the Hawai`i NPDES permit program, and (b) has reviewed the applicable Site-Specific BMP Plan to verify that it fully meets all requirements of the following, to the extent that they are applicable: (i) HDOT's Standard Provisions (Sections 107.17 and 209); (ii) Water Pollution and Erosion Control Notes; (iii) NPDES Requirements for Permit Projects Within State Highway Right-of-Way Notes; (iv) the General Construction Activities Storm Water NPDES permit; and (v) any other applicable requirements of the Hawai`i NPDES permit program. For encroachment permit projects, HDOT shall only be responsible for the activities described in Subparagraphs 9.b.(1) and 9.b.(3) above, for work that occurs within HDOT rights-of-way.

(4) Within 10 business days after entry of this Decree, HDOT shall submit for approval a checklist that its reviewers shall use in evaluating the BMP plans pursuant to this Paragraph. Upon approval, HDOT shall provide copies of

this checklist to applicants for encroachment permits and to contractors for their use in developing construction Site-Specific BMP Plans for HDOT-contracted construction projects.

(5) Upon entry of this Decree, prior to the initiation of ground-disturbing activities at any Site, except for activities associated with the installation of BMPs at a Site, no other construction activities may commence until an HDOT engineer (or an engineer retained by HDOT) or qualified inspector reviews and becomes familiar with the projects' site-specific BMP plan and inspects the Site to determine whether the BMPs required by the BMP plan have been installed correctly and in the correct locations. The engineer or qualified inspector who conducts this inspection shall document that the BMPs required by the BMP plan have been installed correctly and in the correct locations prior to the commencement of any other ground-disturbing activity.

c. Chemical Applications BMP Program. Within 60 days after entry of this Decree, HDOT shall develop and implement a specific training program, for all potential appliers (bulk and hand-held) of fertilizers, pesticides, and herbicides, in the proper application of those substances. HDOT shall not permit the application of fertilizers, pesticides, or herbicides unless the applier has first received this training.

d. Erosion Control BMP Program. Within 180 days after entry of this Decree, HDOT shall submit for approval a plan for the completion of high priority erosion control projects on all of the sites listed in Appendix D which is incorporated herein by reference. This plan shall include for each site, at a minimum: the proposed erosion control methodology to be utilized; construction schedule; cost estimate; completion criteria; and a schedule for post-completion inspection and maintenance. All erosion control projects to be done under this Subparagraph shall be completed by no

later than two years after entry of this Decree. HDOT shall continue to perform maintenance activities on completed projects as necessary.

e. Maintenance Facilities BMP Program

(1) Within 90 days after entry of this Decree, HDOT shall develop and implement, for each maintenance baseyard located on Oahu, a site-specific SWPCP that includes, among other things, a detailed site plan, site description, and facility layout, description of potential pollutant sources, site-specific BMPs, inspection procedures, and spill cleanup procedures. An individual at each facility (e.g., yard foreman) shall be charged with ensuring implementation of the SWPCP. This individual shall be trained to conduct inspections and identify areas for BMP improvement. To ensure consistency and provide assistance and oversight, HDOT shall identify an individual, also trained to conduct inspections and identify areas for BMP improvement and independent of any specific baseyard, who shall conduct inspections of all six baseyards at least quarterly.

(2) HDOT shall develop and implement a formal storm water awareness training program for Oahu District Maintenance supervisors and staff that identifies potential sources of pollution, general BMPs that can be used to reduce or eliminate such sources, and specific BMPs for the District's facilities and activities. The training shall incorporate elements of the public education campaign being implemented by the City and County of Honolulu and shall educate staff that they serve a role in protecting water quality. Maintenance supervisors and staff shall be made aware of the NPDES permit, the overall SWMPP, the SWPCP for their baseyard, and the applicable BMPPP(s). HDOT shall conduct the first round of this training by no later than September 15, 2005 or within 30 days after entry of this Decree, whichever is later.

f. New Development and Significant Redevelopment BMP Program Plan

(1) Within 90 days of the commencement of services by the Master Consultant, or within 180 days of entry of this Decree, whichever comes first, HDOT shall develop and implement specific criteria establishing when permanent post-construction BMPs must be included in project design to address storm water impacts and pollutants of concern. These criteria shall take into consideration, among other things, potential water quality impacts anticipated from the permanent post-construction conditions. Permanent post-construction BMPs to be considered shall include those designed to treat storm water runoff and other structural type devices.

(2) Upon approval of the criteria established under Paragraph 9.f.(1), above, HDOT shall not advertise any construction project or award any construction contract unless and until the project design has been reviewed to ensure that appropriate permanent post-construction BMPs have been included in the project design and are included in the bid package. No project shall proceed without the inclusion of appropriate permanent post-construction BMPs unless there is specific documentation demonstrating that such post-construction BMPs are not practicable. For the purposes of this Paragraph and for a period not to exceed 60 days after approval of the criteria, matters concerning the timing or scheduling of a project may be considered as a reason that post-construction BMPs are not practical for inclusion in the project design. Project documents for projects that will include installation of permanent post-construction BMPs shall also include appropriate requirements for their future continued maintenance.

(3) Upon approval of the criteria established under Paragraph 9.f.(1), HDOT shall not issue any encroachment, discharge, or connection permit for any project that requires NPDES permit coverage under the General Construction Activities Storm Water Permit unless and until the project design has been

reviewed to ensure that appropriate permanent post-construction BMPs have been included in the project design and are included in the permit application package. No encroachment, discharge, or connection permit shall be issued without the inclusion of appropriate permanent post-construction BMPs unless there is specific documentation demonstrating that such post-construction BMPs are not practicable. Permit documents for applications that will include installation of permanent post-construction BMPs shall also include appropriate requirements for their future continued maintenance.

g. Illicit Connection / Illegal Discharge Elimination Program

(1) HDOT shall complete follow-up investigations on all industrial, commercial, and high-density residential parcels discharging to HDOT's MS4 that are indicated in the December 2000 Storm Water Questionnaire Survey of Parcels Adjacent to Highway Rights-of-Way ("Questionnaire Survey"). Follow-up investigations shall be ranked as follows: parcels identified in the Questionnaire Survey as priorities 1-4 shall be considered as Tier 1 parcels; parcels identified as priorities 5-16 shall be considered as Tier 2 parcels; and parcels identified as priorities 17-30 shall be considered as Tier 3 parcels. Each such investigation shall be deemed completed upon either (a) the issuance of a discharge or connection permit, or (b) sufficient documentation to support a conclusion that no discharge or connection permit is necessary because (i) there is no physical connection present, or (ii) the only potential discharges from non-industrial activities are by overland sheet flow. Tier 1 investigations shall be completed within 18 months after entry of this Decree. All Tier 2 and Tier 3 investigations shall be completed within 3 years after entry of this Decree.

(2) Within 60 days after entry of this Decree, HDOT shall transmit to DOH full electronic and paper copies of its survey parcel database, sorted by SIC

code. HDOT shall provide electronic and paper updates to this list, reflecting outcomes of the investigations discussed above, on an annual basis in its Annual Report.

SWMPP Revisions

10. HDOT shall revise and submit for approval its Oahu District Storm Water Management Program Plan ("SWMPP") to incorporate the requirements set out at Paragraphs 9.a - 9.g, above, and at Paragraphs 10.a - 10.k, below. Unless specified otherwise, HDOT shall submit the revised SWMPP within 240 days of the commencement of services by the Master Consultant, or within one year of entry of this Decree, whichever comes first. Upon its submittal, HDOT shall fully and completely implement all parts of the revised SWMPP, which shall supersede the December 2003 SWMPP. HDOT shall make additional modifications as requested by EPA and DOH, in accordance with Section III (Approval Process).

a. Storm Water Management Program Structure. HDOT shall revise its SWMPP to include a formal storm water management program structure for the Oahu District MS4 program that includes, at a minimum, designated storm water contacts for each Highways Division branch, program, and field office, as appropriate. An organization chart to reflect this structure shall also be developed and submitted. For each designated contact, HDOT shall include a description of the position's roles and responsibilities for the storm water program. HDOT shall hold monthly meetings with these contacts to discuss implementation and evaluation of the storm water program. HDOT shall maintain copies of the sign-in sheets for these meetings in accordance with Paragraph 52, below, and these shall be made available to EPA and DOH upon request.

b. Measurable Goals. HDOT shall revise its SWMPP to include a combination of both direct and indirect objective, quantitative standards ("measurable goals") that can be used to measure progress under each specific program element in its SWMPP. In its SWMPP, HDOT shall incorporate the specific measurable goals

identified in other parts of this Consent Decree in addition to developing other appropriate measurable goals.

c. Training and Education

(1) HDOT shall revise its SWMPP to establish a training program such that all HDOT staff and management involved in storm water management activities shall receive at least annual storm water training in the requirements of each program element for which they have responsibility. This training program shall include, at a minimum, for each program element: (a) identification and qualifications of the trainers; (b) training in, at a minimum for each program element, the following topic areas: review of applicable measurable goals; the selection and implementation of appropriate BMPs; and review of storm water regulations, permits, and the terms of this Consent Decree; and (c) appropriate documentation of training activities.

(2) To the extent that HDOT utilizes contractors, with the exception of general contractors used to construct contract construction projects, to implement any SWMPP activities, HDOT shall require that such contractors receive training equivalent to that included in HDOT's training program in all applicable areas.

(3) No less than annually, HDOT shall offer appropriate storm water runoff management training to general contractors and subcontractors used to construct HDOT's contract construction projects. Such training shall emphasize sediment and erosion control requirements and BMPs (Chapter 2 in the CCH manual), but shall additionally cover, in appropriate detail, requirements and BMPs for all of the other Contractor Activities covered in Chapter 1 of the CCH Manual.

(4) Prior to the issuance of any Notice to Proceed, or the equivalent, to any contractor on any contract construction project, HDOT shall hold a

preconstruction meeting with the project's prime contractor during which the requirements of the General Construction Activities Storm Water Permit shall be discussed, as well as (a) Standard Provisions (Sections 107.17 and 209); (b) "Water Pollution and Erosion Control Notes"; and (c) the applicable requirements of this Consent Decree.

d. Monitoring of Program Effectiveness. HDOT shall revise its SWMPP to include a discussion of specific activities to be undertaken in order to assess BMP effectiveness, including an evaluation of success in achieving measurable goals and a discussion of available and applicable water quality monitoring data. Assessments of program effectiveness shall be conducted at least annually and be reported in HDOT's End-of-Year Reports.

e. Reporting. HDOT shall revise its SWMPP to include a description of reporting procedures and activities, including schedules and proposed content of semi-annual and annual reports such that, at a minimum, the following is reported for each storm water program element (BMP Program) in each Mid-Year and End-of-Year Report:

(1) Requirements: description of what HDOT was required to do (permit requirements, EPA or DOH orders for compliance, or other commitments set forth in the SWMPP and this Consent Decree);

(2) Past Year Activities: description of activities over the reporting period including, where applicable, progress accomplished toward meeting specific measurable goals or other specific performance requirements and including, when requirements were not fully met, a detailed explanation as to why HDOT did not meet its commitments for the reporting period;

(3) Future Activities: description of planned activities including, where applicable, specific activities to be undertaken during the next reporting

period toward accomplishing specific measurable goals or other specific performance requirements;

(4) Resources: report on the status of HDOT's resource base for implementing both this Consent Decree and HDOT's NPDES permit during the applicable reporting period, together with an estimate of the resources over and above those required in the current reporting period that will be required in the next reporting period.

f. Debris Removal Best Management Practices Program. HDOT shall revise its SWMPP to develop procedures and a schedule for inspections of:

(1) all state highways on Oahu for the purpose of identifying whether sweeping or brooming of roadways, shoulders, or medians is needed, and

(2) all state highway storm drainage system catch basins, gutters and open ditches, trenches, and storm drains on Oahu for the purpose of identifying whether cleaning of such structures is needed.

In both cases identified in the preceding Subparagraphs, the need for sweeping, brooming, or structure cleaning shall, in addition to other criteria, be determined based upon material accumulation rates and potential threat of discharges to waters of the United States that may have an effect on water quality. The schedule shall provide that each highway mile and storm drainage feature is inspected at least once annually, but that highway segment drainages and their associated storm features that are located in High Priority Watersheds shall be inspected at least semiannually. The adopted procedures shall also provide for the identification of other highway segments (in addition to those located in High Priority Watersheds) and their associated storm drainage features that may require more frequent sweeping, brooming, or structure cleaning based upon material accumulation rates and potential threat of discharges to waters of the United States that may have an effect on water quality. The procedures shall establish debris accumulation thresholds above which sweeping, brooming, or structure cleaning must occur.

g. Construction Activities BMP Program.

(1) HDOT shall revise the following documents to require use of the CCH Manual and the City and County of Honolulu's "Rules for Soil Erosion Standards and Guidelines," April 1999: (a) Standard Provisions (Sections 107.17 and 209); (b) "Water Pollution and Erosion Control Notes"; and (c) "NPDES Requirements for Permit Projects Within State Highway Right-of-Way Notes." These revised documents shall be used, to the extent applicable, on all contract, in-house, and encroachment permit construction projects on Oahu. HDOT shall incorporate these revised documents, either explicitly or by reference, into its revised SWMPP.

(2) HDOT shall revise its SWMPP to specify mandatory minimum project inspection and enforcement requirements for use at all construction sites as follows:

(a) In addition to inspections required by the Hawai`i General Construction Activities Storm Water permit, and as otherwise required under the Hawai`i NPDES permit program, all in-house and contract construction projects shall be inspected at least monthly by a qualified construction inspector who is independent (i.e., not involved in the projects' day-to-day planning, design, or implementation) of the construction projects to be inspected. HDOT may use more than one qualified construction inspector for these inspections. HDOT, in consultation with DOH, shall develop and implement a standard inspection form, and reporting procedures for use in these inspections. The inspection form shall include, at a minimum, a checklist for the proper installation of BMPs specified in the BMP plan, and the reporting procedures shall include, at a minimum, notification of critical deficiencies

to the Director of HDOT and DOH. Upon three successive monthly inspections that indicate, in total, no critical or major deficiencies or less than six minor deficiencies with no more than three minor deficiencies in one month in a project's BMPs or other storm water management activities, HDOT may decrease the inspection frequency for such project to quarterly. However, if while under a quarterly inspection frequency, an inspection of a project conducted pursuant to this Paragraph indicates at least one critical or major deficiency or a total of three or more minor deficiencies in the project's BMPs or other storm water management activities, the inspection frequency shall immediately return to no less than monthly. HDOT shall further develop and implement written procedures for appropriate corrective actions and follow-up inspections when an inspected project is not in full compliance with this Consent Decree, the HDOT MS4 permit, the Hawai`i General Construction Activities Storm Water permit, or any other applicable requirements under the Hawai`i NPDES permit program. The corrective action procedures shall at a minimum require that (i) any critical deficiencies shall be corrected or addressed before the close of business on the day of the inspection at which the deficiency is identified, and (ii) any major deficiencies shall be corrected or addressed as soon as possible, but in no event later than five business days after the inspection at which the deficiency is identified or before the next forecasted precipitation, whichever is sooner.

(b) All encroachment permit construction projects shall be inspected at least once during the life of the project, and any project of the types listed immediately below shall be inspected at least annually if it continues longer than one year's duration:

1) Housing/commercial development improvements which include large roadway and utility improvements or any grading within HDOT's rights-of-way;

2) Utility main installation (waterlines, sewerlines, underground electrical lines, etc.);

3) Landscape/irrigation installation (e.g. median beautification projects); and

4) Drainline connections.

All inspections shall be conducted by a qualified construction inspector. HDOT may use more than one qualified construction inspector for these inspections. HDOT, in consultation with DOH, shall develop and implement a standard inspection form and reporting procedures for use in these inspections. The inspection form shall include, at a minimum, a checklist for the proper installation of BMPs specified in the BMP plan, and the reporting procedures shall include, at a minimum, notification of any critical deficiencies to the Director of HDOT and DOH. HDOT shall further develop and implement written procedures for appropriate corrective actions and follow-up inspections when an inspected project is not in full compliance with this Consent Decree, the HDOT MS4 permit, or the Hawai`i General Construction Activities Storm Water permit.

h. Erosion Control Best Management Practices Program. HDOT shall revise its SWMPP as follows:

(1) HDOT shall include water quality impacts as a priority in selecting projects for erosion control improvements, ensuring that erosional areas with the potential for significant water quality impact, but with limited public safety concerns, are also considered a high priority for remediation. Erosional areas with the potential for significant water quality impact shall include areas where there is evidence of rilling or gullying or other evidence of significant sediment transport

and that are located within High Priority Watersheds. HDOT shall identify and implement erosion control projects based on water quality concerns while continuing to address high profile public safety projects.

(2) HDOT shall require the prompt implementation of temporary erosion control measures (e.g., erosion control blankets or fabrics, gravel bags, and silt fence/fiber rolls) on the erosional areas with the potential for significant water quality impact identified in the preceding Subparagraph if a permanent solution is not immediately possible.

(3) HDOT shall modify the list of approved erosion and sediment control BMPs to include, at a minimum, at least all of those contained in the CCH Manual. The revised SWMPP shall also provide for the implementation of alternative erosion and sediment control BMPs where appropriate.

(4) HDOT shall undertake a program to evaluate the erosional potential of storm drain system outlets that discharge downslope of the roadbed. Where discharge points are observed to be creating erosional conditions, HDOT's program shall require installation of velocity dissipaters or other BMPs to reduce the risk of continued erosion at these locations.

i. Maintenance Facilities BMP Program. HDOT shall develop and implement a written set of maintenance BMPs for routine and emergency in-house activities. Activity-specific BMPs shall be organized as a manual and be created in a format that facilitates its use by field staff. It shall be distributed to all field staff and shall complement the overall goals of the BMPPP.

j. New Development and Significant Redevelopment BMP Program Plan. HDOT shall revise its SWMPP to add the following additional permanent post-construction BMPs to the current list in Section 3 of the New Development and Significant Redevelopment BMP Program Plan (Section VIII M of the December 2003

SWMPP): infiltration basins, infiltration trenches, media filters, Continuous Deflective Separation (CDS) units, and similar technologies.

k. Illicit Connection / Illegal Discharge Elimination Program. HDOT shall revise its SWMPP as follows:

(1) HDOT shall develop procedures for identifying and responding to possibly illicit connections and illegal discharges. These procedures shall include, but not be limited to, specific time deadlines for responding to identified discharges. Such identification and response procedures shall be coordinated with the inspection procedures required under the revised Debris Removal Best Management Practices Program set forth in Paragraph 10.f, above.

(2) HDOT shall develop a program to conduct inspections of industrial and commercial holders of connection and discharge permits to its MS4. This industrial/commercial inspection program shall include scheduling inspections such that each industrial facility is inspected at least once every five years. Any industrial facility that does not have NPDES permit coverage under the Hawai`i NPDES permit program shall be reported to DOH no later than 30 days after the inspection date. Commercial dischargers are to be ranked according to relative risk of discharge of contaminated runoff to HDOT's MS4. The highly ranked commercial facilities shall be inspected at least once every 5 years. This industrial/commercial inspection program shall be updated as appropriate to reflect the outcomes of the investigations discussed in the preceding Subparagraph.

11. Highways Division Construction Activities on Other Islands. On a statewide basis HDOT shall implement all of the revised construction program activities requirements pursuant to Paragraphs 9.b, 10.g.(1), and 10.g.(2)(a), above, and all of the revised New Development and Significant Redevelopment project activities requirements pursuant to

Paragraphs 9.f and 10.j, above, on all HDOT construction projects (including contract and in-house projects) that are subject to NPDES storm water permit requirements, except that references in Paragraph 10.g.(1) to the CCH "Rules for Soil Erosion Standards and Guidelines" (April 1999) shall be modified to require use and adoption of each county's comparable and applicable standards. The time deadlines contained in the referenced Paragraphs shall apply on the Other Islands under this Paragraph.

Airports Division

Airport Tenant Inspections and Enforcement

12. Within 90 days after entry of this Decree, HDOT shall submit to EPA and DOH a written program of procedures for airport tenant inspection and enforcement that shall be used at Honolulu International, Lihue, and Kahului airports, in accordance with the requirements of this Paragraph. HDOT shall implement the procedures upon their submission to and approval by EPA and DOH. HDOT shall make modifications as requested EPA and DOH, in accordance with the requirements of Section III (Approval Process). This tenant inspection and enforcement program shall provide, at a minimum, for the following:

a. HDOT shall develop procedures and schedules for inspections of all airport tenants, including all those located away from the airports proper (e.g., on Aolele and Ualena Streets in Honolulu). At each airport, HDOT shall rank each tenant for its relative potential either to contribute pollutants to storm water runoff or to have a non-storm water discharge either into the airport storm sewer system or otherwise into waters of the United States. Rankings shall be made on a low/medium/high threat basis. Tenants that have separate NPDES permit coverage shall always be ranked as high threat. At least once each calendar year, HDOT shall review its tenant lists and these rankings and update them as necessary. This updated list shall be submitted as part of HDOT's Annual Report.

b. HDOT shall inspect each tenant/facility in each ranking class as follows:

(1) High ranked tenants, other than those that have separate NPDES permit coverage, shall be inspected at least quarterly.

(2) High ranked tenants that have separate NPDES permit coverage shall be inspected at least annually. HDOT shall submit a copy of each report of these inspections to DOH within 30 days of the date of the inspection.

(3) Medium ranked tenants shall be inspected at least annually.

(4) Low ranked tenants shall be inspected at least biennially.

(5) HDOT shall inspect each of its airport maintenance baseyards at least quarterly. HDOT shall submit a copy of each report of these inspections to DOH within 30 days of the date of the inspection.

c. Procedures for inspection of airport tenants and maintenance yards shall require a written record of the inspection such as either a checklist or form. At a minimum, such checklist or form shall for each inspection identify: facility name, address, contact name, contact telephone number, and SIC code; inspection date; inspector name; BMPs evaluated; inspection findings; and recommended follow-up actions. Copies of all inspection reports shall be maintained for a minimum of 5 years and shall be made available to EPA or DOH upon request.

d. Procedures for enforcement against tenants with inadequate BMPs or non-storm water discharges shall include identification of a range of enforcement responses available to HDOT, clear guidelines for selection of an enforcement response appropriate to the tenant deficiency at issue, guidelines for escalating the initial enforcement response for multiple or repeated violations, and follow-up inspections to ensure the problems have been corrected.

e. HDOT shall develop procedures for training of HDOT and contract management staff charged with implementing or overseeing airport tenant inspection and enforcement activities.

13. Resources. HDOT shall take all actions to ensure that it has adequate resources, including contracting resources, to comply with all requirements of both this Consent Decree and its NPDES permits. Such actions shall include, but not be limited to, accurately assessing resource needs, communicating these needs to the Director of HDOT, making timely budget requests of the legislature, and notifying the legislature of the terms and requirements of this Consent Decree and HDOT's NPDES permits. The human resources necessary to carry out the requirements of this Consent Decree and HDOT's NPDES permits may be comprised of either HDOT employees or contractors or both.

14. Reporting. For the first year after entry of this Consent Decree, HDOT shall submit quarterly reports to EPA and DOH that shall include the following information for the past quarter. The first quarterly report shall be due 60 days after the end of the first complete quarter following entry of this Consent Decree. All other reports shall be submitted no later than 45 days after the last day of each calendar quarter. After submittal of the fourth quarterly report referenced above HDOT shall, for the duration of this Decree, submit semiannual reports. Semiannual reports shall be due on August 31st and February 28th and shall cover the six month periods ending on June 30th and December 31st, respectively. HDOT may submit separate quarterly and semiannual reports for the Airports and Highways Divisions. All reports shall, at a minimum, include the following information:

a. Oahu District MS4 Activities

(1) Storm Water Contact Coordination Meetings

The number, dates, and names of attendees of each monthly Storm Water Contact Coordination meetings;

(2) Debris Removal Program Activities

(a) Specific highway segments (with dates) inspected for sweeping needs;

(b) Specific highway segments swept, frequency of sweeping, and the total amount of debris removed;

(c) Specific (by Milepost or other identifier) storm drainage system catch basins, gutters and open ditches, trenches, and sewers inspected, by specific highway segment and date;

(d) Specific (by Milepost or other identifier) storm drainage system catch basins, gutters and open ditches, trenches, and sewers cleaned, the date(s) of cleaning, and the nature and total amount of debris removed;

(e) Number and dates of debris removal program trainings, types of trainings, and attendees participating in each; and

(f) Activities undertaken toward development and utilization of the asset management system;

(3) Construction Program Activities

(a) Total number of contract projects in the planning or design stages and total number of projects for which permanent post-construction BMP review was completed;

(b) Total number of contract project contracts put out to bid, total number awarded, total number of contract project NPDES permit verifications and BMP plans reviewed, and total number of pre-construction BMP verification inspections;

(c) Total number of in-house project NPDES permit verifications and BMP plans reviewed and total number of pre-construction BMP verification inspections;

(d) Total number of active construction projects and the total number of storm water inspections, specifying project type (contract, in-house, permit); and

(e) Number and dates of construction program trainings, types of trainings, and attendees participating in each;

(4) Chemical Applications Program Activities

Number and dates of chemical applications program trainings, types of trainings, and attendees participating in each;

(5) Erosion Control Program Activities

(a) Number of erosional problem areas with a potential for significant water quality impact identified, the number stabilized (permanently or temporarily) or otherwise remediated, and a revised schedule for stabilizing or otherwise remediating the remaining areas; and

(b) Number and dates of erosion control program trainings, types of trainings, and attendees participating in each;

(6) Maintenance Facility Program Activities

(a) Dates and locations and a summary of findings of maintenance facility oversight inspections; and

(b) Number and dates of maintenance facility trainings, types of trainings, and attendees participating in each;

(7) New Development and Significant Redevelopment Program Activities

(a) Number of project designs reviewed for appropriate inclusion of permanent post-construction BMPs; and

(b) Number and dates of New Development and Significant Redevelopment Program Activities trainings, types of trainings, and attendees participating in each;

(8) Illicit Connection / Illegal Discharge Elimination Program Activities

(a) Total number of completed follow-up investigations of discharging industrial, commercial, and high-density residential parcels;

(b) Total number of inspections of industrial and commercial dischargers to HDOT's right-of-way; and

(c) Number and dates of IC/ID Program Activities trainings, types of trainings, and attendees participating in each;

b. Statewide Highway Construction Activities

(1) Total number of contract projects in the planning or design stages and total number of projects for which permanent post-construction BMP review was completed;

(2) Total number of contract project contracts put out to bid, total number awarded, total number of contract project NPDES permit verifications and BMP plans reviewed, and total number of pre-construction BMP verification inspections;

(3) Total number of in-house project NPDES permit verifications and BMP plans reviewed and total number of pre-construction BMP verification inspections;

(4) Total number of active construction projects and the total number of storm water inspections, specifying project type (contract and in-house); and

(5) Number and dates of construction program trainings, types of trainings, and attendees participating in each;

c. Airports Division

(1) A listing of each tenant, its relative pollutant risk ranking, date(s) on which it was inspected by HDOT, and types of enforcement response actions taken against any tenant, including dates and any required follow-up activities; and

(2) Number and dates of tenant inspection and enforcement program trainings, types of trainings, and attendees participating in each.

15. Responsibility for Acts of Contractors or Agents. HDOT shall be responsible for ensuring that work is performed in accordance with the requirements of this Decree, even if that work is performed by contractors, subcontractors, or agents. HDOT shall provide a copy of this Decree to all Managers, employees, contractors, subcontractors, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor specifically retained to perform work required under this Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this the Decree. In any action to enforce this Consent Decree, HDOT shall not raise as a defense the failure by any of its Managers, employees, agents, contractors, or subcontractors to take any actions necessary to comply with the provisions of this Decree.

VI. CIVIL PENALTY

16. Civil Penalty. Within 30 days after entry of this Consent Decree, HDOT shall pay a civil penalty of $1,000,000.00, plus interest from the date the penalty is due. Interest shall be calculated in accordance with 28 U.S.C. § 1961. Interest shall continue to accrue until payment is made. The Civil Penalty payment shall be allocated with $600,000, plus accrued interest, if

any, being paid to the United States and $400,000, plus accrued interest, if any, being paid to DOH.

17. Method of Payment.

a. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to HDOT, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Hawai`i. At the time of payment, HDOT shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-07488 and the civil action number of this case) to the United States in accordance with Section XIV (Notification).

b. Payment shall be made by cashier's or certified check made payable to the State of Hawai`i. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference the civil action number of this case) to the Parties in accordance with Section XIV (Notification).

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

18. HDOT shall implement a Supplemental Environmental Project ("SEP"), consisting of an Audit and Environmental Management System ("EMS")("the EMS SEP"), to be performed in accordance with the provisions of Appendix E to this Consent Decree, which is attached hereto and incorporated into this Decree by reference. In implementing the SEP, HDOT shall spend not less than $1,062,500 in Eligible SEP costs. Eligible SEP costs include the costs of planning and implementing the SEP, but do not include any costs associated with corrective actions needed for compliance actions identified under the EMS.

19. HDOT shall implement a SEP consisting of "Erosion and Sediment Control for Highways" Compliance Assistance Workshops for contractors of professional services and for

contractors of construction services on the islands of Hawai`i (in Hilo and Kona), Kauai, Maui, and Oahu (in Honolulu and Kapolei)("the Compliance Assistance Workshops SEP"). These Compliance Assistance Workshops shall be developed and implemented in accordance with the provisions of Appendix F to the Consent Decree which is attached hereto and incorporated into this Decree by reference. In implementing the SEP, HDOT shall spend not less than $60,000 in Eligible SEP costs. Eligible SEP costs are limited to the costs to perform the tasks described in Appendix F, and do not include any costs associated with developing the workshop curriculum.

20. With regard to each SEP, HDOT certifies the truth and accuracy of each of the following:

a. that, as of the date of executing this Decree, HDOT is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. that the SEP is not a project that HDOT was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

c. that HDOT has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action; and

d. that HDOT will not receive any reimbursement for any portion of the SEP from any other person.

21. EMS SEP Completion Report. Within 30 days after HDOT concludes that the EMS SEP has been fully implemented in accordance with the requirements of this Decree, HDOT shall submit to the Parties in accordance with Section XIV of this Consent Decree (Notification) a SEP Completion Report. The SEP Completion Report shall contain the following information:

a. A detailed description of the SEP as implemented;

b. A description of any problems encountered in completing the SEP and the solutions thereto;

c. An itemized list of all Eligible SEP costs and acceptable evidence of such costs; and

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree and Appendix E.

22. EPA may, in its sole discretion, require information in addition to that contained in Defendants' initial SEP Completion Report, in order to determine the adequacy of SEP completion or eligibility of SEP costs, and Defendants shall provide such information.

23. After receiving the SEP Completion Report, the United States (after consultation with DOH) shall notify HDOT whether or not it has satisfactorily completed the EMS SEP. If the SEP has not been satisfactorily completed in accordance with this Decree and Appendix E, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 18, above, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

24. Compliance Assistance Workshops SEP Completion Report. Within 30 days after HDOT concludes the final Compliance Assistance Workshop, HDOT shall submit to the Parties in accordance with Section XIV of this Consent Decree (Notification) a SEP Completion Report. The SEP Completion Report shall contain the following information:

a. A detailed description of the SEP as implemented;

b. An itemized list of all Eligible SEP costs and acceptable evidence of such costs; and

c. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree and Appendix F.

25. DOH may, in its sole discretion, require information in addition to that contained in Defendants' initial SEP Completion Report, in order to determine the adequacy of SEP completion or eligibility of SEP costs, and Defendants shall provide such information.

26. After receiving the SEP Completion Report, the DOH (after consultation with United States) shall notify HDOT whether or not it has satisfactorily completed the Compliance Assistance Workshops SEP. If the SEP has not been satisfactorily completed in accordance with this Decree and Appendix F, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 19, above, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

27. Disputes concerning the satisfactory performance of each SEP may be resolved under Section X of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

28. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 8, above.

29. Any public statement, oral or written, in print, film, or other media, made by HDOT making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States and State of Hawai`i v. Hawai`i Department of Transportation, taken on behalf of the U.S. Environmental Protection Agency and the Hawai`i Department of Health under the Clean Water Act."

VIII. STIPULATED PENALTIES

30. Stipulated Penalty Amounts. If HDOT fails to comply fully and timely with the requirements of this Decree, including the compliance dates for each and every measure set forth in Section V (Injunctive Relief) and Section VII (Supplemental Environmental Projects), and with all requirements set forth in any applicable permits, HDOT shall pay Stipulated Penalties in the following amounts:

a. for each failure to submit a Notice of Intent or otherwise obtain a permit, failure to prepare a Site-Specific BMP Plan, or failure to have the Site-Specific BMP Plan available at a construction site: $1,000 per day per violation;

b. for each failure in developing a SWPCP for any location in accordance with applicable permits and guidance documents: $800 per violation;

c. for failure to install a BMP specified by the Site-Specific BMP Plan or permit: $2,000 per day per violation;

d. for each failure to properly install or maintain appropriate BMPs in accordance with applicable plans, permits, and guidance documents: $1,500 per day per violation;

e. for failure to conduct the inspections required by Paragraphs 9.a.(2), 9.b.(5), 9.e.(1), 10.f, 10.g.(2), 10.k.(2), 11, and 12 above: $1,000 for each of the first ten violations; $2,500 for each of the next ten violations; and $5,000 for each subsequent violation;

f. for failure to provide reports required pursuant to Paragraphs 10.e and 14: $500 per day for the first ten days of each violation; $1,000 per day for the next ten days of each violation; and $2,500 per day for each subsequent day of violation;

g. for each failure to timely submit or re-submit plans for approval in accordance with Section III (Approval Process): $500 for each day of violation;

h. for each failure to conduct or document the training required by Paragraphs 9.b.(2), 9.c, 9.e, 10.c, 11, and 12.e above: $1,000;

i. for failure to pay the civil penalty or accrued interest: $1,000 for each day that the payment is late;

j. for failure to timely submit the documents required by the SEP pursuant to Section VII of this Decree and Appendix E: $500 per day per violation;

k. for failure to timely submit a draft workshop outline as described in Appendix F: $500 per day;

l. for each failure to offer a workshop: $5,000; and

m. for each failure to timely submit the documents required by the SEP pursuant to Section VII of this Decree and Appendix F: $500 per day per violation.

31. EMS SEP Compliance: If HDOT's total Eligible SEP Costs are less than $1,062,500 in connection with the performance of the EMS SEP described in Appendix E to this Consent Decree, or if the SEP has not been satisfactorily completed, HDOT shall be liable for stipulated penalties as set forth below. If HDOT has halted or abandoned the completion of the SEP, such penalties shall accrue from the date of abandonment or the date set for completion of the SEP, whichever is earlier.

a. If the SEP has been satisfactorily completed but HDOT's total Eligible SEP Costs are less than $1,062,500, HDOT shall pay stipulated penalties at the rate of 100% for every one dollar that HDOT's total Eligible SEP Costs are less than $1,062,500.

b. If the SEP has not been satisfactorily completed, HDOT shall pay stipulated penalties at the rate of 150% for every one dollar that HDOT's total Eligible SEP Costs are less than $1,062,500. If the SEP has not been satisfactorily completed but HDOT's total Eligible SEP Costs for the SEP are equal to or exceed $1,062,500, HDOT shall not be liable for any stipulated penalties for the SEP if HDOT has made good faith and timely efforts to complete the SEP and certifies with supporting documentation, no later than the date that HDOT is required to submit a SEP Completion Report, that it has spent at least $1,062,500 in Eligible SEP Costs. If HDOT does not provide the certification and the documentation required by this Subparagraph, or if the documentation provided does not support HDOT's certification, HDOT shall be deemed to be in violation of this Consent Decree and shall pay stipulated penalties of $25,000.

32. Compliance Assistance Workshops SEP Compliance: If HDOT's total Eligible SEP Costs are less than $60,000 in connection with the performance of the Compliance Assistance Workshops SEP described in Appendix F to this Consent Decree, or if the SEP has

not been satisfactorily completed, HDOT shall be liable for stipulated penalties as set forth below. If HDOT has halted or abandoned the completion of the SEP, such penalties shall accrue from the date of abandonment or the date set for completion of the SEP, whichever is earlier.

a. If the SEP has been satisfactorily completed but HDOT's total Eligible SEP Costs are less than $60,000, HDOT shall pay stipulated penalties at the rate of 100% for every one dollar that HDOT's total Eligible SEP Costs are less than $60,000.

b. If the SEP has not been satisfactorily completed, HDOT shall pay stipulated penalties at the rate of 150% for every one dollar that HDOT's total Eligible SEP Costs are less than $60,000. If the SEP has not been satisfactorily completed but HDOT's total Eligible SEP Costs for the SEP are equal to or exceed $60,000, HDOT shall not be liable for any stipulated penalties for the SEP if HDOT has made good faith and timely efforts to complete the SEP and certifies with supporting documentation, no later than the date that HDOT is required to submit a SEP Completion Report, that it has spent at least $60,000 in Eligible SEP Costs. If HDOT does not provide the certification and the documentation required by this Subparagraph, or if the documentation provided does not support HDOT's certification, HDOT shall be deemed to be in violation of this Consent Decree and shall pay stipulated penalties of $25,000.

33. Accrual of Stipulated Penalties. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Penalties shall accrue regardless of whether HDOT has been notified of a violation but need not be paid until a demand is made. HDOT shall pay any Stipulated Penalty within 30 days of receiving written demand therefor.

34. Demand. The United States or DOH, or both, may seek Stipulated Penalties under this Section. Where both sovereigns seek Stipulated Penalties for the same violation of

this Consent Decree, HDOT shall pay 60% of total Stipulated Penalties to the United States and 40% to DOH. Where only one sovereign demands Stipulated Penalties for a violation, it shall make that demand on its own behalf, and HDOT shall pay the full amount of the Stipulated Penalties due for the violation to that sovereign.

35. Waiver of Stipulated Penalties. The United States or DOH may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due that sovereign under this Consent Decree. The determination by one sovereign not to seek Stipulated Penalties, or subsequently to waive or reduce the amount it seeks, shall not preclude the other sovereign from seeking Stipulated Penalties.

36. Payment. HDOT shall, as directed by the United States in its demand, pay Stipulated Penalties owing to the United States by EFT in accordance with Section VI (Civil Penalty), Paragraph 17.a, above, or by certified or cashier's check in the amount due, payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-07488 and United States Attorney's Office file number [*_____], and delivered to the office of the United States Attorney, District of Hawai`i, Room 6-100, PJKK Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawai`i 96850. Any payment of Stipulated Penalties shall be accompanied by a transmittal memorandum referencing DOJ No. 90-5-1-1-07488 and United States Attorney's Office file number [*_____] and stating that payment of Stipulated Penalties is being made. HDOT shall pay any Stipulated Penalties owing to DOH according to the provisions of Section VI (Civil Penalty), Paragraph 17.b.

37. Interest. If HDOT fails to pay Stipulated Penalties according to the terms of this Consent Decree, HDOT shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

38. No Effect on Obligation to Comply. The payment of Stipulated Penalties shall not alter in any way HDOT's obligation to comply with the requirements of this Decree.

39. No Waiver of Other Remedies. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and DOH for HDOT's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act, HDOT shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

40. Effect of Dispute Resolution. Stipulated Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, HDOT shall pay accrued Stipulated Penalties, if any, determined to be owing to the United States and DOH within 15 business days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States and DOH prevail in whole or in part, HDOT shall pay all accrued Stipulated Penalties determined by the Court to be owed to the United States and DOH within 30 days of receipt of the Court's decision or order, except as provided in Subparagraph c, below;

c. If the District Court's decision is appealed by HDOT or by the United States and DOH, HDOT shall pay all accrued Stipulated Penalties determined by the District Court to be owing to the United States and DOH into an interest-bearing escrow account within 30 days of receipt of the Court's decision or order. Stipulated Penalties shall be paid into this account as they continue to accrue, at least every 30 days. Within 15 business days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States and DOH, or to HDOT, in accordance with the court's mandate.

IX. FORCE MAJEURE

41. Definition of Force Majeure. A "Force Majeure" event is any event beyond the control of HDOT, its contractors, or any entity controlled by HDOT that delays the performance of any obligation under this Consent Decree despite HDOT's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential Force Majeure event and addressing the effects of any such event (a) as it is occurring, and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. In no case shall any of the following circumstances give rise to a claim of Force Majeure: unanticipated or increased costs or expenses associated with implementation of this Decree or changed financial circumstances; failure to apply for a required permit or approval, or to provide in a timely manner all information required to obtain a permit or approval, that is necessary to meet the requirements of this Decree; failure by HDOT to approve contracts; failure by HDOT to secure federal funding; or failure by HDOT to fill all staffing positions.

42. Required Notification. HDOT shall notify EPA and DOH orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time HDOT first knew of, or in the exercise of reasonable diligence under the circumstances should have known of, any event that might delay completion of any requirement of this Decree, whether or not the event is a Force Majeure event. HDOT shall make the oral notification to the United States required by this Paragraph by calling Kathi Moore, the Chief of the Clean Water Compliance Office; in the event that HDOT is unable to reach Kathi Moore, such notification may be effective if HDOT leaves a detailed message explaining that notice is being provided pursuant to this Paragraph. HDOT shall make oral notification to DOH by calling Denis Lau, the Chief of the Clean Water Branch. The United States and DOH may designate alternative representatives to receive oral notification at their discretion by sending HDOT a written designation in accordance with Section XIV (Notification). Within 7 days of providing oral notice, HDOT shall provide written notice by facsimile with hard copy to follow to EPA and DOH. The written notice HDOT submits pursuant to this Paragraph shall indicate whether

HDOT claims that the delay should be excused due to a Force Majeure event. The written notice shall describe in detail the basis for HDOT's contention that it has experienced, or may experience, a Force Majeure delay (if it intends to make such a claim); the anticipated length of the delay; the precise cause or causes of the delay; and the measures taken or to be taken to prevent or minimize the delay and the timetable by which those measures will be implemented. Failure to comply with the procedures of this Paragraph shall preclude HDOT from asserting any claim of Force Majeure.

43. Procedures for Extension. If the United States agrees that a Force Majeure event has occurred or will occur, the United States may agree to extend the time for HDOT to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a Force Majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XV of this Consent Decree (Modification).

44. Dispute Resolution. If the United States does not agree that a Force Majeure event has occurred, or does not agree to the extension of time sought by HDOT, the United States' position shall be binding, unless HDOT invokes Dispute Resolution under Section X of this Consent Decree. In any such dispute, HDOT bears the burden of proving, by a preponderance of the evidence, that each claimed Force Majeure event is a Force Majeure event; that HDOT gave the notice required by Paragraph 42, above; that the Force Majeure event caused any delay HDOT claims was attributable to that event; and that HDOT exercised best efforts to prevent or minimize any delay caused by the event.

X. DISPUTE RESOLUTION

45. Exclusive Remedy. Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between HDOT and the United States and DOH arising under this Decree. However,

the procedures set forth in this Section shall not apply to actions by the United States or DOH to enforce obligations of HDOT that have not been disputed in accordance with this Section. The procedures set forth in this Section shall not apply to disputes between DOH and the United States.

46. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when HDOT sends the United States and DOH a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 days from the date the dispute arises, unless that period is modified by written agreement of the United States, DOH, and HDOT. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States (after consultation with DOH) shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, HDOT invokes formal dispute resolution procedures set forth in Paragraph 47, below.

47. Formal Dispute Resolution.

a. Within 30 days after the conclusion of the informal negotiation period, HDOT may invoke formal dispute resolution procedures by serving on the United States and DOH a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting HDOT's position and any supporting documentation relied upon by HDOT.

b. The United States and DOH shall serve their Joint Statement of Position within 45 days of receipt of HDOT's Statement of Position. The Joint Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The Joint Statement of Position shall be binding on HDOT, unless HDOT files a motion for judicial review of the dispute in accordance with Paragraph 48, below.

48. Petitions to the Court. In the event that the Parties cannot resolve a dispute by informal or formal negotiations as set forth above, the following procedures shall apply:

a. HDOT may seek judicial review of the dispute by filing with the Court and serving on the United States and DOH a Motion requesting judicial resolution of the dispute. The Motion shall be filed within 30 days of receipt of the Joint Statement of Position set forth in Paragraph 47.b, above.

b. The Motion shall attach all Statements of Position and shall contain a written statement of HDOT's position on the matter in dispute, including any supporting factual data, analysis, opinion, and documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree. HDOT shall serve such Motion on the United States and DOH electronically and by overnight delivery.

c. The United States and DOH shall respond to HDOT's Motion within 30 days of the service of the Motion. The United States and DOH agree to serve their Joint Response electronically and by overnight delivery.

d. HDOT may file a reply memorandum within 15 business days of service of the Joint Response.

e. Standard and Scope of Review. In any dispute brought under this Paragraph, HDOT shall bear the burden of demonstrating that its position clearly complies with the Clean Water Act and the Act's implementing regulations and that Defendant is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

49. Effect on Other Obligations. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of HDOT under this Consent Decree, unless and until final resolution of the dispute so provides.

Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 40, above. If HDOT does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

50. The United States, DOH, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or DOH in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by HDOT or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess HDOT's compliance with this Consent Decree.

51. Upon request, HDOT shall provide EPA and DOH, or their authorized representatives, splits of any samples taken by HDOT. Upon request, EPA and DOH shall provide HDOT splits of any samples taken by EPA or DOH.

52. Until five years after the termination of this Consent Decree, HDOT shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relates in any manner to HDOT's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary institutional policies or procedures. At any time during this

information-retention period, the United States or DOH may request copies of any documents, records, or other information required to be maintained under this Paragraph.

53. At the conclusion of the information-retention period provided in the preceding Paragraph, HDOT shall notify the United States and DOH at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or DOH, HDOT shall deliver any such documents, records, or other information to EPA or DOH. HDOT may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If HDOT asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by HDOT. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

54. HDOT may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that HDOT seeks to protect as CBI, HDOT shall follow the procedures set forth in 40 C.F.R. Part 2.

55. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or DOH pursuant to applicable federal or State laws, regulations, or permits, nor does it limit or affect any duty or obligation of HDOT to maintain documents, records, or other information imposed by applicable federal or State laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT

56. This Consent Decree resolves the civil claims of the United States and DOH for the violations alleged in the Complaint filed in this action through the date of lodging.

57. The United States and DOH reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 56. This Consent Decree shall not be construed to limit the rights of the United States or DOH to obtain penalties or injunctive relief under the Act or its implementing regulations, or under other federal or State laws, regulations, or permit conditions, except as expressly specified in Paragraph 56.

58. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. HDOT is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and HDOT's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States and DOH do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that HDOT's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act or its implementing regulations or with any other provisions of federal, State, or local laws, regulations, or permits. Notwithstanding the United States' or DOH's review and approval of any data, reports, or plans submitted pursuant to this Decree, HDOT shall remain solely responsible for compliance with this Decree.

59. This Consent Decree does not limit or affect the rights of HDOT or of the United States or DOH against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against HDOT, except as otherwise provided by law.

60. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. MISCELLANEOUS

61. Headings. Headings in this Decree are provided for convenience only and shall not affect the substance of any provision.

62. Costs of Suit. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and DOH shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by HDOT.

XIV. NOTIFICATION

63. When written notification or communication is required by the terms of this Decree, such notification or communication shall be addressed to the following individuals at the addresses specified below (or to such other addresses as may be thereafter designated by written notice to the parties):

As to the United States:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ #90-5-1-1-07488

and

Kathi Moore (WTR -7)
Chief, CWA Compliance Office
U.S. EPA, Region 9
75 Hawthorne St.
San Francisco, CA 94105
(415) 972-3505
kathi.moore@epa.gov

As to EPA:

Kathi Moore (WTR -7)
Chief, CWA Compliance Office
U.S. EPA, Region 9
75 Hawthorne St.
San Francisco, CA 94105
(415) 972-3505
kathi.moore@epa.gov

As to DOH:

Denis Lau
Chief, Clean Water Branch
Hawai`i State Department of Health
919 Ala Moana Blvd., Room 301
Honolulu, Hawai`i 96814
(808) 586-4309
dlau@eha.health.state.hi.us

and

Kathleen S. Ho
Deputy Attorney General
Health and Human Services Division
Department of the Attorney General
State of Hawai`i
465 South King Street, Room 200
Honolulu, Hawai`i 96813
(808) 587-3062
kathleen.s.ho@hawaii.gov

As to HDOT:

Rodney K. Haraga
Director, Department of Transportation
869 Punchbowl Street
Honolulu, Hawai`i 96813
(808) 587-2150
rodney.haraga@hawaii.gov

and

Jefferry S. Kato
Deputy Attorney General
Land and Transportation Division
Department of the Attorney General
State of Hawai`i
465 South King Street, Room 300
Honolulu, Hawai`i 96813
(808) 587-2994
jefferry.s.kato@hawaii.gov

64. Notifications to or communications with HDOT, DOH, EPA, or the United States shall be deemed submitted:

a. when required to be sent by mail, on the date they are postmarked and sent by certified mail, return receipt requested;

b. when required to be sent by overnight delivery, on the date they are picked up by the overnight delivery service; or

c. when required to be made electronically, on the date they are sent by electronic mail with confirmation of receipt.

XV. MODIFICATION AND TERMINATION

65. Modification. The deadlines set forth in Sections V (Injunctive Relief) and VII (Supplemental Environmental Project) of this Decree may be modified, and those and other non-material modifications of this Decree shall be made by written agreement of the parties, with notification to the Court. Where any modification constitutes a material change to any term of this Decree, it shall be effective only upon written agreement of the Parties and approval by the Court.

66. Request to Terminate Decree. No sooner than 5 years after entry of this Decree, HDOT may request the United States and DOH's consent to termination of this Decree. In seeking such consent, HDOT shall provide a written report to the United States and DOH that demonstrates:

a. HDOT has paid all civil penalties, Stipulated Penalties, and interest due under this Decree;

b. There are no unresolved matters subject to Dispute Resolution pursuant to Section X (Dispute Resolution);

c. No enforcement action under this Decree is pending;

d. HDOT has fully and successfully completed the compliance requirements set forth in Section V (Injunctive Relief); and

e. HDOT has fully and successfully completed all SEP requirements set forth in Section VII.

67. Response to Request for Termination

a. If the United States and DOH agree that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

b. If the United States and DOH do not agree that the Decree may be terminated, HDOT may invoke Dispute Resolution under Section X of this Decree. However, HDOT shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 47 of Section X, until 60 days after service of its Request for Termination.

XVI. INTEGRATION

68. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and submittals that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XVII. APPENDICES

69. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the Definition of High Priority Watersheds;

"Appendix B" is the Highway Segments and Sweeping Frequencies

"Appendix C" is the Drainage System Inspection and Cleaning Schedule

"Appendix D" is the High Priority Areas for Erosion Control Measures

"Appendix E" is the EMS SEP

"Appendix F" is the Compliance Assistance Workshops SEP

"Appendix G" is the list of DOT Facilities with CCH Manuals

XVIII. ENTRY AND FINAL JUDGMENT

70. Authority to Sign Decree. The undersigned representatives of HDOT certify that they are authorized to enter into and to execute this Decree and to legally bind HDOT to the terms and conditions of the Decree and that they meet the requirements for authorized signatory found in 40 C.F.R. § 122.22. The undersigned representatives of DOH and the United States each certifies that he or she is authorized to enter into and to execute this Decree and to legally bind the Party that he or she represents to the terms and conditions of the Decree.

71. Counterparts. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

72. Designation of Agent for Service. HDOT shall identify on the attached signature page the name and address of an agent who is authorized to accept service of process by mail on HDOT's behalf with respect to all matters arising under or relating to this Decree. HDOT agrees to accept service in that manner and to waive the formal service requirements of Fed. R. Civ. P. 4 and 5 and any applicable local rules of this Court, including, but not limited to, service of summons.

73. Public Notice. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. HDOT agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified HDOT in writing that it no longer supports entry of the Decree.

74. Final Judgment. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, DOH, and HDOT. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

75. Retention of Jurisdiction. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XV, or effectuating or enforcing compliance with the terms of this Decree.

SO ORDERED THIS _____ DAY OF _____, 2005

_____
UNITED STATES DISTRICT JUDGE

We hereby consent to entry of the foregoing Consent Decree, subject to the Notice and Comment Provisions of 28 C.F.R. § 50.7 and Paragraph 73 of this Decree:

FOR THE UNITED STATES OF AMERICA

Date: 9/27/05

Kelly A Johnson

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 9/27/05

ANGELA O'CONNELL
CYNTHIA HUBER
Senior Attorneys
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-5273

We hereby consent to entry of the foregoing Consent Decree, subject to the Notice and Comment Provisions of 28 C.F.R. § 50.7 and Paragraph 73 of this Decree:

Date: 28 SEP 05

GRANTA Y. NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building, 2241-A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Date: 14 SEP 05

WAYNE NASTRI
Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

OF COUNSEL:

LAURIE KERMISH
Assistant Regional Counsel
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3917

FOR THE HAWAI'I DEPARTMENT OF HEALTH

Date: AUG 1 5 2005

Chiyome Leinaala Fukino, M.D.
Director of Health
State of Hawai'i
1250 Punchbowl Street
Honolulu, Hawai'i 96813

APPROVED AS TO FORM:

Kathleen S. Ho
Deputy Attorney General

FOR DEFENDANT, HAWAI`I DEPARTMENT OF TRANSPORTATION

Date: SEP - 1 2005

Rodney K. Haraga
Director, Department of Transportation
869 Punchbowl Street
Honolulu, Hawai`i 96813

APPROVED AS TO FORM:

Jefferry S. Kato
Deputy Attorney General

Appendix A
State Highway Routes in High-priority Watershed Areas

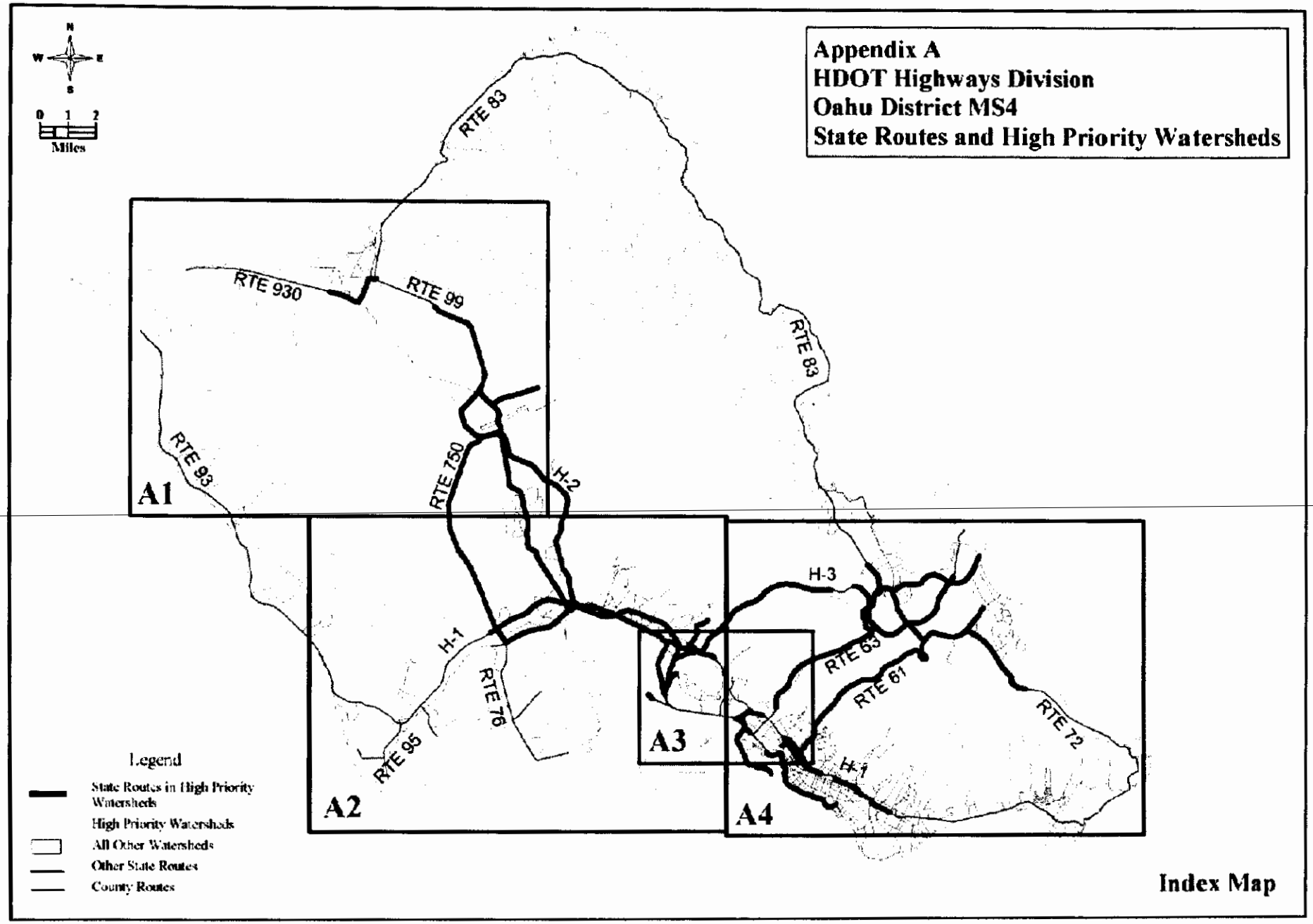
8/22/2005

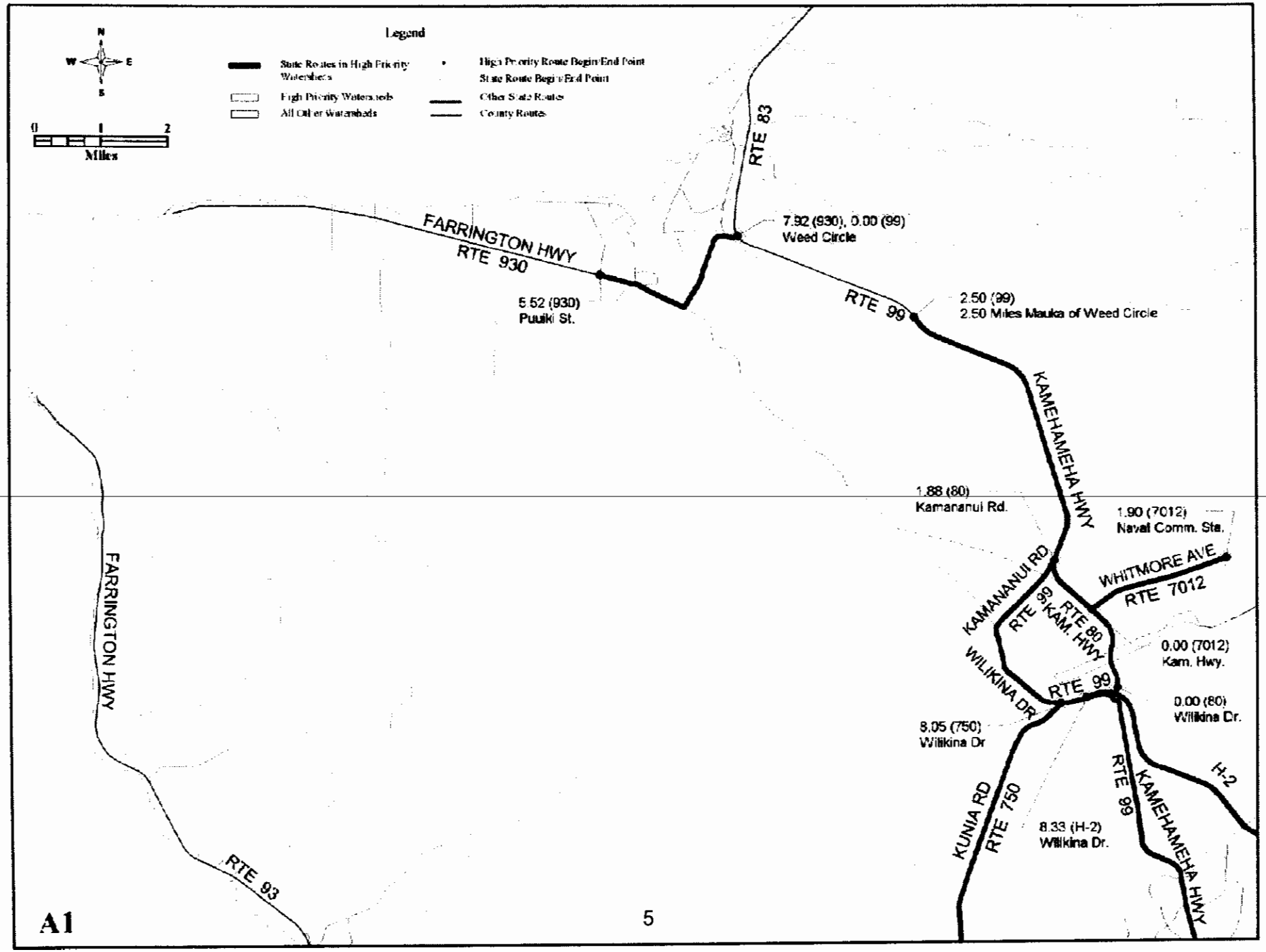
Route No.	Route Name	Overall							
		Start MP	Map	End MP	Map	Start MP	Map	End MP	Map
H-1	H-1 Fwy.	0.00 (Palalai I/C)	A2	27.16 (Ainakoa Ave.)	A4	5.11 (EB Off-Ramp to Ft. Weaver Rd., Kunia Rd.	A2	15.22 (Kam. Hwy. O/P)	A3
						18.28 (0.2 mi after EB Off-Ramp to Dillingham Blvd.)	A3	19.36 (Gulick Ave. O/P)	A3
						20.80 (Liliha St. O/P)	A3	22.59 (Piikoi St. U/P)	A4
						23.18 (Punahou St. O/P	A4	24.43 (EB Off-Ramp to King St.)	A4
						24.83 (Kapiolani I/C at Kapahulu Ave.)	A4	25.55 (10th Ave. U.P.)	A4
H-2	H-2 Fwy.	0.00 (Waiawa I/C)	A2	8.33 (Wilikina Dr.)	A1	0.00 (Waiawa I/C)	A2	8.33 (Wilikina Dr.)	A1
H-3	H-3 Fwy.	0.00 (Halawa I/C)	A3	15.32 (MCBH-Kaneohe)	A4	0.00 (Halawa I/C)	A3	6.47 (End H3 Tunnel, Kaneohe Bound)	A4
						7.47 (One Mile After H-3 Tunnel Exit, Kaneohe Bound)	A4	13.66 (0.25 mile After Kailua Separation)	A4
H-201	Moanalua Fwy.	0.00 (Rte. 78/ Halawa I/C)	A3	4.09 (Middle St. I/C)	A3	0.00 (Rte. 78/ Halawa I/C)	A3	1.50 (Ala Kapuna Rd. O/P)	A3
61	Pali Hwy., Kalanianaole Hwy., Kailua Rd.	0.00 (Vineyard Blvd.)	A3	10.60 (Kawainui Br.)	A4	0.00 (Vineyard Blvd.)	A3	10.60 (Kawainui Br.)	A4
63	Kalihi St., Likelike Hwy.	0.00 (Nimitz Hwy.)	A3	8.28 (Kahekili Hwy.)	A4	1.42 (Kalihi St. North of Kam. Shopping Center)	A3	8.28 (Kahekili Hwy.)	A4
64	Sand Island Pkwy. and Access Rd.	0.00 (S.I. Park)	A4	2.60 (Nimitz Hwy.)	A3	0.00 (S.I. Park)	A4	1.40 (Begin Bascule Bridge)	A3
						1.53 (End Bascule Bridge)	A3	2.60 (Nimitz Hwy.)	A3
65	Kaneohe Bay Dr., Mokapu Blvd.	0.00 (Kam. Hwy.)	A4	4.15 (Kalaheo Ave.)	A4	0.00 (Kam. Hwy.)	A4	4.15 (Kalaheo Ave.)	A4
72	Kalanianaole Hwy.	0.00 (Kailua Rd.)	A4	18.46 (Ainakoa Ave.)	A4	0.00 (Kailua Rd.)	A4	3.35 (Poalima St.)	A4
76	Ft. Weaver Rd., Kunia Rd.	0.00 (Iroquois Gate)	A2	6.64 (H-1)	A2	6.01 (Farr. Hwy.)	A2	6.64 (H-1)	A2

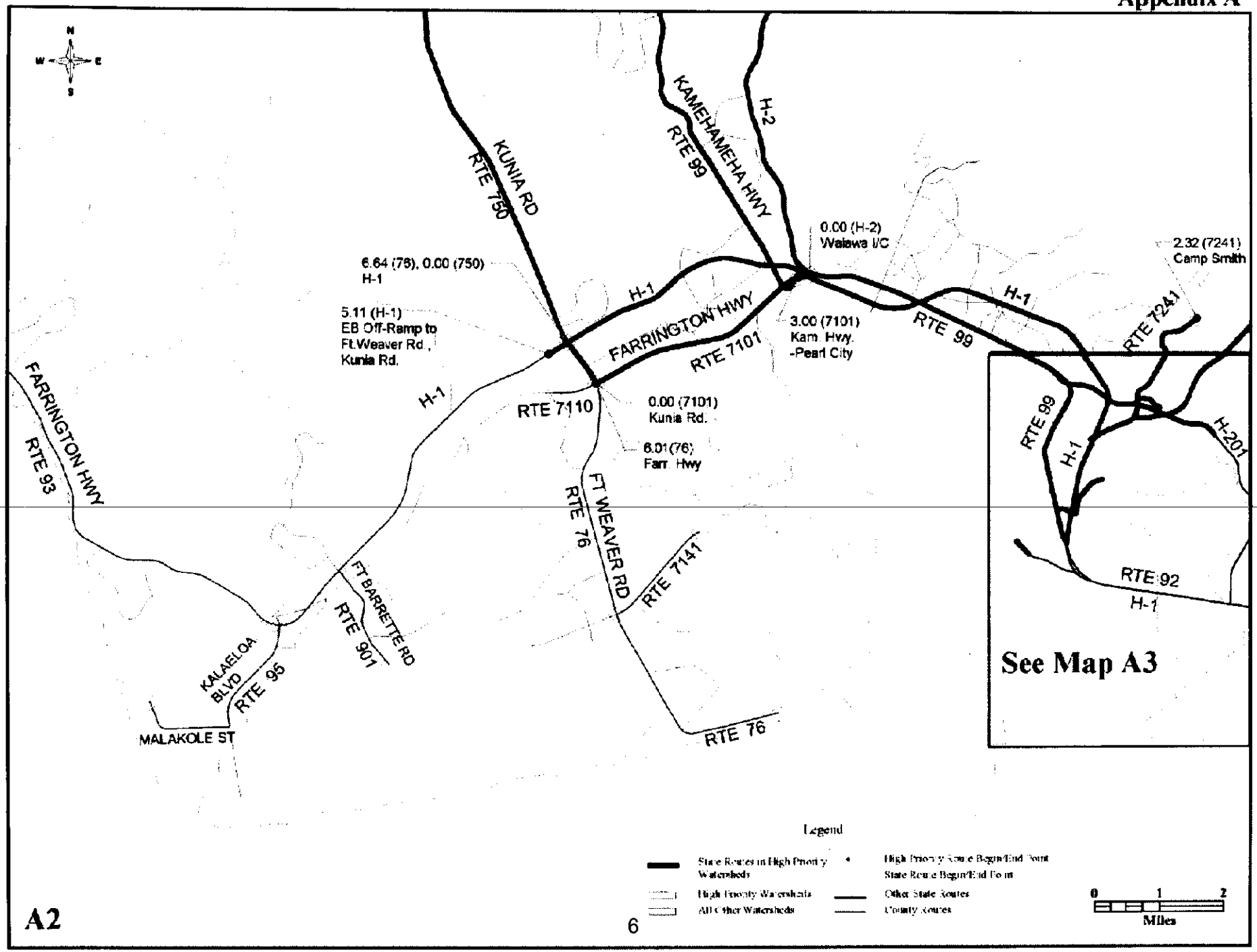
Route No.	Route Name	Overall				[redacted]			
		Start MP	Map	End MP	Map	Start MP	Map	End MP	Map
78	Moanalua Fwy.	0.00 Aiea I/C	A3	0.74 (Rte. H-201/ Halawa I/C)	A3	0.00 Aiea I/C	A3	0.74 (Rte. H-201/ Halawa I/C)	A3
80	Kamehameha Hwy.	0.00 (Wilikina Dr.)	A1	1.88 (Kamananui Rd.)	A1	0.00 (Wilikina Dr.)	A1	1.88 (Kamananui Rd.)	A1
83	Kamehameha Hwy., Kahekili Hwy., Likelike Hwy.	0.00 (Weed Circle)	A1	43.92 (Pali Hwy.)	A4	39.59 (Haiku Rd.)	A4	43.92 (Pali Hwy.)	A4
92	Nimitz Hwy., Ala Moana Blvd.	0.00 (Pearl Harbor Main Gate)	A3	9.26 (Kalakaua Ave.)	A4	0.00 (Pearl Harbor Main Gate	A3	0.24 (On Ramp from O'Malley Blvd.- Hickam Main Gate)	
						3.52 (Middle St.)	A3	4.28 (Mokauea St.)	A3
						5.27 (Rd. to Chevron Oil)	A3	9.26 (Kalakaua Ave.)	A4
93	Farrington Hwy.	0.00 (Palalai I/C)	A2	19.53 (Kaena Pt.)	A1				
95	Kalaeloa Blvd., Malakole St.	0.00 (Palalai I/C)	A2	2.68 (Access Rd. Leading to Storage Yard)	A2				
98	Vineyard Blvd.	0.00 (Olomea St. @ H-1 Offramp)	A3	1.76 (Ramp to H-1 EB)	A4	0.34 (Pua Lane)	A3	1.76 (Ramp to H-1 EB)	A4
99	Kamehameha Hwy., Kamananui Rd., Wilikina Dr., Farrington Hwy.	0.00 (Weed Circle)	A1	23.83 (Pearl Harbor I/C)	A3	2.50 (2.50 Miles Mauka of Weed Circle)	A1	23.31 (Above H-1 Fwy. and EB Nimitz/Hickam Off-Ramp)	A3
750	Kunia Rd.	0.00 (H-1)	A2	8.05 (Wilikina Dr.)	A1	0.00 (H-1)	A2	8.05 (Wilikina Dr.)	A1
901	Ft. Barrette Rd.	0.00 (Barbers Pt. Rd.)	A2	1.38 (Makakilo O/P)	A2				
930	Farrington Hwy., Kaukonahua Rd.	0.00 (Kaena Pt.)	A1	7.92 (Weed Circle)	A1	5.52 (Puuiki St.)	A1	7.92 (Weed Circle)	A1
7012	Whitmore Ave.	0.00 (Kam. Hwy.)	A1	1.90 (Naval Comm. Sta.)	A1	0.00 (Kam. Hwy.)	A1	1.90 (Naval Comm. Sta.)	A1
7101	Farrington Hwy.	0.00 (Kunia Rd.)	A2	3.00 (Kam. Hwy. - Pearl City)	A2	0.00 (Kunia Rd.)	A2	3.00 (Kam. Hwy. - Pearl City)	A2
7110	Farrington Hwy.	0.00 (Kunia Rd.)	A2	0.62 (Old Ft. Weaver Rd.)	A2				
7141	Iroquois Rd.	0.00 (Ft. Weaver Rd.)	A2	1.51 (West Loch)	A2				
7239	Ulune St., Halawa Valley Rd.	0.00 (Kahuapaani St.)	A3	0.32 (Iwaiwa St.)	A3	0.00 (Kahuapaani St.)	A3	0.32 (Iwaiwa St.)	A3

Route No.	Route Name	Overall							
		Start MP	Map	End MP	Map	Start MP	Map	End MP	Map
7241	Kahuapaani St., Halawa Hts. Rd.	0.00 (Salt Lake Blvd.)	A3	2.32 (Camp Smith)	A2	0.00 (Salt Lake Blvd.)	A3	2.32 (Camp Smith)	A2
7310	Puuloa Rd.	0.00 (Kam./Nimitz Hwy.)	A3	1.03 (Moanalua Fwy.)	A3				
7345	Jarrette White Rd.	0.00 (Moanalua Fwy.)	A3	0.55 (Tripler Hospital)	A3				
7350	Bouganville Dr.	0.00 (Radford Dr.)	A3	0.59 (Salt Lake Blvd.)	A3	0.00 (Radford Dr.)	A3	0.59 (Salt Lake Blvd.)	A3
7351	Radford Dr.	0.00 (Kam. Hwy.)	A3	0.23 (Bouganville Dr.)	A3	0.00 (Kam Hwy.)	A3	0.23 (Bouganville Dr.)	A3
7401	Kamehameha Hwy.	0.00 (Middle St.)	A3	0.10 (100' East of Kalihi Stream Bridge)	A3	0.00 (Middle St.)	A3	0.10 (100' East of Kalihi Stream Bridge)	A3
7413	Liliha St.	0.00 (King St.)	A3	0.35 (H-1 Liliha St. O/P)	A3	0.00 (King St.)	A3	0.35 (H-1 Liliha St. O/P)	A3
7415	Middle St.	0.00 (Kaua St.)	A3	0.51 (Kam. Hwy.)	A3	0.00 (Kaua St.)	A3	0.51 (Kam. Hwy.)	A3
7601	Old Waialae Rd.	0.00 (Kapiolani Blvd.)	A4	0.41 (King St.)	A4				

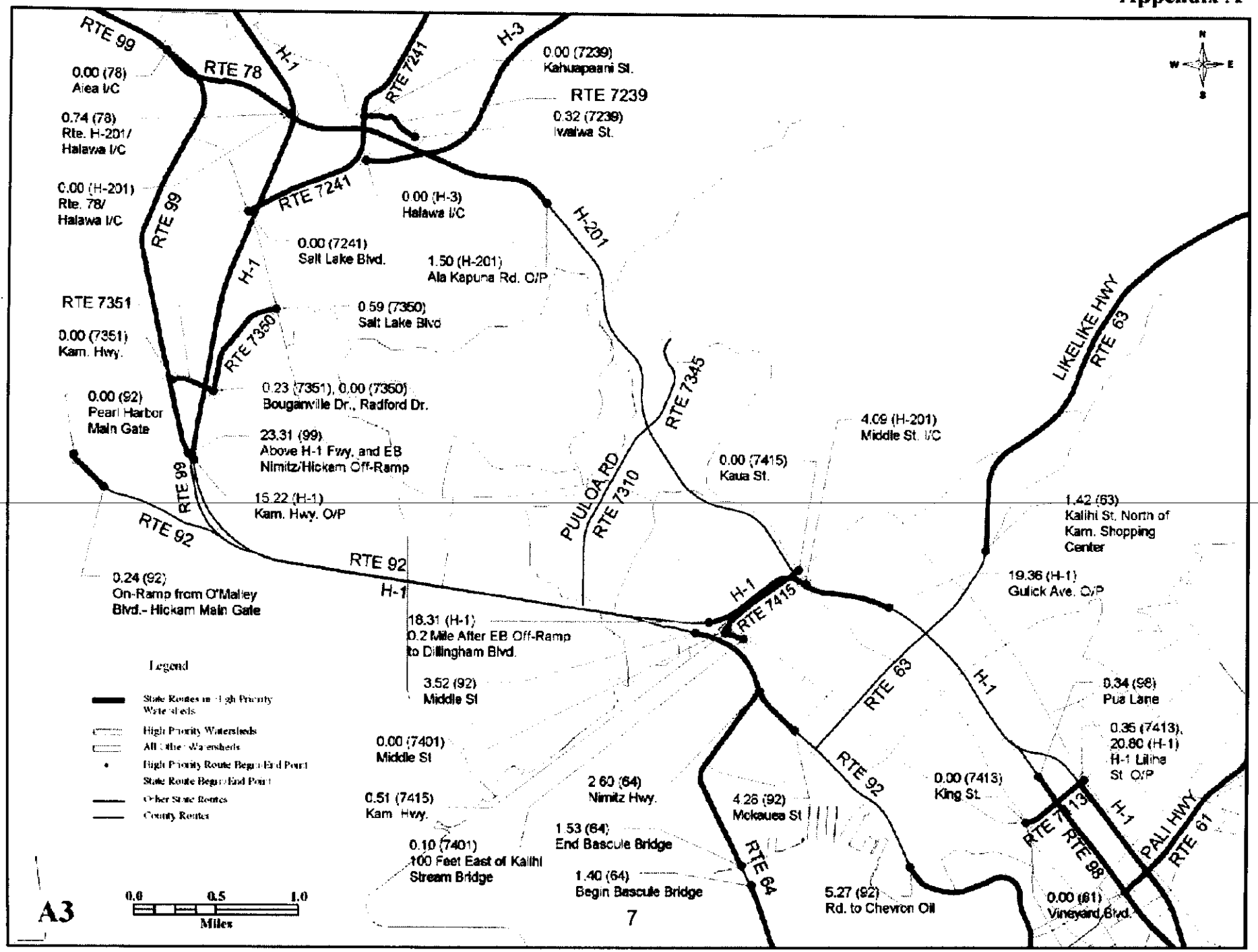
Based on Oahu 303d High Priority Watersheds and DOT Highways and Conveyances, as prepared by DOH-EPO.

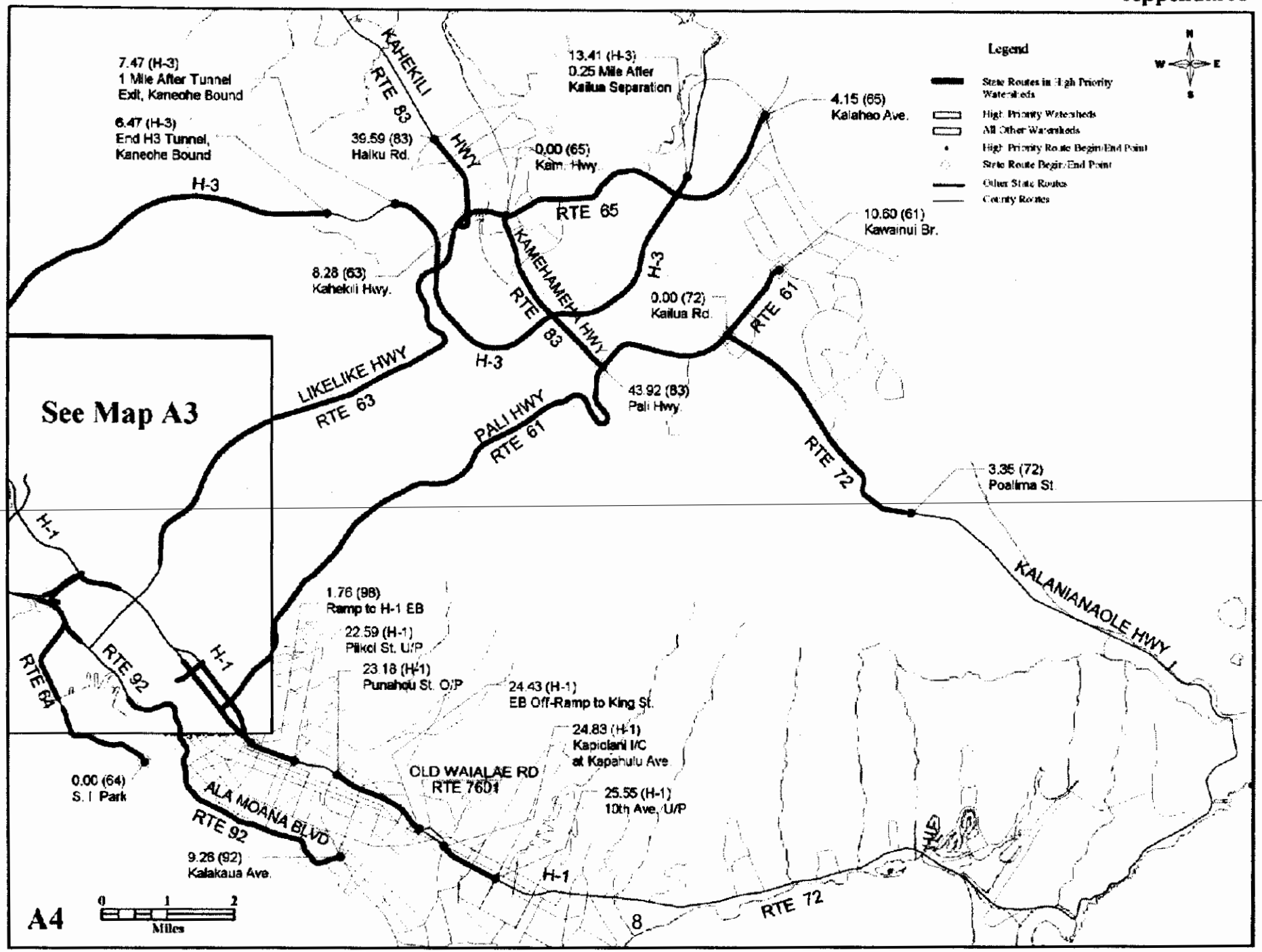

Appendix A
HDOT Highways Division
Oahu District MS4
State Routes and High Priority Watersheds
N
W
E
S
0 1 2
Miles
RTE 83
RTE 930
RTE 99
RTE 83
RTE 93
RTE 750
H-2
A1
H-3
H-1
RTE 76
RTE 63
RTE 61
RTE 72
A3
RTE 95
H-1
A2
A4
Legend
State Routes in High Priority Watersheds
High Priority Watersheds
All Other Watersheds
Other State Routes
County Routes
Index Map


Legend
State Routes in High Priority Watersheds
High Priority Watersheds
All Other Watersheds
High Priority Route Begin/End Point
State Route Begin/End Point
Other State Routes
County Routes
N
W
E
S
0
1
2
Miles
RTE 83
FARRINGTON HWY
RTE 930
7.92 (930), 0.00 (99)
Weed Circle
5.52 (930)
Puuiki St.
RTE 99
2.50 (99)
2.50 Miles Mauka of Weed Circle
KAMEHAMEHA HWY
1.88 (80)
Kamananui Rd.
1.90 (7012)
Naval Comm. Sta.
WHITMORE AVE
RTE 7012
KAMANANUI RD
RTE 99
RTE 80
KAM. HWY
0.00 (7012)
Kam. Hwy.
WILIKINA DR
RTE 99
0.00 (80)
Wilikina Dr.
8.05 (750)
Wilikina Dr
H-2
KUNIA RD
RTE 750
RTE 99
8.33 (H-2)
Wilikina Dr.
KAMEHAMEHA HWY
FARRINGTON HWY
RTE 93


N
W
E
S
KUNIA RD
RTE 750
KAMEHAMEHA HWY
RTE 99
H-2
0.00 (H-2)
Waiawa I/C
2.32 (7241)
Camp Smith
6.64 (76), 0.00 (750)
H-1
5.11 (H-1)
EB Off-Ramp to
Ft.Weaver Rd.,
Kunia Rd.
H-1
FARRINGTON HWY
RTE 7101
3.00 (7101)
Kam. Hwy.
-Pearl City
RTE 99
H-1
RTE 7241
FARRINGTON HWY
RTE 93
H-1
RTE 7110
0.00 (7101)
Kunia Rd.
6.01 (76)
Farr. Hwy
FT WEAVER RD
RTE 76
RTE 7141
FT BARRETTE RD
RTE 901
KALAELOA
BLVD
RTE 95
MALAKOLE ST
RTE 76
RTE 99
H-1
H-201
RTE 92
H-1
See Map A3
Legend
State Routes in High Priority Watersheds
High Priority Watersheds
All Other Watersheds
High Priority Route Begin/End Point
State Route Begin/End Point
Other State Routes
County Routes
0
1
2
Miles

A2


RTE 99
RTE 78
H-1
RTE 7241
H-3
0.00 (7239)
Kahuapaani St.
RTE 7239
0.32 (7239)
Iwalwa St.
0.00 (78)
Aiea I/C
0.74 (78)
Rte. H-201/
Halawa I/C
0.00 (H-201)
Rte. 78/
Halawa I/C
RTE 7241
0.00 (H-3)
Halawa I/C
H-201
0.00 (7241)
Salt Lake Blvd.
1.50 (H-201)
Ala Kapuna Rd. O/P
RTE 7351
0.59 (7350)
Salt Lake Blvd
RTE 7350
0.00 (7351)
Kam. Hwy.
0.23 (7351), 0.00 (7350)
Bougainville Dr., Radford Dr.
0.00 (92)
Pearl Harbor
Main Gate
23.31 (99)
Above H-1 Fwy. and EB
Nimitz/Hickam Off-Ramp
RTE 98
15.22 (H-1)
Kam. Hwy. O/P
RTE 92
RTE 7345
PUULOA RD
RTE 7310
4.09 (H-201)
Middle St. I/C
0.00 (7415)
Kaua St.
LIKELIKE HWY
RTE 63
1.42 (63)
Kalihi St. North of
Kam. Shopping
Center
19.36 (H-1)
Gulick Ave. O/P
0.24 (92)
On-Ramp from O'Malley
Blvd.- Hickam Main Gate
RTE 92
H-1
18.31 (H-1)
0.2 Mile After EB Off-Ramp
to Dillingham Blvd.
H-1
RTE 7415
3.52 (92)
Middle St
RTE 63
H-1
0.34 (98)
Pua Lane
0.35 (7413),
20.80 (H-1)
H-1 Liliha
St. O/P
0.00 (7401)
Middle St
RTE 92
0.00 (7413)
King St.
2.60 (64)
Nimitz Hwy.
0.51 (7415)
Kam. Hwy.
4.28 (92)
Mokauea St
RTE 7413
RTE 98
H-1
PALI HWY
RTE 61
1.53 (64)
End Bascule Bridge
0.10 (7401)
100 Feet East of Kalihi
Stream Bridge
RTE 64
1.40 (64)
Begin Bascule Bridge
5.27 (92)
Rd. to Chevron Oil
0.00 (61)
Vineyard Blvd.
Legend
State Routes in High Priority Watersheds
High Priority Watersheds
All Other Watersheds
High Priority Route Begin/End Point
State Route Begin/End Point
Other State Routes
County Routes
0.0
0.5
1.0
Miles
A3
7


Legend
State Routes in High Priority Watersheds
High Priority Watersheds
All Other Watersheds
High Priority Route Begin/End Point
State Route Begin/End Point
Other State Routes
County Routes
N
W
E
S
7.47 (H-3)
1 Mile After Tunnel
Exit, Kaneohe Bound
6.47 (H-3)
End H3 Tunnel,
Kaneohe Bound
H-3
39.59 (83)
Haiku Rd.
KAHEKILI HWY
RTE 83
13.41 (H-3)
0.25 Mile After
Kailua Separation
4.15 (65)
Kalaheo Ave.
0.00 (65)
Kam. Hwy.
RTE 65
10.60 (61)
Kawainui Br.
8.28 (63)
Kahekili Hwy.
KAMEHAMEHA HWY
RTE 83
H-3
0.00 (72)
Kailua Rd.
RTE 61
H-3
43.92 (83)
Pali Hwy.
LIKELIKE HWY
RTE 63
PALI HWY
RTE 61
See Map A3
RTE 72
3.35 (72)
Poalima St.
H-1
KALANIANAOLE HWY
1.76 (98)
Ramp to H-1 EB
22.59 (H-1)
Pilkoi St. U/P
23.18 (H-1)
Punahou St. O/P
24.43 (H-1)
EB Off-Ramp to King St.
24.83 (H-1)
Kapiolani I/C
at Kapahulu Ave
25.55 (H-1)
10th Ave. U/P
RTE 92
RTE 63
H-1
OLD WAIALAE RD
RTE 7601
0.00 (64)
S. I Park
ALA MOANA BLVD
RTE 92
9.26 (92)
Kalakaua Ave.
H-1
RTE 72
0
1
2
Miles

Appendix B
Street Sweeping

08/22/05

Route No.	Route Name	Overall Segment Requiring Sweeping				High Priority Watersheds (To Be Swept Every 5 Weeks)											
		Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map
H-1	H-1 Fwy.	0.00 (Palalai I/C)	B2	27.16 (Ainakoa Ave.)	B4	5.11 (EB Off-Ramp to Ft. Weaver Rd., Kunia Rd.)	B2	15.22 (Kam. Hwy. O/P)	B3	0.00 (Palalai I/C)	B2	5.11 (EB Off-Ramp to Ft. Weaver Rd., Kunia Rd.)	B2				
						18.31 (0.2 mi after EB Off-Ramp to Dillingham Blvd.)	B3	19.36 (Gulick Ave. O/P)	B3	15.22 (Kam. Hwy. O/P)	B3	18.31 (0.2 mi after EB Off-Ramp to Dillingham Blvd.)	B3				
						20.80 (Liliha St. O/P)	B3	22.59 (Piikoi St. U/P)	B4	19.36 (Gulick Ave. O/P)	B3	20.80 (Liliha St. O/P)	B3				
						23.18 (Punahou St. O/P)	B4	24.43 (Off-Ramp to King St.)	B4	22.59 (Piikoi St. U/P)	B4	23.18 (Punahou St. O/P)	B4				
						24.83 (Kapiolani I/C at Kapahulu Ave.)	B4	25.55 (10th Ave. U/P)	B4	24.43 (EB Off-Ramp to King St.)	B4	24.83 (Kapiolani I/C at Kapahulu Ave.)	B4				
										25.55 (10th Ave. U/P)	B4	27.16 (Ainakoa Ave.)	B4				
H-2	H-2 Fwy.	0.00 (Waiawa I/C)	B2	8.33 (Wilikina Dr.)	B1	0.00 (Waiawa I/C)	B2	8.33 (Wilikina Dr.)	B1								
H-3	H-3 Fwy.	0.00 (Halawa I/C)	B3	15.32 (MCBH-Kaneohe)	B4	0.00 (Halawa I/C)	B3	6.47 (End Kaneohe Bound H-3 Tunnel)	B4	6.47 (End Kaneohe Bound H-3 Tunnel)	B4	7.47 (One Mile After H-3 Tunnel Exit, Kaneohe Bound)	B4				
						7.47 (One Mile After H-3 Tunnel Exit, Kaneohe Bound)	B4	13.66 (0.25 mile After Kailua Separation)	B4	13.66 (0.25 mile After Kailua Separation)	B4	15.32 (MCBH-Kaneohe)	B4				
H-201	Moanalua Fwy.	0.00 (Rte. 78/ Halawa I/C)	B3	4.09 (Middle St. I/C)	B3	0.00 (Rte. 78/ Halawa I/C)	B3	1.50 (Ala Kapuna Rd. O/P)	B3	1.50 (Ala Kapuna Rd. O/P)	B3	4.09 (Middle St. I/C)	B3				
61	Pali Hwy., Kalanianaole Hwy., Kailua Rd.	0.00 (Vineyard Blvd.)	B3	10.60 (Kawainui Br.)	B4	0.00 (Vineyard Blvd.)	B3	10.60 (Kawainui Br.)	B4								

Street Sweeping

08/22/05

Route No.	Route Name	Overall Segment Requiring Sweeping				High Priority Watersheds (To Be Swept Every 5 Weeks)											
		Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map
63	Kalihi St., Likelike Hwy.	0.00 (Nimitz Hwy.)	B3	8.28 (Kahekili Hwy.)	B4	1.42 (Kalihi St. North of Kam. Shopping Ctr.)	B3	8.28 (Kahekili Hwy.)	B4					0.00 (Nimitz Hwy.)	B3	1.42 (Kalihi St. North of Kam. Shopping Ctr.)	B3
64	Sand Island Pkwy. and Access Rd.	0.00 (S.I. Park)	B3	2.60 (Nimitz Hwy.)	B3	0.00 (S.I. Park)	B4	1.40 (Begin Bascule Bridge)	B3					1.40 (Begin Bascule Bridge)	B3	1.53 (End Bascule Bridge)	B3
						1.53 (End Bascule Bridge)	B3	2.60 (Nimitz Hwy.)	B3								
65	Kaneohe Bay Dr., Mokapu Blvd.	0.00 (Kam. Hwy.)	B4	4.15 (Kalaheo Ave.)	B4	0.00 (Kam. Hwy.)	B4	4.15 (Kalaheo Ave.)	B4								
72	Kalanianaole Hwy.	0.00 (Kailua Rd.)	B4	18.46 (Ainakoa Ave.)	B4	0.00 (Kailua Rd.)	B4	3.35 (Poalima St.)	B4	13.26 (Lunalilo Hm. Rd.)	B4	18.46 (Ainakoa Ave.)	B4	3.35 (Poalima St.)	B4	13.26 (Lunalilo Hm. Rd.)	B4
76	Ft. Weaver Rd., Kunia Rd.	0.00 (Iroquois Gate)	B2	6.64 (H-1)	B2	6.01 (Farr. Hwy.)	B2	6.64 (H-1)	B2					0.00 (Iroquois Gate)	B2	6.01 (Farr. Hwy.)	B2
~~78~~	~~Moanalua Fwy.~~	~~0.00 Aiea I/C~~	~~B3~~	~~0.74 (Rte. H-201)~~	~~B3~~	~~0.00 Aiea I/C~~	~~B3~~	~~0.74 (Rte. H-201/ Halawa I/C)~~	~~B3~~								
80	Kamehameha Hwy.	0.00 (Wilikina Dr.)	B1	1.88 (Kamananui Rd.)	B1	0.00 (Wilikina Dr.)	B1	1.88 (Kamananui Rd.)	B1								
83	Kamehameha Hwy., Kahekili Hwy., Likelike Hwy.	0.00 (Weed Circle)	B1	43.92 (Pali Hwy.)	B4	39.92 (Kahuhipa Rd.)	B4	43.92 (Pali Hwy.)	B4					0.00 (Weed Circle)	B1	39.92 (Kahuhipa St.)	B4
92	Nimitz Hwy., Ala Moana Blvd.	0.00 (Pearl Harbor Main Gate)	B3	9.26 (Kalakaua Ave.)	B4	0.00 (Pearl Harbor Main Gate)	B3	0.24 (On-Ramp from O'Malley Blvd. - Hickam Main Gate)	B3					0.24 (On-Ramp from O'Malley Blvd. - Hickam Main Gate)	B3	3.52 (Middle St.)	B3
						3.52 (Middle St.)	B3	4.28 (Mokauea St.)	B3	4.28 (Mokauea St.)	B3	5.27 (Rd. to Chevron Oil)	B3				
						5.27 (Rd. to Chevron Oil)	B3	9.26 (Kalakaua Ave.)	B4								

Street Sweeping

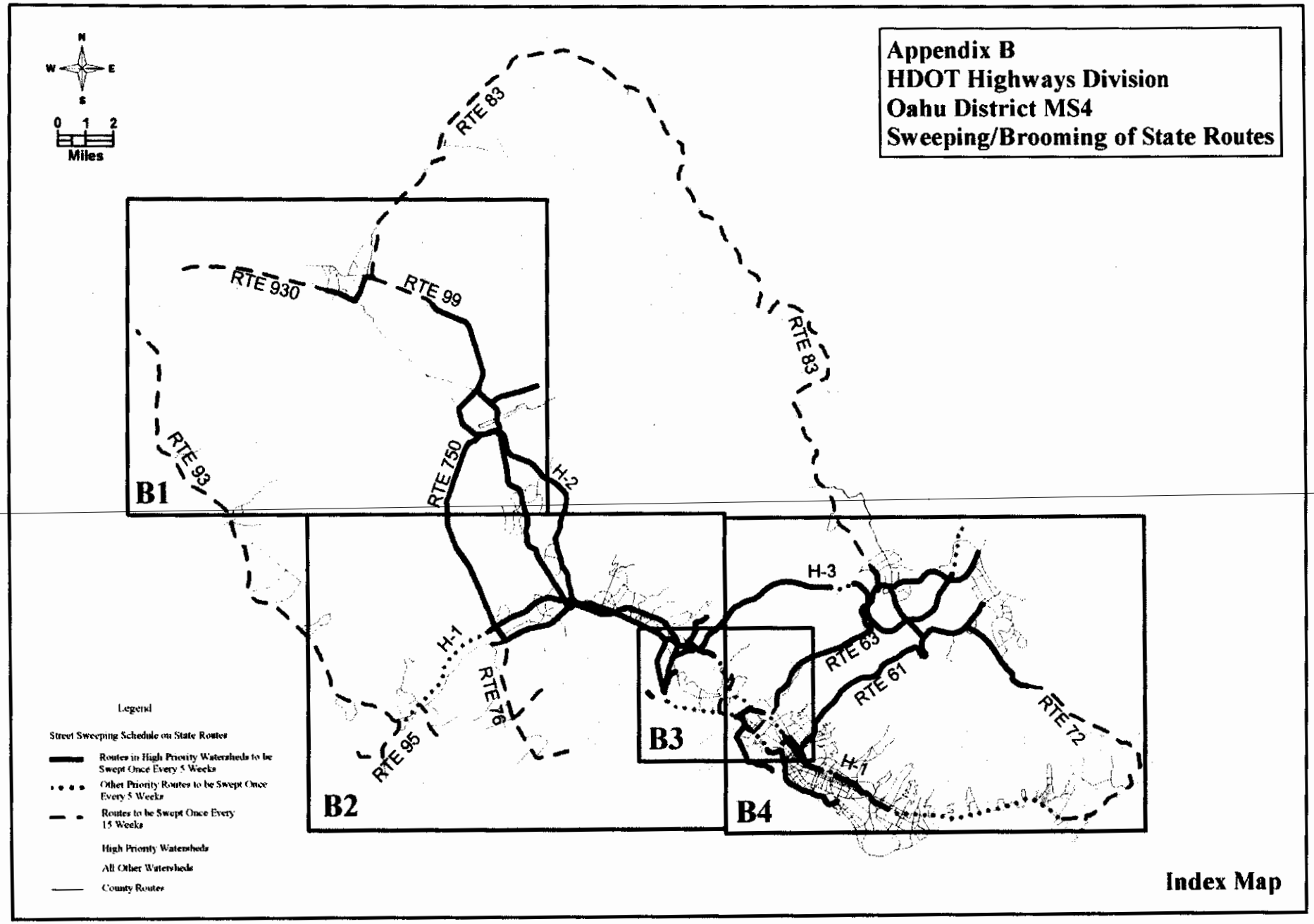
08/22/05

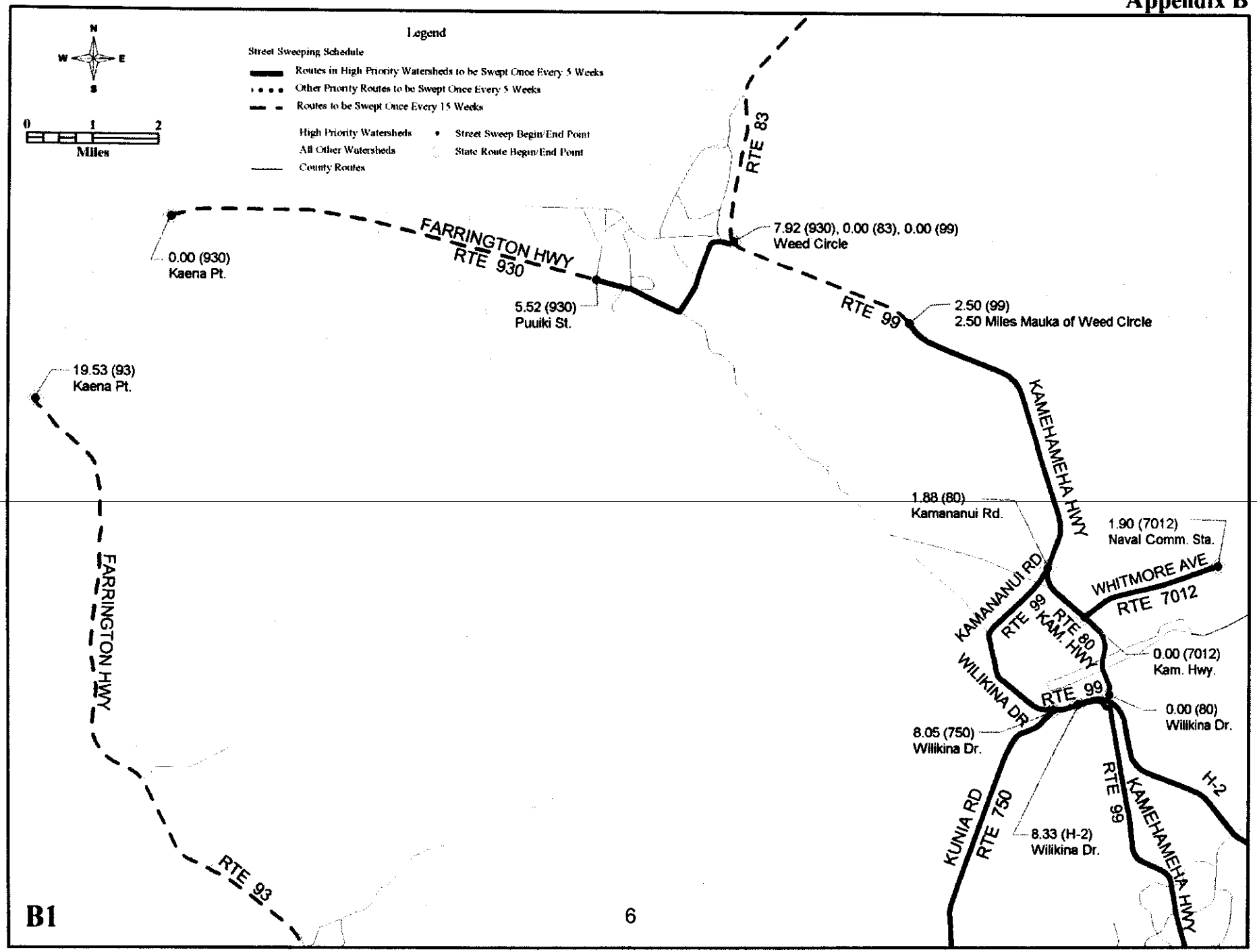
Route No.	Route Name	Overall Segment Requiring Sweeping				High Priority Watersheds (To Be Swept Every 5 Weeks)											
		Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map
93	Farrington Hwy.	0.00 (Palalai I/C)	B2	19.53 (Kaena Pt.)	B1									0.00 (Palalai I/C)	B2	19.53 (Kaena Pt.)	B1
95	Kalaeloa Blvd., Malakole St.	0.00 (Palalai I/C)	B2	2.68 (Access Rd. Leading to Storage Yard)	B2									0.00 (Palalai I/C)	B2	2.68 (Access Rd. Leading to Storage Yard)	B2
98	Vineyard Blvd.	0.00 (Olomea St. @ H-1 EB Off-Ramp)	B3	1.76 (Ramp to H-1 EB)	B3	0.34 (Pua Lane)	B3	1.76 (Ramp to H-1 EB)	B4	0.00 (Olomea St. @ H-1 EB Off-Ramp)	B3	0.34 (Pua Lane)	B3				
99	Kamehameha Hwy., Kamananui Rd., Wilikina Dr., Farrington Hwy.	0.00 (Weed Circle)	B1	23.83 (Pearl Harbor I/C)	B3	2.50 (2.5 Miles Mauka of Weed Circle)	B1	23.31 (Above H-1 Fwy.and EB Nimitz/Hickam Off-Ramp)	B3	23.31 (Above H-1 Fwy.and EB Nimitz/Hickam Off-Ramp)	B3	23.83 (Pearl Harbor I/C)	B3	0.00 (Weed Circle)	B1	2.50 (2.5 Miles Mauka of Weed Circle)	B1
750	Kunia Rd.	0.00 (H-1)	B2	8.05 (Wilikina Dr.)	B1	0.00 (H-1)	B2	8.05 (Wilikina Dr.)	B1								
901	Ft. Barrette Rd.	0.00 (Barbers Pt. Rd.)	B2	1.38 (Makakilo O/P)	B2									0.00 (Barbers Pt. Rd.)	B2	1.38 (Makakilo O/P)	B2
930	Farrington Hwy., Kaukonahua Rd.	0.00 (Kaena Pt.)	B1	7.92 (Weed Circle)	B1	5.52 (Puuiki St.)	B1	7.92 (Weed Circle)	B1					0.00 (Kaena Pt.)	B1	5.52 (Puuiki St.)	B1
7012	Whitmore Ave.	0.00 (Kam. Hwy.)	B1	1.90 (Naval Comm. Sta.)	B1	0.00 (Kam. Hwy.)	B1	1.90 (Naval Comm. Sta.)	B1								
7101	Farrington Hwy.	0.00 (Kunia Rd.)	B2	3.00 (Kam. Hwy. - Pearl City)	B2	0.00 (Kunia Rd.)	B2	3.00 (Kam. Hwy. - Pearl City)	B2								
7110	Farrington Hwy.	0.00 (Kunia Rd.)	B2	0.62 (Old Ft. Weaver Rd.)	B2									0.00 (Kunia Rd.)	B2	0.62 (Old Ft. Weaver Rd.)	B2
7141	Iroquois Rd.	0.00 (Ft. Weaver Rd.)	B2	1.51 (West Loch)	B2									0.00 (Ft. Weaver Rd.)	B2	1.51 (West Loch)	B2
7239	Ulune St., Halawa Valley Rd.	0.00 (Kahuapaani St.)	B3	0.32 (Iwaiwa St.)	B3	0.00 (Kahuapaani St.)	B3	0.32 (Iwaiwa St.)	B3								
7241	Kahuapaani St., Halawa Hts. Rd.	0.00 (Salt Lake Blvd.)	B3	2.32 (Camp Smith)	B3	0.00 (Salt Lake Blvd.)	B3	2.32 (Camp Smith)	B2								

Street Sweeping

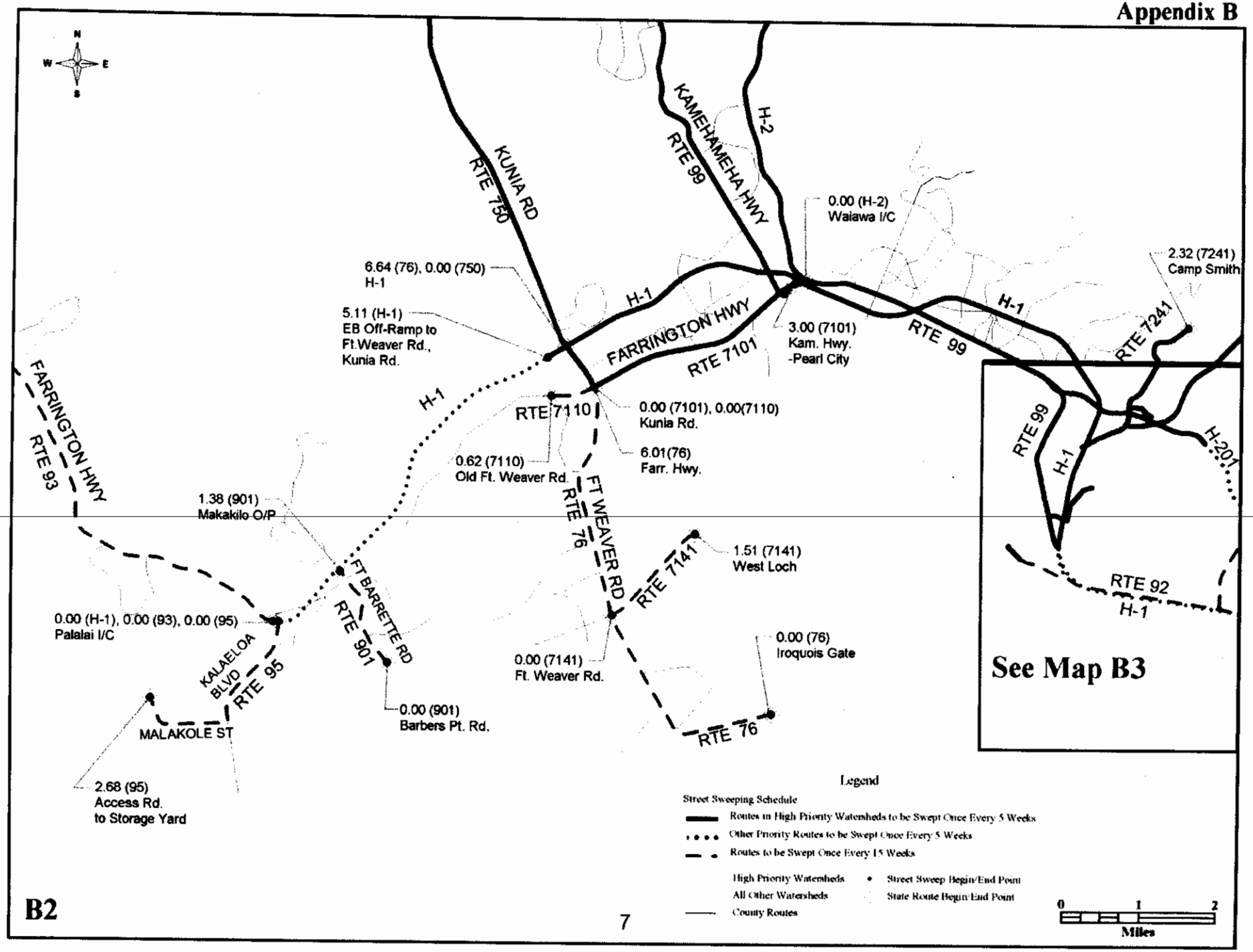
08/22/05

Route No.	Route Name	Overall Segment Requiring Sweeping				High Priority Watersheds (To Be Swept Every 5 Weeks)											
		Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map
7310	Puuloa Rd.	0.00 (Kam./Nimitz Hwy.)	B3	1.03 (Moanalua Fwy.)	B3									0.00 (Kam./Nimitz Hwy.)	B3	1.03 (Moanalua Fwy.)	B3
7345	Jarrette White Rd.	0.00 (Moanalua Fwy.)	B3	0.55 (Tripler Hospital)	B3									0.00 (Moanalua Fwy.)	B3	0.55 (Tripler Hospital)	B3
7350	Bouganville Dr.	0.00 (Radford Dr.)	B3	0.59 (Salt Lake Blvd.)	B3	0.00 (Radford Dr.)	B3	0.59 (Salt Lake Blvd.)	B3								
7351	Radford Dr.	0.00 (Kam. Hwy.)	B3	0.23 (Bouganville Dr.)	B3	0.00 (Kam. Hwy.)	B3	0.23 (Bouganville Dr.)	B3								
7401	Kamehameha Hwy.	0.00 (Middle St.)	B3	0.10 (100' East of Kalihi Stream Bridge)	B3	0.00 (Middle St.)	B3	0.10 (100' East of Kalihi Stream Bridge)	B3								
7413	Liliha St.	0.00 (King St.)	B3	0.35 (H-1 Liliha St. O/P)	B3	0.00 (King St.)	B3	0.35 (H-1 Liliha St. O/P)	B3								
7415	Middle St.	0.00 (Kaua St.)	B3	0.51 (Kam. Hwy.)	B3	0.00 (Kaua St.)	B3	0.51 (Kam. Hwy.)	B3								
7601	Old Waialae Rd.	0.00 (Kapiolani Blvd.)	B4	0.41 (King St.)	B4									0.00 (Kapiolani Blvd.)	B4	0.41 (King St.)	B4

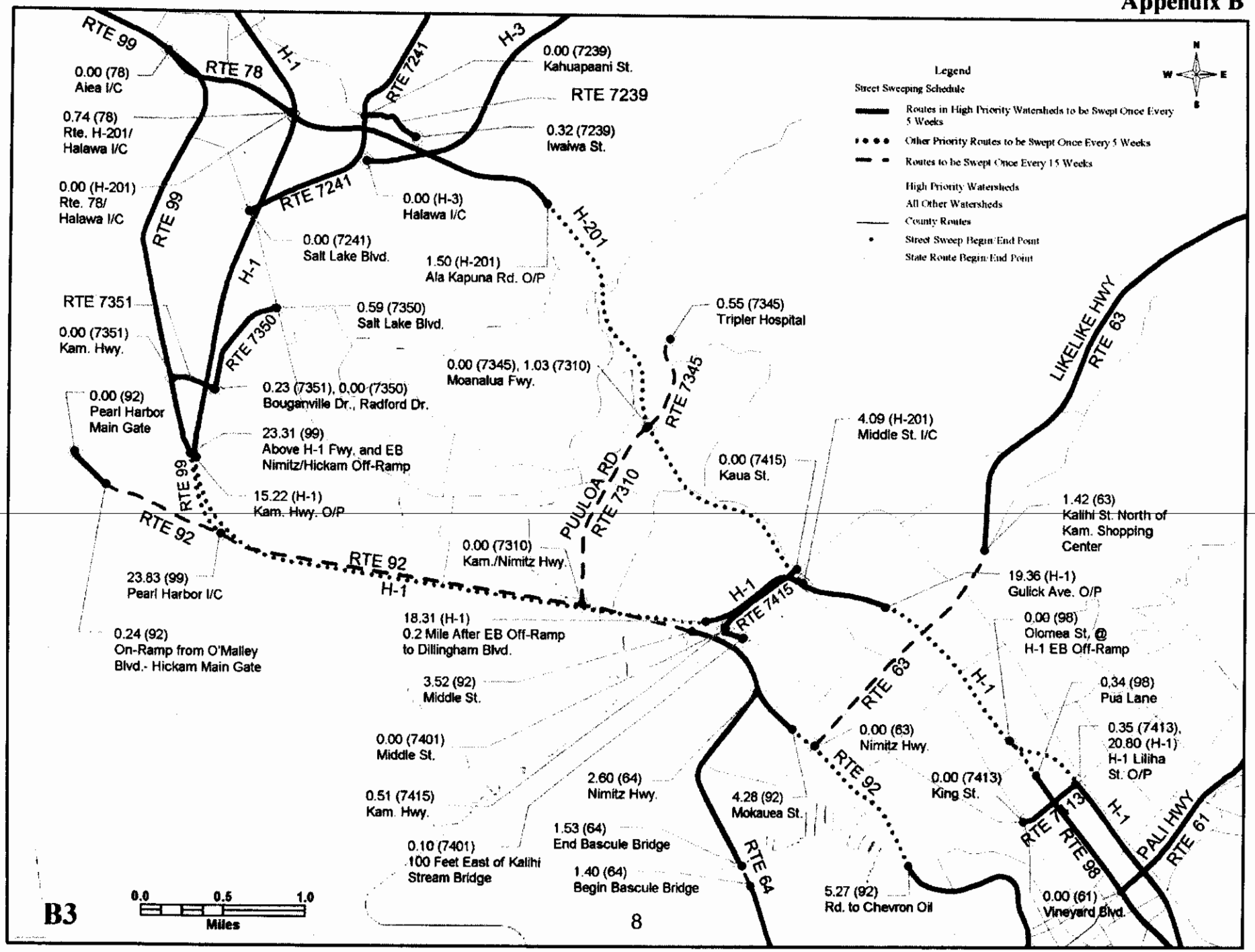

Appendix B
HDOT Highways Division
Oahu District MS4
Sweeping/Brooming of State Routes
N
W
E
S
0 1 2
Miles
RTE 83
RTE 930
RTE 99
RTE 93
RTE 750
H-2
B1
B2
B3
B4
H-3
H-1
RTE 76
RTE 95
RTE 63
RTE 61
RTE 72
Legend
Street Sweeping Schedule on State Routes
Routes in High Priority Watersheds to be Swept Once Every 5 Weeks
Other Priority Routes to be Swept Once Every 5 Weeks
Routes to be Swept Once Every 15 Weeks
High Priority Watersheds
All Other Watersheds
County Routes
Index Map


N
W
E
S
0
1
2
Miles
Legend
Street Sweeping Schedule
Routes in High Priority Watersheds to be Swept Once Every 5 Weeks
Other Priority Routes to be Swept Once Every 5 Weeks
Routes to be Swept Once Every 15 Weeks
High Priority Watersheds
All Other Watersheds
County Routes
Street Sweep Begin/End Point
State Route Begin/End Point
RTE 83
FARRINGTON HWY
RTE 930
0.00 (930)
Kaena Pt.
5.52 (930)
Puuiki St.
7.92 (930), 0.00 (83), 0.00 (99)
Weed Circle
RTE 99
2.50 (99)
2.50 Miles Mauka of Weed Circle
19.53 (93)
Kaena Pt.
KAMEHAMEHA HWY
1.88 (80)
Kamananui Rd.
1.90 (7012)
Naval Comm. Sta.
WHITMORE AVE.
RTE 7012
KAMANANUI RD.
RTE 99
RTE 80
KAM. HWY
0.00 (7012)
Kam. Hwy.
WILIKINA DR
RTE 99
0.00 (80)
Wilikina Dr.
8.05 (750)
Wilikina Dr.
FARRINGTON HWY
KUNIA RD
RTE 750
8.33 (H-2)
Wilikina Dr.
RTE 99
KAMEHAMEHA HWY
H-2
RTE 93

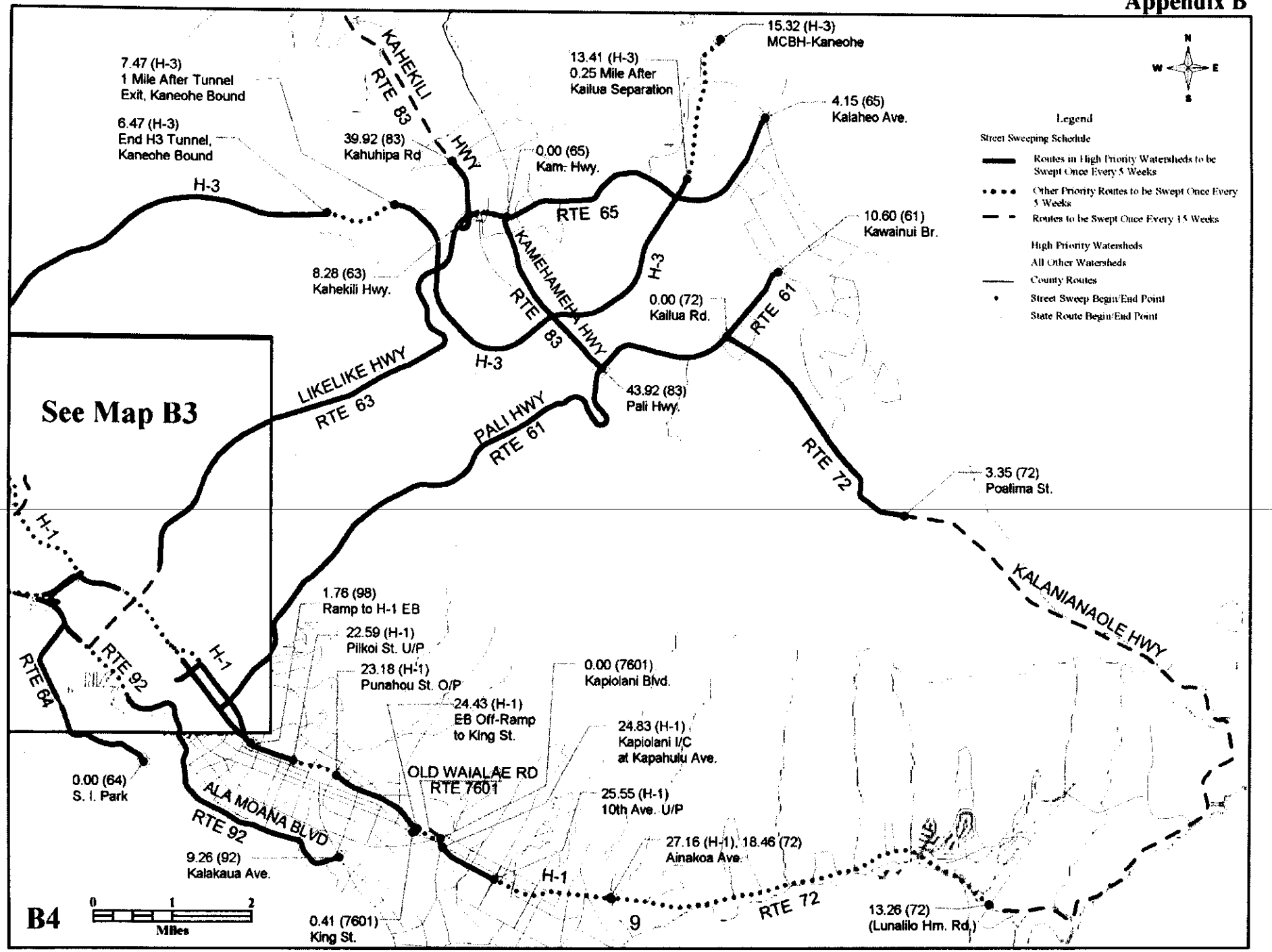
B1


N
W
E
S
KUNIA RD
RTE 750
KAMEHAMEHA HWY
RTE 99
H-2
0.00 (H-2)
Waiawa I/C
2.32 (7241)
Camp Smith
6.64 (76), 0.00 (750)
H-1
5.11 (H-1)
EB Off-Ramp to
Ft.Weaver Rd.,
Kunia Rd.
H-1
FARRINGTON HWY
RTE 7101
3.00 (7101)
Kam. Hwy.
-Pearl City
RTE 99
H-1
RTE 7241
FARRINGTON HWY
RTE 93
H-1
RTE 7110
0.00 (7101), 0.00(7110)
Kunia Rd.
6.01(76)
Farr. Hwy.
0.62 (7110)
Old Ft. Weaver Rd.
FT WEAVER RD
RTE 76
RTE 99
H-1
H-201
1.38 (901)
Makakilo O/P
FT BARRETTE RD
RTE 901
RTE 7141
1.51 (7141)
West Loch
RTE 92
H-1
0.00 (H-1), 0.00 (93), 0.00 (95)
Palalai I/C
KALAELOA
BLVD
RTE 95
0.00 (7141)
Ft. Weaver Rd.
0.00 (76)
Iroquois Gate
See Map B3
0.00 (901)
Barbers Pt. Rd.
MALAKOLE ST
RTE 76
2.68 (95)
Access Rd.
to Storage Yard
Legend
Street Sweeping Schedule
Routes in High Priority Watersheds to be Swept Once Every 5 Weeks
Other Priority Routes to be Swept Once Every 5 Weeks
Routes to be Swept Once Every 15 Weeks
High Priority Watersheds
All Other Watersheds
County Routes
Street Sweep Begin/End Point
State Route Begin/End Point
0
1
2
Miles

B2


Legend
Street Sweeping Schedule
Routes in High Priority Watersheds to be Swept Once Every 5 Weeks
Other Priority Routes to be Swept Once Every 5 Weeks
Routes to be Swept Once Every 15 Weeks
High Priority Watersheds
All Other Watersheds
County Routes
Street Sweep Begin/End Point
State Route Begin/End Point
N
W
E
S
RTE 99
RTE 78
H-1
RTE 7241
H-3
0.00 (7239)
Kahuapaani St.
RTE 7239
0.00 (78)
Aiea I/C
0.74 (78)
Rte. H-201/
Halawa I/C
0.32 (7239)
Iwaiwa St.
0.00 (H-201)
Rte. 78/
Halawa I/C
0.00 (H-3)
Halawa I/C
H-201
0.00 (7241)
Salt Lake Blvd.
1.50 (H-201)
Ala Kapuna Rd. O/P
RTE 7351
0.59 (7350)
Salt Lake Blvd.
0.00 (7351)
Kam. Hwy.
RTE 7350
0.55 (7345)
Tripler Hospital
0.00 (7345), 1.03 (7310)
Moanalua Fwy.
RTE 7345
LIKELIKE HWY
RTE 63
0.23 (7351), 0.00 (7350)
Bougainville Dr., Radford Dr.
0.00 (92)
Pearl Harbor
Main Gate
23.31 (99)
Above H-1 Fwy. and EB
Nimitz/Hickam Off-Ramp
4.09 (H-201)
Middle St. I/C
0.00 (7415)
Kaua St.
PUULOA RD.
RTE 7310
15.22 (H-1)
Kam. Hwy. O/P
1.42 (63)
Kalihi St. North of
Kam. Shopping
Center
RTE 92
0.00 (7310)
Kam./Nimitz Hwy.
23.83 (99)
Pearl Harbor I/C
19.36 (H-1)
Gulick Ave. O/P
H-1
RTE 7415
18.31 (H-1)
0.2 Mile After EB Off-Ramp
to Dillingham Blvd.
0.00 (98)
Olomea St. @
H-1 EB Off-Ramp
0.24 (92)
On-Ramp from O'Malley
Blvd.- Hickam Main Gate
3.52 (92)
Middle St.
RTE 63
0.34 (98)
Pua Lane
0.00 (7401)
Middle St.
0.00 (63)
Nimitz Hwy.
0.35 (7413),
20.80 (H-1)
H-1 Liliha
St. O/P
2.60 (64)
Nimitz Hwy.
0.00 (7413)
King St.
0.51 (7415)
Kam. Hwy.
4.28 (92)
Mokauea St.
1.53 (64)
End Bascule Bridge
RTE 13
RTE 98
PALI HWY
RTE 61
0.10 (7401)
100 Feet East of Kalihi
Stream Bridge
1.40 (64)
Begin Bascule Bridge
RTE 64
5.27 (92)
Rd. to Chevron Oil
0.00 (61)
Vineyard Blvd.
0.0
0.5
1.0
Miles

B3


See Map B3
7.47 (H-3)
1 Mile After Tunnel
Exit, Kaneohe Bound
6.47 (H-3)
End H3 Tunnel,
Kaneohe Bound
H-3
KAHEKILI
RTE 83
HWY
39.92 (83)
Kahuhipa Rd
8.28 (63)
Kahekili Hwy.
13.41 (H-3)
0.25 Mile After
Kailua Separation
15.32 (H-3)
MCBH-Kaneohe
4.15 (65)
Kalaheo Ave.
0.00 (65)
Kam. Hwy.
RTE 65
KAMEHAMEHA HWY
RTE 83
H-3
10.60 (61)
Kawainui Br.
0.00 (72)
Kailua Rd.
RTE 61
43.92 (83)
Pali Hwy.
LIKELIKE HWY
RTE 63
PALI HWY
RTE 61
RTE 72
3.35 (72)
Poalima St.
KALANIANAOLE HWY
H-1
RTE 64
RTE 92
1.76 (98)
Ramp to H-1 EB
22.59 (H-1)
Pilkoi St. U/P
23.18 (H-1)
Punahou St. O/P
24.43 (H-1)
EB Off-Ramp
to King St.
0.00 (7601)
Kapiolani Blvd.
24.83 (H-1)
Kapiolani I/C
at Kapahulu Ave.
OLD WAIALAE RD
RTE 7601
25.55 (H-1)
10th Ave. U/P
27.16 (H-1), 18.46 (72)
Ainakoa Ave.
0.00 (64)
S. I. Park
ALA MOANA BLVD
RTE 92
9.26 (92)
Kalakaua Ave.
0.41 (7601)
King St.
RTE 72
13.26 (72)
(Lunalilo Hm. Rd.)
Legend
Street Sweeping Schedule
Routes in High Priority Watersheds to be Swept Once Every 5 Weeks
Other Priority Routes to be Swept Once Every 5 Weeks
Routes to be Swept Once Every 15 Weeks
High Priority Watersheds
All Other Watersheds
County Routes
Street Sweep Begin/End Point
State Route Begin/End Point
N
W
E
S
0
1
2
Miles

B4

APPENDIX C

DRAINAGE SYSTEM INSPECTION & CLEANING

1. This requirement becomes effective upon commencement of service contract, or 60 days post-entry, whichever comes first.

2. For drainage system structures (including, but not limited to, gutters, swales, open channels/ditches, culverts, drain inlets, catch basins, manholes, outfalls, and other accessible discharge points) located in High Priority Watersheds and within HDOT's rights-of-way:

   a. Complete inventory of, and inspect for sediment, trash, litter, and other gross solids, within one (1) year of effective date.

   b. Clean, in accordance with SWMPP DR3-1, within one (1) year of effective date.

   c. Re-inspect, and clean as appropriate and in accordance with SWMPP DR3-1, at least semiannually thereafter.

3. For drainage system structures (including, but not limited to, gutters, swales, open channels/ditches, culverts, drain inlets, catch basins, manholes, outfalls, and other accessible discharge points) not located in High Priority Watersheds, or located within High Priority Watersheds but outside of HDOT's rights-of-way:

   a. Complete inventory of, and inspect for sediment, trash, litter, and other gross solids, within two (2) years of effective date.

   b. Clean, in accordance with SWMPP DR3-1, within two (2) years of effective date.

   c. Re-inspect, and clean as appropriate and in accordance with SWMPP DR3-1, at least annually thereafter.

4. For the purposes of this Appendix the word "culverts" shall mean "accessible points including culvert manholes, entrances, and outfalls."

APPENDIX D

AREAS FOR INSTALLATION OF TEMPORARY EROSION CONTROL MEASURES IN HIGH PRIORITY WATERSHEDS

	Route	Route No.	Direction of Travel	From Mile Post	To Mile Post	Length (feet)	Height (feet)
1.	Interstate H-2	H-2	Wahiawa Bound	0.48	0.80	1690	30
2.	Interstate H-2	H-2	Wahiawa Bound	0.99	1.20	1109	30
3.	Interstate H-2	H-2	Honolulu Bound	1.02	1.21	1003	15
4.	Interstate H-2	H-2	Waianae Exit	0.51	1.71	1056	35
5.	Kamehameha Hwy.	99	Wahiawa Bound	11.28	11.50	1162	50
6.	Kamehameha Hwy.	99	Honolulu Bound	11.95	12.16	1109	50
7.	Kunia Rd.	750	Waipahu Bound	7.02	7.20	950	5 - 25
8.	Kunia Rd.	750	Waipahu Bound	6.54	6.79	1320	2 - 15
9.	Kunia Rd.	750	Wahiawa Bound	6.54	6.79	1320	2 - 15
10.	Kunia Rd.	750	Wahiawa Bound	6.96	7.14	950	5 - 25

APPENDIX E

COMPLIANCE-FOCUSED ENVIRONMENTAL MANAGEMENT SYSTEMS ("EMSs")

1. Purpose. The purpose of this supplemental environmental project ("SEP") is to develop and implement EMSs that conform to the standards identified below for the operations and facilities of the Airports, Harbors, and Highways Divisions of the HDOT including, at a minimum, those facilities specifically identified in Attachment 1.

2. Initial Auditor(s). No later than 60 days after entry of the Consent Decree to which this Appendix is attached ("Consent Decree"), HDOT shall provide to EPA and to DOH ("the Parties") in writing:

(a) the name, affiliation, and address of the Initial Auditor(s) selected by HDOT to conduct an Initial EMS Review and Evaluation;

(b) evidence that each Initial Auditor(s) satisfies the qualification requirements and proficiency criteria of ISO 14012 "Guidelines for environmental auditing - Qualification criteria for environmental auditors" (First Edition, 1996-10-01) and that the team conducting the Initial EMS Review and Evaluation, in composite, has a working knowledge of HDOT's operations and the facilities identified in Attachment 1, or similar operations, and of the federal and state environmental requirements which apply to HDOT's operations and these facilities;

(c) evidence that each Initial Auditor(s) has the necessary expertise to develop and implement the Compliance, Best Management Practices and Pollution Prevention ("P2") Checklists required below; and

(d) evidence that each Initial Auditor(s) has the necessary training experience to conduct the training sessions required below.

3. If EPA (after consultation with DOH) determines that the proposed Initial Auditor(s) does not meet the qualifications set forth in the previous Paragraph or that past or existing relationships with the Initial Auditor(s) could affect the Initial Auditor(s)' ability to exercise the independent judgment and discipline required to conduct the review, EPA may disapprove such Initial Auditor(s) and HDOT shall propose another Initial Auditor(s) for approval by EPA (after consultation with DOH) within 30 days of HDOT's receipt of EPA's determination. If, at any time, HDOT wishes to contract with a new Initial Auditor(s), HDOT shall notify the United States and DOH in writing and provide an explanation for the change and shall propose another Initial Auditor(s) to EPA for approval. Any subsequent Initial Auditor(s) must satisfy the qualification requirements of the preceding Paragraph.

4. HDOT shall not, in any way, through its own actions or through the actions of others, interfere with the ability of the Initial Auditor(s) to carry out his or her review of the elements and terms described in this Appendix in an independent fashion.

5. Initial EMS Review and Evaluation. Upon approval of the Initial Auditor(s), HDOT shall direct the Initial Auditor(s) to conduct and complete an Initial EMS Review and Evaluation (commonly referred to as a "gap" analysis) for HDOT's operations at the Harbors (including Honolulu Harbor), Airports (including Honolulu Airport), and Highways Divisions, including a representative sampling of the facilities identified in Attachment 1. The Initial EMS Review and Evaluation shall include an evaluation of the current compliance status, management practices, and pollution prevention ("P2") opportunities at the Divisions, as well as an assessment of any existing EMS, environmental practices, compliance, or P2 programs at the facilities. The Initial Auditor(s) shall review and evaluate any current EMS using the elements set forth in Paragraph 15 below, to identify where systems or subsystems have not been adequately developed or implemented.

6. The HDOT staff, especially the Operations staff, shall be actively involved in the Initial EMS Review and Evaluation. A primary purpose of this Initial EMS Review and Evaluation shall be to collect information for development of the Compliance, Best Management Practices, and Pollution Prevention Checklists and the training sessions required in Paragraphs 9 and 11 below.

7. Any violations of federal, state, or local environmental laws, regulations, or permits or of any other enforceable agreement requiring environmental compliance identified during the Initial EMS Review and Evaluation shall be disclosed and corrected in accordance with Paragraphs 15.F.5 and 36.

8. The Initial EMS Review and Evaluation shall be completed no later than 120 days after approval of the Initial Auditor(s). The results of the Initial EMS Review and Evaluation shall be documented in a report prepared by the Initial Auditor(s) and provided to HDOT, including all Deputy Directors and the Director. This report shall be made available to EPA and DOH upon request.

9. The Compliance, Best Management Practices and Pollution Prevention Checklists ("the Checklists"). No later than 120 days after approval of the Initial Auditor(s), the Initial Auditor(s) shall develop and submit to EPA for review and approval pursuant to Part III of the Consent Decree (Approval Process):

(a) Compliance Checklist(s) of federal, state, local requirements, as described in Paragraph 15.D.2. The Compliance Checklist(s) shall also include the legal citation for any legal requirement, a calendaring system to identify when compliance obligations are due and forms to assist in the facility evaluations.

(b) Best Management Practices Checklist(s) which shall provide a schedule of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge, release, or emission of pollutants; and

(c) Pollution Prevention ("P2") Checklist(s) which shall provide opportunities for preventing, reducing, recycling, reusing, and minimizing waste and emissions, including procedures to encourage material substitutions.

10. Each of the above Checklists shall require ongoing updates and supplementation and shall be tailored to the different operations of HDOT's Harbors, Airports, and Highways Divisions. The Checklists are compliance assistance tools developed by HDOT for use by HDOT. The Checklists are not intended to create rights, substantive or procedural, enforceable by any party in litigation with any regulatory agencies, including, but not limited to, DOH or EPA. EPA and DOH do not vouch for the completeness of the Checklists. The Checklists do not operate in lieu of complying with any legal requirements.

11. Training Course. No later than 120 days after approval of the Initial Auditor(s), the Initial Auditor(s) shall develop and submit to EPA for review and approval pursuant to Part III of the Consent Decree (Approval Process) a detailed training course outline and schedule with all materials for the first two training sessions for each of HDOT's Divisions. The training course and materials shall address, at a minimum, the following:

(a) The training course shall be a multi-session course designed to allow HDOT personnel involved in the course to participate in a session and then return to their respective facilities to apply what has been learned in order to implement the EMSs as defined herein;

(b) The implementation of the Checklists at each facility shall be an integral part of the training and implementation of the EMS; and

(c) The training shall focus, in part, on *measuring environmental results.* As an integral part of the training sessions, HDOT shall develop baseline information for the different environmental aspects of operations, including water usage, wastewater (including stormwater runoff), chemical usage, and energy usage for its facilities. A baseline shall be developed for environmental compliance by implementing the compliance checklist at each facility at the beginning of the training. Goals shall be established for environmental improvement. The difference between the baseline and the information developed during the internal evaluation provides an indicator of the environmental improvement resulting from the EMS.

(d) One follow up training workshop may be conducted as part of the EMS SEP after the EMS Manual has been submitted in accordance with Paragraph 16 below.

12. No later than 30 days after approval of the detailed training course outline and the materials for the first two training sessions, the Initial Auditor(s) shall start training sessions for each of the Divisions. The training courses shall be completed no later than 180 days from the date of the initial training session.

13. Action Plan for EMS Development. No later than 120 days after approval of the Initial Auditor(s), the Initial Auditor(s) shall develop and submit to EPA for review and approval pursuant to Part III of the Consent Decree (Approval Process), an Action Plan describing in a comprehensive manner how the Initial Auditor(s) shall work with the Divisions and facilities to facilitate their development of EMSs for the operations at each of the Divisions and the facilities identified in Attachment 1. The comprehensive EMSs shall, at a minimum, address the 12 key elements set forth in Paragraph 15 below. The Action Plan shall also, at a minimum, include the development of an EMS Manual for each Division that complies with Paragraphs 9, 10,11, 13, 14, and 35 of this Appendix. The Action Plan shall describe the process by which the Checklists and training course will be integrated to develop and implement the EMSs. As part of the HDOT's facilities' EMS, HDOT shall develop and implement procedures for oversight of the facilities of tenants, contractors, and other users of the ports, airports, and highways subject to the jurisdiction of HDOT. The Action Plan shall include a schedule for implementing the Action Plan and final development of the EMS Manual(s), as required by Paragraph 16, and the Evaluation Report, as required by Paragraph 17.

14. Action Plan's Emphasis on Harbors Division. The Action Plan shall require that the Compliance and Best Management Practices Checklists be implemented at the Harbors Division as a priority. As a mandatory condition for certifying that the SEP has been fully implemented in accordance with Paragraph 21 of the Consent Decree (SEP Completion Report), the Harbors Division shall:

(a) apply the Compliance and Best Management Practices Checklists to the Honolulu Harbor, including tenants and other users;

(b) certify that any compliance violations at the Harbors Division's facilities identified in Attachment 1 that have been discovered by the HDOT, Initial Auditor, or the Final Auditor during the initial review, development, implementation, and final audit of the EMS(s) shall have been corrected or are the subject of a compliance schedule as required by Paragraphs 15.F.5 and 36; and

(c) as part of the HDOT's facilities' EMS, develop and implement procedures for oversight of the facilities of tenants and other users of the ports subject to the jurisdiction of HDOT.

15. The Elements of the EMS. Following the completion of the training course, HDOT shall complete the EMS Manuals. The EMS Manuals shall be organized to clearly address the following issues:

A. Environmental Policy

1. This policy, upon which the EMS is based, must clearly communicate management commitment to achieving compliance with applicable federal, state, and local environmental statutes, regulations, enforceable agreements, and permits (hereafter, "environmental requirements"), minimizing the risks to the environment from unplanned contaminant releases, and continual improvement in environmental performance. Further, the policy should address management's commitment to coordinate activities of HDOT to ensure that there is effective oversight to address the potential and actual environmental impacts resulting from the tenants, contractors, and other users of the ports, highways, and airports subject to the jurisdiction of HDOT. The policy should also state management's intent to seek adequate personnel and other resources for the EMS so that there is dedicated personnel identified to ensure the ongoing implementation of the EMS and that environmental responsibilities are not viewed as collateral duties to the staffs numerous other responsibilities. As evidence of management commitment, the Division Directors of the Harbors, Airports, and Highway Divisions shall personally review and certify as to the status of the EMSs for each of their respective facilities and the Division on a biannual basis. The certification shall be submitted to EPA. The Director of HDOT shall review the status of the EMS annually.

B. Organization, Personnel, and Oversight of EMS

1. Describes, organizationally, how the EMS is implemented and maintained.

2. Includes organization charts that identify units, line management, and other individuals having environmental performance, risk reduction, and regulatory compliance responsibilities.

3. Identifies and defines specific duties, roles, responsibilities, and authorities of key environmental program personnel in implementing and sustaining the EMS (e.g., could include position descriptions and performance standards for all environmental department personnel, and excerpts from others having specific environmental program and regulatory compliance responsibilities).

4. Includes ongoing means of communicating environmental issues and information to all organization personnel, on-site service providers, tenants, and contractors, and for receiving and addressing their concerns.

C. Accountability and Responsibility

1. Specifies accountability and environmental responsibilities of organization's managers, on-site service providers, tenants, and contractors for environmental protection practices, assuring compliance, required reporting to regulatory agencies, and corrective actions implemented in their area(s) of responsibility.

2. Describes incentive programs for managers and employees to perform in accordance with compliance policies, standards, and procedures.

3. Describes potential consequences for departure from specified operating procedures, including HDOT liability for civil/administrative penalties imposed as a result of noncompliance.

D. Environmental Requirements

1. Describes process for identifying, interpreting, and effectively communicating environmental requirements to affected organization personnel, on-site service providers, tenants, and contractors, and then ensuring that facility activities conform to those requirements (i.e., ongoing compliance monitoring). Specifies procedures for prospectively identifying and obtaining information about changes and proposed changes in environmental requirements, and incorporating those changes into the EMS.

2. Includes a compliance checklist of federal, state, local requirements and best industry practices. These requirements shall incorporate, but are not limited to, the terms in permits, orders, and enforceable agreements. The requirements addressed by the Compliance Checklist are based on the Clean Water Act, 33 U.S.C. §§ 1311–1346 (including compliance with the Storm Water and SPCC requirements of the Act); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921–6939e; and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001–11023. This Compliance Checklist shall be updated periodically and used for routine compliance audits, as appropriate. All compliance violations identified by the Compliance Checklist, or otherwise in conjunction with the EMS, shall be corrected in accordance with the terms of Paragraphs 15.F.5 and 36.

3. Establishes and describes processes to ensure communication with regulatory agencies regarding environmental requirements and regulatory compliance.

E. Assessment, Prevention, and Control

1. Identifies an ongoing process for assessing operations, for the purposes of preventing and controlling or minimizing reasonably foreseeable releases or discharges, ensuring environmental protection, and maintaining compliance with

statutory and regulatory requirements. This section shall describe monitoring and measurements, as appropriate, to ensure sustained compliance. It shall also include identifying operations and waste streams where equipment malfunctions and deterioration, operator errors or deliberate malfeasance, and discharges or emissions may be causing, or may lead to: (a) releases of hazardous waste or other pollutants to the environment, (b) a threat to human health or the environment, or c) violations of environmental requirements.

2. Describes process for identifying operations and activities where documented standard operating practices ("SOPs") are needed to prevent potential violations or unplanned pollutant releases, and defines a uniform process for developing, approving, and implementing the SOPs.

3. Describes a system for conducting and documenting routine, objective, self-inspections by department supervisors and trained staff, especially at locations identified by the process described in Paragraph 15.E.1, to check for malfunctions, deterioration, worker adherence to SOPs, and unauthorized releases.

4. Describes process for ensuring input of environmental requirements (or concerns) in planning, design, and operation of ongoing, new, and/or changing buildings, processes, equipment, and maintenance activities.

F. Environmental Incident and Noncompliance Investigations

1. Describes standard procedures and requirements for internal and external reporting of potential violations and release or discharge incidents or other non-compliance.

2. Establishes procedures for investigation and prompt and appropriate correction of potential violations. The investigation process includes root-cause analysis of identified problems to aid in developing the corrective actions.

3. Describes a system for development, tracking, and effectiveness verification of corrective and preventative actions.

4. Each of these procedures shall specify self-testing of such procedures, where practicable.

5. Provide prompt notice of all violations to the regulatory agency and correct all compliance violations identified by the EMS for facilities identified in Attachment 1 within 21 days, unless a legal requirement requires more prompt correction. If it is determined that the violation cannot be corrected within 21 days, a compliance

schedule should be submitted to the HDOT EMS manager and to the applicable regulatory agency.

G. Environmental Training, Awareness, and Competence

1. Identifies other specific education and training required for organization personnel, as well as process for documenting training provided.

2. Describes program to ensure that organization employees are aware of its environmental policies and procedures, environmental requirements, and their roles and responsibilities within the environmental management system.

3. Describes program for ensuring that personnel responsible for meeting and maintaining compliance with environmental requirements are competent on the basis of appropriate education, training, and/or experience. In particular, training shall be conducted to address any compliance violations identified by the EMS.

4. Identifies training on how to recognize operations and waste streams where equipment malfunctions and deterioration, operator errors or deliberate malfeasance, and discharges or emissions may be causing, or may lead to: (a) releases of hazardous waste or other pollutants to the environment, (b) a threat to human health or the environment, or c) violations of environmental requirements.

H. Environmental Planning and Organizational Decision-Making

1. Describes how environmental planning will be integrated into organizational decision-making, including plans and decisions on capital improvements, product and process design, training programs, and maintenance activities.

2. Requires establishing written targets, objectives, and action plans by at least each operating organizational subunit with environmental responsibilities, as appropriate, including those for contractor operations conducted at the facility, and how specified actions will be tracked and progress reported. Targets and objectives must include actions which reduce the risk of noncompliance with environmental requirements and minimizing the potential for unplanned releases.

I. Maintenance of Records and Documentation

1. Identifies the types of records developed in support of the EMS (including audits and reviews), who maintains them and where, and protocols for responding to inquiries and requests for release of information.

2. Specifies the data management systems for any internal waste tracking, environmental data, and hazardous waste determinations.

3. Specifies document control procedures.

J. Pollution Prevention/Best Management Practices Program

1. Describes an internal program for preventing, reducing, recycling, reusing, and minimizing waste and emissions, including procedures to encourage material substitutions. HDOT shall evaluate P2 opportunities which shall include an identification of the opportunities, an evaluation of whether those opportunities are technically feasible, a calculation of the cost and a quantitative assessment of the pollution reduction. The Pollution Prevention and Best Management Practices Checklists will serve as a basis for this program.

2. To the extent that the training and development of the EMS Manual for a Division has been completed for the identified facilities and available funding from the SEP remains, the Division can select additional SEP projects arising out of the training, so long as such projects are consistent with the terms and conditions of the EPA Supplemental Environmental Projects Policy (May 1, 1998) and approved by EPA. If there are remaining funds available for a Division, another Division can apply to the HDOT EMS manager for use of the funds to conduct one of the approved SEP projects.

K. Continuing Program Evaluation and Improvement

1. Describes program for periodic (at least annually) evaluation of the EMS, including incorporating the results of the assessment into program improvements, revisions to the manual, and communicating findings and action plans to affected employees, on-site service providers, tenants, and contractors.

2. Describes a program for periodic audits (at least annually) of facility compliance with environmental requirements. Audit results are reported to upper management and potential violations are addressed through the process described in Paragraphs 15.F.5 and 36. In addition, an audit by an independent auditor will be conducted every four years.

L. Public Involvement/Community Outreach

1. Describes a program for ongoing community education and involvement in the environmental aspects of the organization's operations and general environmental awareness.

16. Submission of the EMS Manual. No later than 60 days after completion of the training course, HDOT shall submit to EPA complete EMS Manuals addressing the EMS provisions in Appendix E herein that relate to the facilities identified in Attachment 1 for review and approval in accordance with Part III (Approval Process) of the Consent Decree. A copy of the complete EMS Manuals shall be provided to DOH. Upon approval of the EMS Manual(s), HDOT shall immediately commence implementation of the EMS(s) in accordance with the schedule that shall be provided in the EMS Manual(s).

17. Evaluation Report. No later than 90 days after the EMS Manuals are approved, HDOT shall submit to EPA and to DOH an Evaluation Report describing the activities associated with the development of the EMS at the facilities identified in Attachment 1. The Evaluation Report shall include the following:

(a) the implementation status of each of the twelve EMS elements identified in Paragraph 15;

(b) baseline information for the different environmental aspects including water usage, wastewater (including stormwater runoff), hazardous waste, and energy usage;

(c) a completed Compliance Checklist for each of the identified environmental requirements;

(d) a corrective action schedule for any identified non-compliance; and

(e) an identification of P2 opportunities, including an evaluation of whether those opportunities are technically feasible, a calculation of their cost and a quantitative assessment of the projected pollution reduction.

18. Final Auditor. HDOT shall provide for a third party (Final Auditor) to perform a Final Audit of the EMSs at each of HDOT's Divisions and facilities identified in Attachment 1. HDOT's contract with the Final Auditor shall require the Final Auditor to review and to evaluate the implementation of the systems, policies, and procedures described in the EMS Manuals, using the criteria set forth in Paragraphs 24 and 25 of this Appendix, as criteria for the evaluation. No later than 60 days after the EMS Manuals are approved HDOT shall provide to the EPA and DOH in writing:

(a) the name, affiliation, qualifications and address of an independent auditor who was not involved in the Initial EMS Review and Evaluation ("the Final Auditor") selected by HDOT to perform an audit of HDOT's operations at each of its Divisions and the facilities identified in Attachment 1;

(b) evidence that the selected Final Auditor satisfies the independence and proficiency criteria contained in the ISO 14012 "Guidelines for environmental auditing - Qualification criteria for environmental auditors"(First edition, 1996-10-01).

(c) evidence that the Final Auditor has the necessary expertise to evaluate all the terms and conditions described in Paragraphs 9, 10, 11, 13, 14, 15, and 35, including expertise and competence in the regulatory programs under federal, state, and local environmental laws; and

(d) a schedule, including milestones, for conducting the review.

19. The Final Auditor must be capable of exercising the same independent judgment and discipline that a certified public accounting firm would be expected to exercise in auditing a publicly held corporation.

20. If EPA (after consultation with DOH) determines that the proposed Final Auditor does not meet the qualifications set forth in the previous Paragraph or that past or existing relationships with the Final Auditor could affect the Auditor's ability to exercise the independent judgment and discipline required to conduct the review, EPA may disapprove such Auditor and HDOT shall propose another Final Auditor for approval by EPA within 30 days of HDOT's receipt of EPA's determination. If, at any time, HDOT wishes to contract with a new Final Auditor because the approved Auditor is unable to fulfill the remaining tasks under the Final Audit of the EMSs, or for any other reason, HDOT shall notify EPA and DOH in writing and provide an explanation for the change and shall propose another Final Auditor to EPA for approval. Any subsequent Final Auditor must satisfy the qualification requirements outlined in Paragraphs 18 and 19 above.

21. HDOT shall not, in any way, through its own actions or through the actions of others, interfere with the ability of the Final Auditor to carry out his or her review of the elements and terms described in this Appendix in an independent fashion.

22. HDOT shall identify any and all site-specific training requirements for the Final Auditor and shall ensure that the requirements are met prior to conducting the audit.

23. <u>The EMS Final Audit Plan.</u> HDOT shall require the Final Auditor to prepare an EMS Final Audit Plan, for purposes of implementing the EMS Final Audit as described in Paragraphs 24 and 25 below, with an implementation schedule. The draft EMS Final Audit Plan shall be submitted no later than 45 days after the EPA's approval of the Final Auditor to EPA for review and approval pursuant to Part III of the Consent Decree (Approval Process). A copy of the draft EMS Final Audit Plan shall also be submitted to DOH.

24. HDOT shall require the Final Auditor to conduct an EMS Final Audit to evaluate the adequacy of EMS implementation, from top management down, throughout each

major organizational unit at the facilities, and to identify where further improvements should be made to the EMS. The Final Auditor shall include a comprehensive audit, with personal visit(s) by the Final Auditor, to determine conformance with the items identified in Paragraph 25 for all facilities identified in Attachment 1 located on Oahu. For all of the other facilities identified in Attachment 1, the HDOT EMS Manager shall have discretion as to: a) whether there will be personal visit(s) by the Final Auditor; and b) the extent of the evaluation needed to establish conformance with the elements identified in Paragraph 25 herein. For example, audits for these other facilities may be conducted by, at a minimum, reviewing the applicable portion of the EMS manual used by the facility and all records documenting EMS activities, in addition to conducting telephone interviews, as deemed appropriate. Notwithstanding the discretion related to the Final Audit, as described in this paragraph, HDOT shall implement an EMS, as developed in accordance with Appendix E, for all of the facilities identified in Attachment 1. The EMS Final Audit shall be conducted in accordance with ISO 14011 (First edition, 1996-10-01), using ISO 14010 (First edition, 1996-10-01) as supplemental guidance.

25. The Final Auditor shall assess conformance with the elements specified in Paragraphs 9, 10, 11, 13, 14, 15, and 35 and with the EMS Manuals, and shall determine the following for the Divisions and for each of the facilities:

(a) Whether there is a defined system, subsystem, program, or planned task for the respective EMS element;

(b) To what extent the system, subsystem, program, or task has been implemented and is being maintained;

(c) Adequacy of each Facility's internal self-assessment procedures for programs and tasks composing the EMS;

(d) Whether HDOT is effectively communicating environmental requirements to affected parts of the organization, contractors, tenants, users, and on-site service providers;

(e) Whether further improvements should be made to the EMS;

(f) Whether there are observed deviations from HDOT's written requirements or procedures;

(g) Whether continuous improvement is occurring;

(h) Any violations of federal, state, or local environmental laws, regulations, or permits, or of any other enforceable agreement requiring environmental compliance at the facilities. Any identified violation shall be disclosed and corrected in accordance with Paragraphs 15.F.5 and 36;

(i) Whether the Checklists have been effectively implemented at the facilities;

(j) Whether there is sufficient information to measure environmental results as described in Paragraph 11(c); and

(k) The extent to which the EMS includes effective procedures for oversight of the facilities of tenants, contractors, and other users of the ports, airports, and highways subject to the jurisdiction of HDOT.

26. The EMS Final Audit shall not be initiated until at least 30 days after HDOT submits the Evaluation Report as described in Paragraph 17 above. The EMS Final Audit shall be completed no later than 90 days after HDOT submits the Evaluation Report.

27. Designated representatives from EPA, DOH, and other environmental regulatory agencies may participate in the Final EMS Audit as observers. HDOT shall make timely notification to designated regulatory contacts regarding audit scheduling in order to make arrangements for observers to be present. HDOT personnel may also participate in the on-site audits as an observer(s), but may not interfere with the independent judgement of the Final Auditor.

28. EMS Final Audit Report. HDOT shall direct the Final Auditor to independently prepare an EMS Final Audit Report and concurrently submit the report to HDOT, DOH and EPA within 60 days of completion of the EMS Final Audit. The EMS Final Audit Report shall present the Audit Findings and shall, at a minimum, contain the following information:

(a) Audit scope, including the period of time covered by the audit;

(b) The date(s) the on-site portion of the audit was conducted;

(c) Identification of audit team members;

(d) Identification of HDOT representatives and regulatory agency personnel observing the audit;

(e) The distribution for the EMS Final Audit Report;

(f) A summary of the audit process, including any obstacles encountered;

(g) Detailed Audit Findings, including the basis for each Finding and each Area of Concern identified;

(h) Identification of any Audit Findings corrected or Areas of Concern addressed during the audit, and a description of the corrective measures and when they were implemented;

(i) Certification by the Final Auditor that the EMS Final Audit was conducted in accordance with the provisions of this Decree;

(j) An identification of any violations of federal, state, or local environmental laws, regulations, or permits, or of any other enforceable agreement requiring environmental compliance at the facilities and any root cause analysis describing the reason for the violations;

(k) The extent to which the Checklists have been effectively implemented at the facilities;

(l) The extent to which the facilities are able to measure environmental results as described in Paragraph 11(c) above; and

(m) How the EMS SEP has applied to contractors, tenants, and other users in accordance with Paragraph 35.

29. If the Final Auditor believes that additional time is needed to analyze available information or to gather additional information, HDOT may request that EPA grant the Final Auditor such additional time as needed to prepare and submit the EMS Final Audit Report. EPA's decision whether to grant additional time shall be final and unreviewable.

30. Corrective Action Plan. Upon receiving the EMS Final Audit Report, HDOT shall conduct a root cause analysis of the identified Audit Findings, as appropriate, and shall investigate all Areas of Concern. No later than 60 days after receiving the EMS Final Audit Report, HDOT shall submit to EPA for review and approval pursuant to Part III of the Consent Decree (Approval Process), a Corrective Action Plan for expeditiously bringing the facilities into full conformance with the EMS provisions in Paragraphs 9, 10, 11, 13, 14, 15, and 35, the EMS Manual(s), and fully addressing all Areas of Concern from the EMS Final Audit Report. A copy of the Corrective Action Plan shall be submitted to DOH. The Corrective Action Plan shall include the result of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule.

31. Upon EPA approval of the Corrective Action Plan, in whole or in part, HDOT shall begin implementation of the Corrective Action Plan immediately in accordance with the implementation schedule set forth therein. HDOT shall submit status reports regarding implementation to EPA and to DOH on a quarterly basis, beginning no later than 30 days from EPA's approval of the Corrective Action Plan, in whole or in part, until all approved portions of the Corrective Action Plan have been completed.

32. SEP Completion Report and Corrective Action Plan Completion. Within 30 days after all items in the Corrective Action Plan have been completed, HDOT shall submit to EPA and to DOH:

(a) a SEP Completion Report in accordance with Paragraphs 21 through 23 of the Consent Decree. The SEP Completion Report is subject to Part X (Dispute Resolution) of the Consent Decree. Any disputes concerning the SEP Completion Report are the only disputes arising out of this Appendix that are related to the satisfactory performance of the EMS SEP; and

(b) a written Correction Action Plan Completion Certification to EPA signed by the Director of HDOT.

33. Funding of EMS SEP. HDOT's total expenditure for the EMS SEP shall not be less than $1,062,500. No part of this expenditure shall include federal funds, including low interest federal loans, federal contracts, or federal grants. Each of the Divisions shall use its share of these dollars to implement an EMS at each of the identified facilities within its Division. SEP funds not spent within four years from the effective date of this Consent Decree shall revert to the U.S. Treasury, unless an extension is agreed to by HDOT and the United States.

34. Eligible SEP Expenses. The Initial Auditor(s)' costs associated with the Initial EMS Review and Evaluation, preparation of the training materials, time for instruction, follow up with facilities on EMS related activities, including, but not limited to, implementing the Checklists and one follow up training session, shall be eligible SEP expenses. Technical support for conducting the projects identified through Paragraph 15.J.2 above may be eligible SEP expenses. Finally, costs associated with the Final Auditor for preparing the EMS Final Audit Plan, conducting the EMS Final Audit, and preparing the EMS Final Audit Report and for technical assistance associated with implementing the Final Auditor's recommendations, not associated with correcting a compliance violation, shall be eligible SEP expenses. No costs associated with HDOT employees participating in training, implementing the EMS or other expenses associated with the EMS (including any costs associated with corrective actions needed for compliance actions identified under the EMS) shall be considered eligible SEP expenses. Also, any costs associated with the injunctive relief required by this Consent Decree shall not be eligible SEP expenses.

35. The Relationship of the EMS SEP to the Contractors, Tenants, and Users. The Checklists shall be used by HDOT personnel, in part, to evaluate the environmental performance of its contractors, tenants, and users. Contractors, tenants, and users of the Harbors, Airports, and Highways Divisions may be invited to attend the training sessions, but they will not be allowed to use SEP funds to discuss their EMS outside the training sessions with the Initial Auditor(s). HDOT shall require contractors to implement the EMS for all activities conducted on HDOT property, as part of future contractual requirements.

36. Violations Discovered in Connection with the Implementation of the EMSs. All violations of federal, state, or local environmental requirements at HDOT facilities identified in Attachment 1 discovered by HDOT, the Initial Auditor, or the Final Auditor during the initial review, development, implementation, and final audit of the EMS(s) shall:

(a) be disclosed to EPA and corrected in accordance with Paragraph 15.F.5 of this Appendix; and

(b) meet the "voluntary discovery" condition of the "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" ("the Audit Policy"), 65 Fed. Reg. 19618 (April 11, 2000).

37. Retention of Rights. Notwithstanding the activities associated with this SEP, the United States and DOH retain its enforcement rights to address any violations.

38. Confidential Business Information ("CBI"). HDOT may, if appropriate, assert that portions of the EMS Manual or reports or other submissions required by this Appendix contain CBI, pursuant to 40 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies the documents or information when submitted to EPA, or if EPA has notified HDOT that the documents or information is not confidential under the standards of 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to HDOT.

ATTACHMENT 1
DOT FACILITY LIST

I. Airports Division.

a. Hawaii District, Hilo International Airport, DOT Maintenance Baseyard
b. Hawaii District, Kona International Airport at Keahole, DOT Maintenance Baseyard
c. Hawaii District, Waimea-Kohala Airport, DOT Maintenance Baseyard
d. Kauai District, Lihue Airport, DOT Maintenance Baseyard
e. Oahu District, Honolulu International Airport, DOT Maintenance Baseyard
f. Oahu District, Dillingham Airfield, DOT Maintenance Baseyard
g. Oahu District, Kalaeloa Airport, DOT Maintenance Baseyard
h. Maui District, Kahului Airport, DOT Maintenance Baseyard
i. Maui District, Kapalua Airport, DOT Maintenance Baseyard
j. Maui District, Lanai Airport, DOT Maintenance Baseyard
k. Maui District, Molokai Airport, DOT Maintenance Baseyard

II. Highways Division

a. Hawaii District, Hilo Baseyard
b. Hawaii District, Honokaa Baseyard
c. Hawaii District Waimea Baseyard
d. Hawaii District, North Kona Baseyard
e. Hawaii District, South Kona Baseyard
f. Hawaii District, Kau Baseyard
g. Kauai District, Lihue Baseyard
h. Kauai District, Waimea Baseyard
i. Oahu District, Kakoi Street Baseyard
j. Oahu District, Keehi Baseyard
k. Oahu District, Kaneohe Baseyard
l. Oahu District, Haaula Baseyard
m. Oahu District, Wahiawa Baseyard
n. Oahu District, Waiane Baseyard
o. Oahu District, Pearl City Baseyard
p. Oahu District, H-3 Tunnel Maintenance Shop
q. Maui District, Kahului Baseyard
r. Maui District, Keanae Baseyard
s. Maui District, Lanai Baseyard
t. Maui District, Molokai Baseyard

III. Harbors Division

a. Hawaii District, Hilo Harbor DOT Maintenance Facility
b. Hawaii District, Kawaihae Harbor DOT Maintenance Shop

c. Kauai District, Nawiliwili Harbor DOT Maintenance Facility
d. Kauai District, Port Allen Harbor DOT Maintenance Shop
e. Oahu District, Honolulu Harbor DOT Maintenance Facility
f. Oahu District, Kalaeloa Barbers Point Harbor
g. Maui District, Kahului Harbor DOT Maintenance Facility

APPENDIX F

COMPLIANCE ASSISTANCE WORKSHOPS

1. HDOT shall provide "Erosion and Sediment Control for Highways" Compliance Assistance Workshops for professional contractors and construction contractors at each of the following six (6) locations: Hilo, Hawaii; Kona, Hawaii; Kauai; Maui; Honolulu, Oahu; and Kapolei, Oahu.
2. HDOT shall provide the cost for one DOH representative to attend each workshop, including transportation to and from Oahu and accommodations as required.
3. HDOT shall provide separate courses for professional contractors and construction contractors. In addition, HDOT shall invite inspectors from each County to attend each workshop.
4. HDOT shall publicize the workshops by giving a minimum of thirty (30) days notice to the applicable organizations.
    a. The notice shall include the date, time, location, and outline of the workshop.
    b. The applicable organizations include, but are not limited to, the following organizations:
        i. American Council of Engineering Companies of Hawaii (ACECH), American Society of Civil Engineers (ASCE) Hawaii Section, Hawaii Society of Professional Engineers (ASPE), Hawaii Water Environment Association (HWEA), and Institute of Transportation Engineers (ITE) for professional contractors.

ii. Building Industry Association of Hawaii (BIA-Hawaii) and General Contractors Association of Hawaii (GCA), and the Contractor's Associations on the islands of Maui, Kauai, and Hawaii for construction contractors.

5. Each course shall take one day (minimum of 6 hours of instruction).

6. Within thirty (30) days from the date of entry of the Consent Decree, HDOT shall submit draft course outlines to EPA and DOH for approval pursuant to Section III of this Consent Decree. The course outlines shall, at a minimum, accomplish the following:

a. These one day courses shall provide participants with a thorough understanding of the principles of erosion and sediment control and how they uniquely apply to highway projects. The regulatory requirements shall also be discussed. The emphasis of both courses shall be selecting, designing, implementing, and evaluating the effectiveness of Best Management Practices and Erosion and Sediment Control Plans.

b. The following topics shall be covered in the course:

- Erosion and Sediment Control Process
- Regulatory Requirements
- Overview and Development of erosion control plans
- Stabilization Methods
- Structural Erosion Control Methods
- Design Issues and Considerations
- Inspection and Monitoring Requirements

c. Upon completion of the course, the attendees should be able to:

- Understand the erosion and sediment control process and the factors which influence erosion and sedimentation.

- Comprehend the regulatory issues which relate to erosion control for highways.
- Follow the basic procedures for developing erosion control plans.
- Describe the stabilization methods used in highway applications.
- Describe the structural erosion control measures used in highway applications.
- Perform basic design calculations for erosion control measures.
- Understand inspection and monitoring requirements.

7. Within ninety (90) days from the date of entry of the Consent Decree, HDOT shall commence offering the first workshop. All twelve (12) workshops shall be completed by HDOT no later than fifteen (15) months from the date of entry of the Consent Decree.

8. HDOT shall document attendance at the workshops with sign-in or registration sheets. These sheets, along with copies of the notice described in Paragraph 4 and the list of associated recipients, shall be submitted in HDOT's End-of-Year Reports.

APPENDIX G

LIST OF CCH MANUAL LOCATIONS
HIGHWAYS DIVISION

1. Construction & Maintenance Branch

    a. Construction Section (4 Employees, 1 Manual)
    b. Environmental Section (2 Employees, 1 Manual)
    c. Maintenance Section (4 Employees, 1 Manual)

2. Planning Branch

    a. Advance Planning Section (7 Employees, 1 Manual)
    b. Highway Planning Survey Section (18 Employees, 2 Manuals)
    c. System Planning Section (6 Employees, 1 Manual)

3. Materials Testing & Research Branch

    a. Research & Technology Transfer Section (7 Employees, 1 Manual)
    b. Geotechnical & Pavement Design Section (9 Employees, 1 Manual)
    c. Bituminous Materials Section (9 Employees, 1 Manual)
    d. Structural Material Section (8 Employees, 1 Manual)

4. Design Branch

    a. Bridge Design Section (14 Employees, 1 Manual)
    b. Highway Design Section (25 Employees, 2 Manuals)
    c. Hydraulic Design Section (9 Employees, 3 Manuals)

5. Traffic Branch

    a. Traffic Design Service Section (7 Employees, 1 Manual)
    b. Traffic Operation Section (10 Employees, 1 Manual)

6. Oahu District

    a. Field Offices
        i. Halawa - Upper (14 Employees, 1 Manual)
        ii. Halawa - Lower (13 Employees, 1 Manual)
        iii. Kilihau (14 Employees, 1 Manual)
        iv. Kaneohe (12 Employees, 1 Manual)
        v. Pearl City (10 Employees, 1 Manual)
        vi. Salt Lake (14 Employees, 1 Manual)
    b. Maintenance Section
        i. NPDES (4 Employees, 1 Manual)

ii. Facility Engineering (5 Employees, 1 Manual)
iii. Field Engineering (7 Employees, 1 Manual)
iv. Equipment Service & Repair Unit (2 Employees, 1 Manual)
v. Highway Electrical Unit (13 Employees, 1 Manual)
vi. Highway Maintenance Unit (108 Employees, 7 Manuals)

c. Tunnel Section (40 Employees, 3 Manuals)

7. Hawaii District

a. Design Section (7 Employees, 1 Manual)
b. Construction Section (19 Employees, 1 Manual)
c. Maintenance Section (17 Employees, 1 Manual)

8. Maui District

a. Engineering Section (5 Employees, 1 Manual)
b. Construction Section (8 Employees, 1 Manual)
c. Survey Unit (4 Employees, 1 Manual)
d. Maintenance Section (11 Employees, 1 Manual)

9. Kauai District

a. Construction/Maintenance Section (20 Employees, 2 Manuals)

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

OCT 0 6 2005

at 8 o'clock and ___min.___M
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, DEPARTMENT OF HEALTH, STATE OF HAWAII, Plaintiffs, v. DEPARTMENT OF TRANSPORTATION, STATE OF HAWAII Defendant.	CV05 00636 HG KSC CIVIL ACTION NO. CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the following documents were mailed on October 6, 2005, to be served upon the persons listed on the attached service list in the manner indicated:

Complaint;
Notice of Lodging of Consent Decree; and
Consent Decree (for lodging purposes)

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 6, 2005, at Honolulu, Hawaii.

Jan Yoneda

Jan Yoneda

SERVICE LIST

Sent via U.S. Postal Service:

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

OCT 0 6 2005

at 8 o'clock and 00 min. a.m.
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, DEPARTMENT OF HEALTH, STATE OF HAWAII, Plaintiffs, v. DEPARTMENT OF TRANSPORTATION, STATE OF HAWAII Defendant.	CIVIL ACTION NO. KSC NOTICE OF LODGING

The United States of America ("United States"), by the authority of the Attorney General and through the undersigned attorney, and on behalf of the Administrator of the United States Environmental Protection Agency, hereby serves notice that the United States is lodging with the Court a Complaint and a Consent Decree that resolves all claims raised in the Complaint.

Under the terms of the Consent Decree and pursuant to 28 C.F.R. 50.7, the United States is allowing the public a 30-day period to comment on the Consent Decree. Accordingly, the United States respectfully requests that the Consent Decree not be entered prior to the expiration of the public comment period.

At the expiration of that period and after the United States has reviewed any public comments that are received, the United States will either request that the Court enter the Consent Decree, or advise the Court that public comments have been received that warrants the United States' withdrawal from the Consent Decree.

Respectfully submitted,

9/29/05
Date:

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