

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

180-Day Exp. Date: September 3, 2014

August 22, 2014

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

REGARDING: Conservation District Use Application (CDUA) MA-3706
For the After the Fact Recreational Facility

APPLICANT Maui Canoe Club
AGENT: Rory Frampton
LANDOWNER: Alexander & Baldwin

LOCATION: Mā'alaea Bay, Kīhei, Waikapū, Maui
Tax Map Key: Portion of (2) 3-8-005:003

SUBZONE: Protective

BACKGROUND:

Maui Canoe Club (MCC), a nonprofit organization obtained a license agreement with landowner, Alexander & Baldwin to use the site for canoe paddling purposes. In 2010, the MCC cleaned and cleared the property and began to make minor improvements to the land. In 2012, the MCC was issued a Civil Resource Violation Notice for the placement of storage structures and minor improvements within the Conservation District. The Club was fined and was required to remove the structures or obtain an After the Fact Conservation District Use Permit.

DESCRIPTION OF AREA (EXHIBITS 1, 2, 3, 4 & 5)

The project area exists in south Maui, Mā'alaea Bay, on the shores of Keālia Beach along North Kīhei Road. Keālia Pond National Wildlife Refuge is across the road to the north with the Keālia Resort a bit down the road to the east, Mā'alaea Bay to the south and Central Maui beyond to the west. The site is leased from Alexander & Baldwin and is approximately 29,805-ft².

According to the applicant and comments received, prior to the use of the area for recreational use, the land was cluttered with trash, engine parts, drug paraphernalia and was overgrown with invasive vegetation. Fencing to protect endangered turtles was in disrepair. The general public did not feel safe along this stretch of road and beach.

Currently, 19 canoes are stored for 3 organizations noted as the Maui Canoe Club, Mana'olana, also a non-profit organization, and Live Life Aloha that is funded by the

Federal Center for Disease Control through UH-Maui College. According to the applicant, usually on a daily basis, paddling may take place for members, guests, visitors and residents.

The site is open and provides a line of site to the ocean. Parking is available within the parcel adjacent to the road right of way. The location is a park like setting open to the public. Turtle fencing is within the southeast section of the site and also fronts large boulders that demarcate the mauka corners of the site and borders the road. A large container, porta pottie, barbeque, kiosk, dumpster, irrigation lines, wind screen, bollards, and picnic tables are also on site.

Native shoreline plants have been introduced to the site. Common coastal plants found along this shoreline include Kiawe, Naupaka, Pohuehue and 'Aki'aki grass. It is expected that common urban mammals (dog, cat, rat) and avifauna may visit the site. Endangered, threatened, or listed marine animals such as the Monk Seal, Hawksbill and Green Sea Turtle may also visit the site.

Based upon studies by the Keālia Pond National Wildlife Refuge, no archaeological items or sites have been encountered in the area. Suitable areas of habitation or cultural activities may have been eliminated or impacted by amphibious landings during World War II.

AFTER the FACT USE

The existing site improvements that are the subject of this after the fact request include a 10' x 20' container used to store equipment; picnic tables, a porta-potty, boulder boundaries, BBQ grill, waste dumpster, 2-ft tall 160-liner feet turtle fence, wind screen fence, educational and identification signs, an information kiosk, an irrigation system and native landscaping.

The container rests on concrete blocks and has multiple holes drilled as directed by the County of Maui, so in the event of a tsunami it will sink. Although the site remains open, the porta potty is available only during designated activities. Canoes are stored approximately 40+ feet inland on the shoreline on portable cradles or used car tires. Big foot rollers are used to move canoes instead of dragging. A Master Gardener was consulted to determine what types of native shoreline plants should be used to restore the area.

SUMMARY OF COMMENTS

The Office of Conservation and Coastal Lands referred this application to the following agencies for review and comment: the Federal- Keālia Pond US Fish & Wildlife Service; the State-Department of Health; the Office of Hawaiian Affairs; the Office of Environmental Quality Control; the Department of Land and Natural Resources Divisions of: Aquatic Resources, Conservation and Resource Enforcement, Maui District Land Office, and Historic Preservation; the County of Maui Department of Planning. In addition, the CDUA was also sent to the nearest public library, the Kīhei Public Library to make this information readily available to those who may wish to review it.

Comments were received by the following agencies and summarized by Staff as follows:

THE STATE

DEPARTMENT OF LAND AND NATURAL RESOURCES

Conservation and Resource Enforcement

No comment

Historic Preservation Division

A search of our records indicates that an archaeological inventory survey has not been conducted in this area, which was likely used for fishing, residences, and/or burials in the pre-Contact era. In general this area of Mā'alaea was heavily impacted by military drill activities during World War II. It is possible that historic properties may be present below the surface at this location, but we feel that the likelihood that any were affected by this above-surface project is low. We would like to note that should sub-surface alterations be planned in the future, we recommend archaeological monitoring pursuant to an approved archaeological monitoring plan.

Applicant's response

We note and will comply with your comment and notify the Department.

Office of Conservation and Coastal Land

Please discuss in detail the collaboration with the US Fish and Wildlife in regards to species that may visit the site and mitigative efforts (turtle fence, avoidance, barriers) that would be undertaken should endangered, threatened, or listed species visit or utilize the site. Describe flora and fauna that may be found on site. Describe the 'plantings' called out in the Site Plan and discuss how the vegetation shall not encroach upon the beach transit corridor. (See §115 of the Hawai'i Revised Statutes). Describe the signage and discuss how it is consistent with HAR, §13-5-22, P-7. Describe the components and work done to place the irrigation/water system. Please provide a legend of symbols for the Site Plan.

Applicant's response

The turtle fence was moved inland after consultation with the US Fish and Wildlife Service. The intent of the fence is to deter turtles from entering the highway. Regarding other listed species visiting the site, members are educated to not approach, avoid, relocate and also provide notice to USFW of the presence of the animal.

Plantings were done after consultation with a Master Gardener under the UH-Master Gardening Program. Only indigenous Hawaiian seashore plants were planted. The site has 'A'ali'i, 'Aki'aki, 'Ilima, Loulu, Mananea, Ma'ō, Milo, Naupaka, Ohai, Pohuehue, Pohinahina and Keawe Flora and a legend has been included with the updated site plan. The plants are naturally adapting to the area.

The irrigation system is at grade or covered with minimal topsoil or sand and is manually controlled. Water is used during dry periods or to wash down canoes. Irrigation will not be used to encourage advancement towards the beach corridor.

All signs within the site will comply with the Hawaii Administrative Rules, §13-5-22 P-7 Signs.

COUNTY OF MAUI

DEPARTMENT OF PLANNING

A site inspection was conducted on April 3, 2014 by Planning Staff and UH- Sea Grant coastal Hazard Specialist. The site is in generally good repair and as represented in the plans submitted. The Maui Canoe Club does a reasonable job of balancing the need to safely get canoes to and from the ocean from their storage places on the top of the bluff, and maintaining healthy sand dunes. The Department recommends that the Club install signs alerting members and the public of the sensitivity of the dune grasses and morning glory and their importance in retaining the existing sand dunes. The Department also recommends to the extent practicable, the Club expand the areas of existing dune grasses and morning glory so as to further restore and protect existing sand dunes.

Applicant's response

We note and will comply with your comment to install signs to alert the public of the sensitivity of the dune grasses and morning glory to retain the existing sand dunes and acknowledge your recommendation to expand the areas of dune grasses and morning glory to restore the existing sand dunes. We will contact Maui County staff regarding details for sign information.

GENERAL PUBLIC

In addition, the OCCL was in receipt of many correspondences of support for the CDUA. Letters described the canoe club organizations as good stewards of the land and the clean-up involved of the parcel. Others shared how the presence of the canoe club has helped mitigate environmental and public safety concerns in the immediate area. The majority of correspondences shared how the organizations are peer support and encourages health and fitness and perpetuating native Hawaiian culture thru paddling and utilizing the ocean as a source for healing. Comments of support were received by the following:

Mayor Alan Arakawa	Mary Dungans	David & Daphne Williams
Kathleen Kastles	Ruth Skripac	Jeannie L. McMurry Kaiser
Richard Buckley	Fabienne Mateo	Councilmember Donald G. Couch
Senator Rosalyn H. Baker	Wayne Hill	Reuel P. Matkin
Derith A. Lounsbury	Linda Lafragiola	Margaret S. Skripac
George F. McDowell	John McCune	Kathleen McDowell
Judy Matkin	Laurie Piai	Pamela & Robert Miller
Anna Mayeda	Jim McCauley	Carol McCauley
Bonnie B. Levy	Heidi Haltiner	Mercer "Chubby" Vicens
Patricia Covici	Mara Cole	Stephanie DeCosta-Franco
Doreen Napua Gomes	Rick Long	Warren Snyder
Maile Getzen		

Tri-Isle Resource Conservation & Development Council
Pacific Cancer Foundation
Maui Native Hawaiian Chamber of Commerce

ANALYSIS

After reviewing the application, by correspondence dated March 17, 2014, the Department has found that:

1. The After the Fact use is an identified land use in the Protective subzone of the Conservation District, pursuant to the Hawaii Administrative Rules (HAR) §13-5-22, P-6 PUBLIC PURPOSE USES (D-1) Not for profit land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity, except that an independent non-governmental regulated public utility may be considered to be engaged in a public purpose use. Examples of public purpose uses may include but are not limited to public roads, marinas, harbors, airports, trails, water systems and other utilities, energy generation from renewable sources, communication systems, flood or erosion control projects, **recreational facilities**, community centers, and other public purpose uses, intended to benefit the public in accordance with public policy and the purpose of the conservation district;
2. As the land lies within the Protective subzone, pursuant to §13-5-40 (3), HAR, a Public Hearing shall be required;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and HAR, Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules, Section 11-200-8(4) Minor alterations in the conditions of land, water, or vegetation, the use is exempt; and
4. Special Management Area Minor Permit (SM2 2012/0106) was issued via letter dated August 31, 2012 by the County of Maui's Planning Department.

Notice of CDUA MA-3706 was published in the March 23, 2014 issue of the Environmental Notice.

PUBLIC HEARING

A Public Hearing was held on May 21, 2014 at 5:30 pm at the Kīhei Community Center. A standing room only gathering of over 50 individuals attended the Hearing. All oral and written testimony collected that evening were supportive of the after the fact land use. Based upon the oral testimony shared that evening, the fellowship and friendship that has developed has led to organized care of the land and ocean. Staff was made aware that the land use and activities of the site is a support system for those facing and defeating cancer. Many of those that testified shared personal experiences regarding regaining their health, self-esteem and well-being by canoe paddling.

CONSERVATION CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in §13-5-30, HAR:

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

Cleaning and restoring the land to create a space for recreational purposes appear to be conducive to protecting and preserving the resources of the land. Native plants have been reintroduced to help protect the beach dunes. Users of the recreational space will help to manage the land and offer a presence that may contribute to public safety. The organizations have beach clean-ups, have repaired fencing to protect turtles, and have monitored the ocean. The continuation of these actions should promote long-term sustainability of the resources of the area and public health, safety and welfare.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Protective Subzone is to protect valuable natural and cultural resources in designated areas such as restricted watersheds, marine, plant, and wildlife sanctuaries, significant historic, archaeological, geological, and volcanological features and sites, and other designated unique areas.

The storage of canoes on the beach is a traditional use in Hawai'i. The recreational use of land for canoe paddling perpetuates the native Hawaiian culture. The uses upon the land are low intensity. The reintroduction of native seashore plants may help to restore the land and protect the sand dunes. Proper management of the reintroduced landscape should suffice to keep the beach transit corridor open. The Club members are cognizant that they are the stewards of the land and sea of this area.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The County of Maui Planning Department has issued a Special Management Area Minor Permit and has determined that the use is consistent with the County General Plan that encompasses the Kīhei-Mākena Community Plan.

Staff believes the proposed use is consistent with Chapter 205A, HRS as the site is a recreational resource that promotes a traditional use. The debris removal, clearing and reintroducing native landscaping has contributed to making this area a scenic and open space resource. The native vegetation will hopefully protect the coastal ecosystem and beach. The low key use of the site and small mitigation measures taken [drilling holes into container] will reduce coastal hazards to property and the ocean.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

The improvements to the site have been minimal. Vegetative clearing was manually done and consisted of weeding and removing dead kiawe. No mechanical equipment was utilized. Only native coastal landscaping was introduced to the site. All structures on the site can be easily dismantled and required no grubbing or grading. No negative impacts to coastal ecosystems are expected.

Staff believes the improvements to the site will have positive impacts to the existing natural resources within the surrounding area and community.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

None of the structures on site are permanent. The recreational use of the site for canoe storage is appropriate given the proximity to the ocean. Staff believes the land use is compatible with the surrounding areas and appropriate to the physical conditions and capabilities of the parcel.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Prior to the leasing of the site, the area was utilized as an illegal dump site. According to the applicant, trash, car parts, drug paraphernalia was abundant on the site. The use of the land has turned an eyesore into a scenic and recreational area that has opened up views of the ocean from the road.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

No subdivision of land is proposed in this application.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff believes the recreational use of the land has contributed to the public health, safety and welfare. The cleaning and clearing of the land has promoted safety and welfare. Canoe paddling, recreating and reflecting at the beach has health benefits.

CULTURAL IMPACT ANALYSIS

The recreational site will be utilized for canoe paddling, a traditional and customary use. Other traditional cultural practices that may take place in the vicinity would include gathering, fishing, diving, and ocean recreational activities.

During the processing of this application, no objections to the use of the site were received. The Office of Hawaiian Affairs did not provide comments and the Historic

Preservation Division had no objections to the use. A cultural practitioner has worked with the Canoe Club. To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action does not appear to affect traditional Hawaiian rights; it is believed that no action is necessary to protect these rights.

DISCUSSION

Canoe paddling is a traditional Hawaiian use that promotes teamwork, health and fitness. The cleaning, clearing and caring of the site has improved view planes to the ocean and has created a safer atmosphere for the general public. Native plants have been re-introduced to restore native vegetation and mitigation to support the survival of endangered turtles has been reconstructed.

The presence of the Canoe Club will help to maintain and manage the site. The Club members are cognizant that they are the stewards of the land and sea of this area. The maintenance of the site will further the objective of the Conservation District to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

It is staff's opinion that the use of the site by the Canoe Clubs fulfills the definition of public purpose use pursuant to HAR, §13-5-2 that states "Public purpose use" means not for profit land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity, except that an independent non-governmental regulated public utility may be considered to be engaged in a public purpose use. Examples of public purpose uses may include but are not limited to public roads, marinas, harbors, airports, trails, water systems and other utilities, communication systems, flood or erosion control projects, recreational facilities, community centers, and other public purpose uses, intended to benefit the public in accordance with public policy and the purpose of the conservation district.

The location is a park like setting open to the public. Parking is available within the parcel adjacent to the road right of way. According to the applicant, usually on a daily basis, paddling may take place for members, guests, visitors and residents.

19 canoes are stored for 3 organizations noted as the Maui Canoe Club, Mana'olana, also a non-profit organization, and Live Life Aloha that is funded by the Federal Center for Disease Control through UH-Maui College. It is not uncommon to have canoes stored near shore within State or County parks. §200-20, HRS allows for outrigger canoes on state shoreline areas provided all beach users are appropriately accommodated and as permitted where required.

RECOMMENDATION

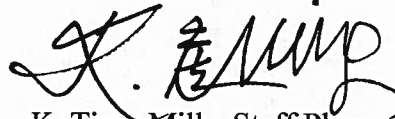
Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE the Maui Canoe Club's application for a Public Purpose Recreational Facility located at Mā'alaea Bay, Kīhei, Maui, portion of Tax Map Key:

(2) 3-8-005:003 subject to the following conditions:


- 1) The permittee shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Chapter 13-5, HAR;
- 2) The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The permittee shall comply with all applicable Department of Health administrative rules;
- 4) The permittee understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 5) In issuing this permit, the Department and Board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and the Department may, in addition, institute appropriate legal proceedings;
- 6) When provided or required, potable water supply and sanitation facilities shall have the approval of the Department of Health and the County Department of Water Supply;
- 7) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 8) The permittee acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- 9) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The Historic Preservation Division shall be contacted (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 10) Additional improvements and land uses shall be reviewed by the Department prior to initiation;
- 11) Shoreline vegetation shall be maintained in compliance with HRS, §115;

- 12) Other terms and conditions as may be prescribed by the Chairperson; and
- 13) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands



William J. Aifa, Jr. Chairperson
Board of Land and Natural Resources

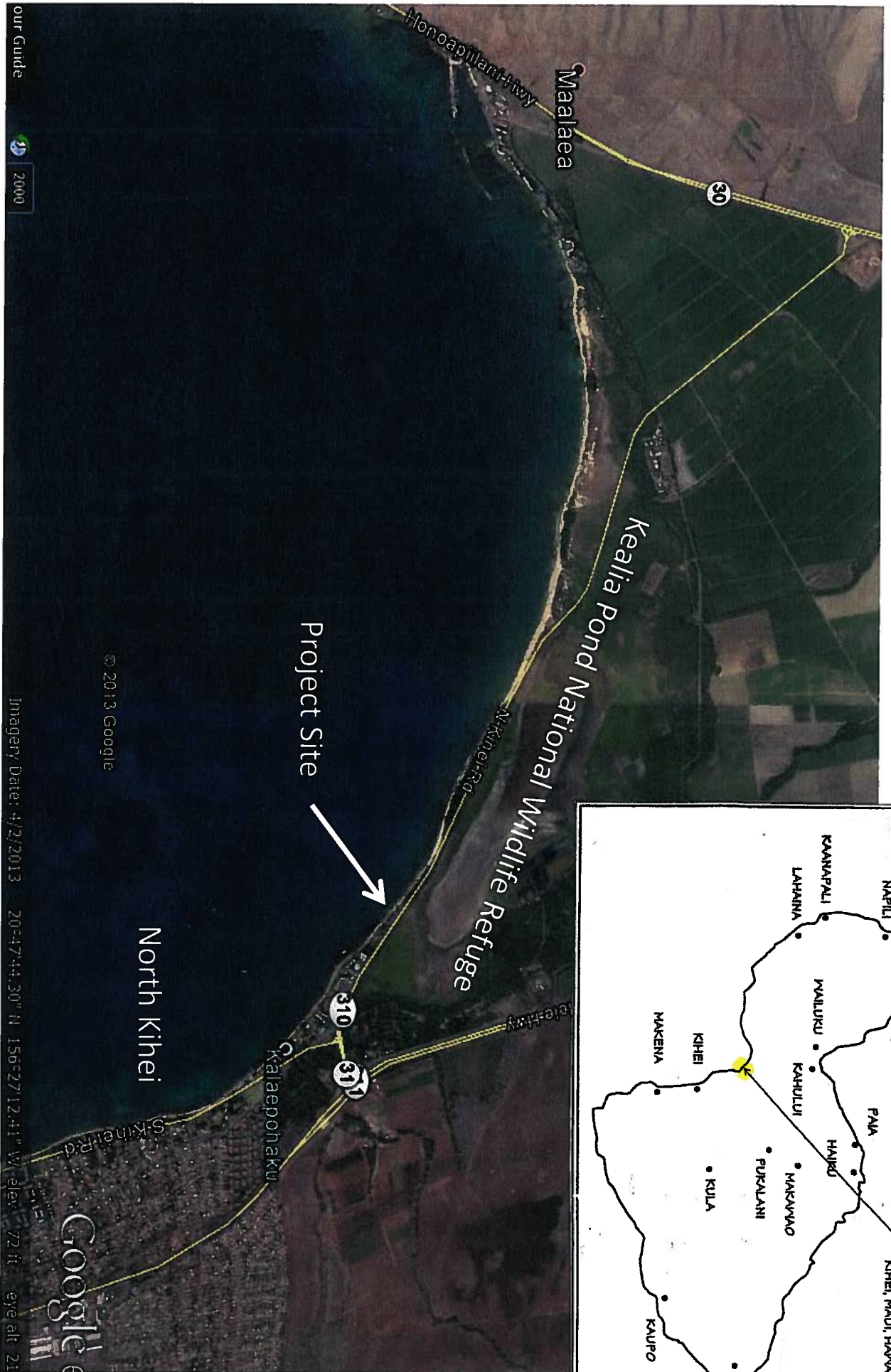


EXHIBIT 1

Maui Canoe Club – Location Map

Maui Canoe Club – Site Photographs



Photo 1 – View across center of site from North Kihei Road, storage container on left, makai ocean views

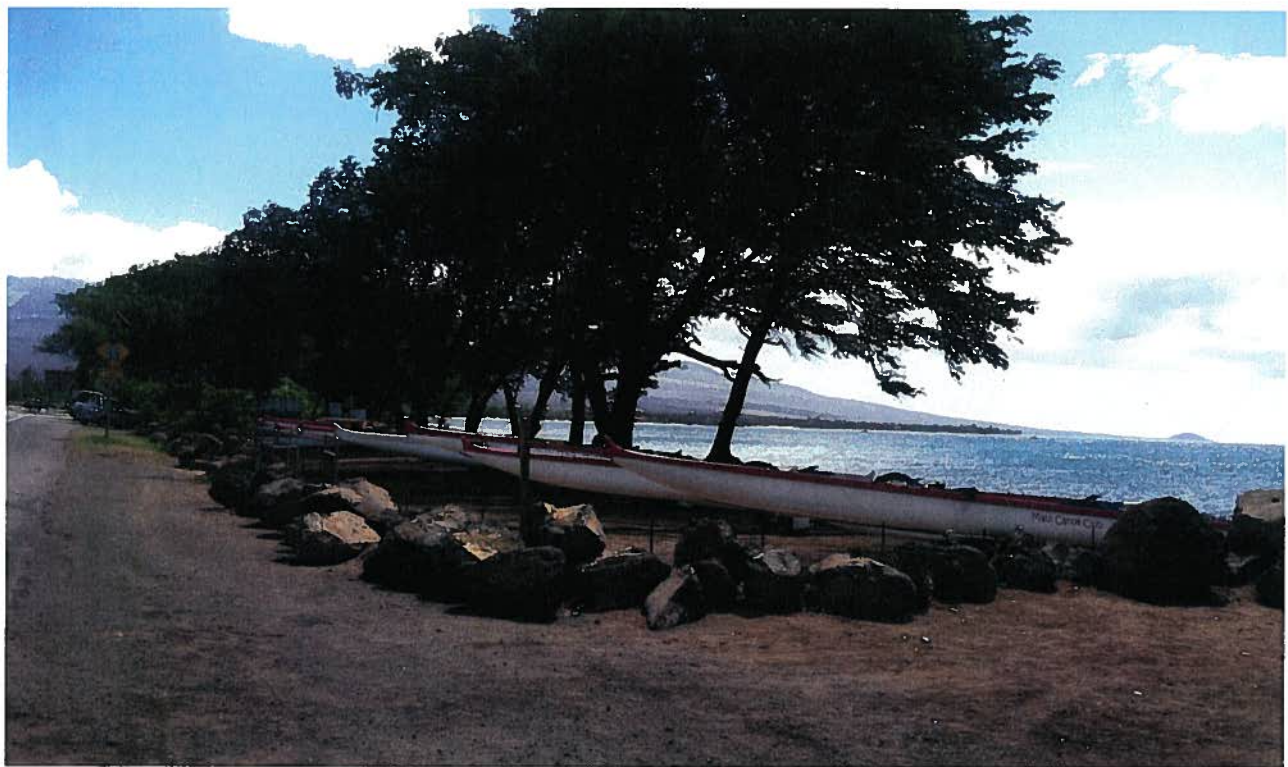


Photo 2 – View looking southeast of northwest boundary, canoe storage area and makai ocean views

EXHIBIT 2

Maui Canoe Club – Site Photographs



Photo 3 – View looking northwest along shoreline frontage



Photo 4 – View looking southeast along shoreline frontage and native plant restoration areas

Maui Canoe Club – Site Photographs

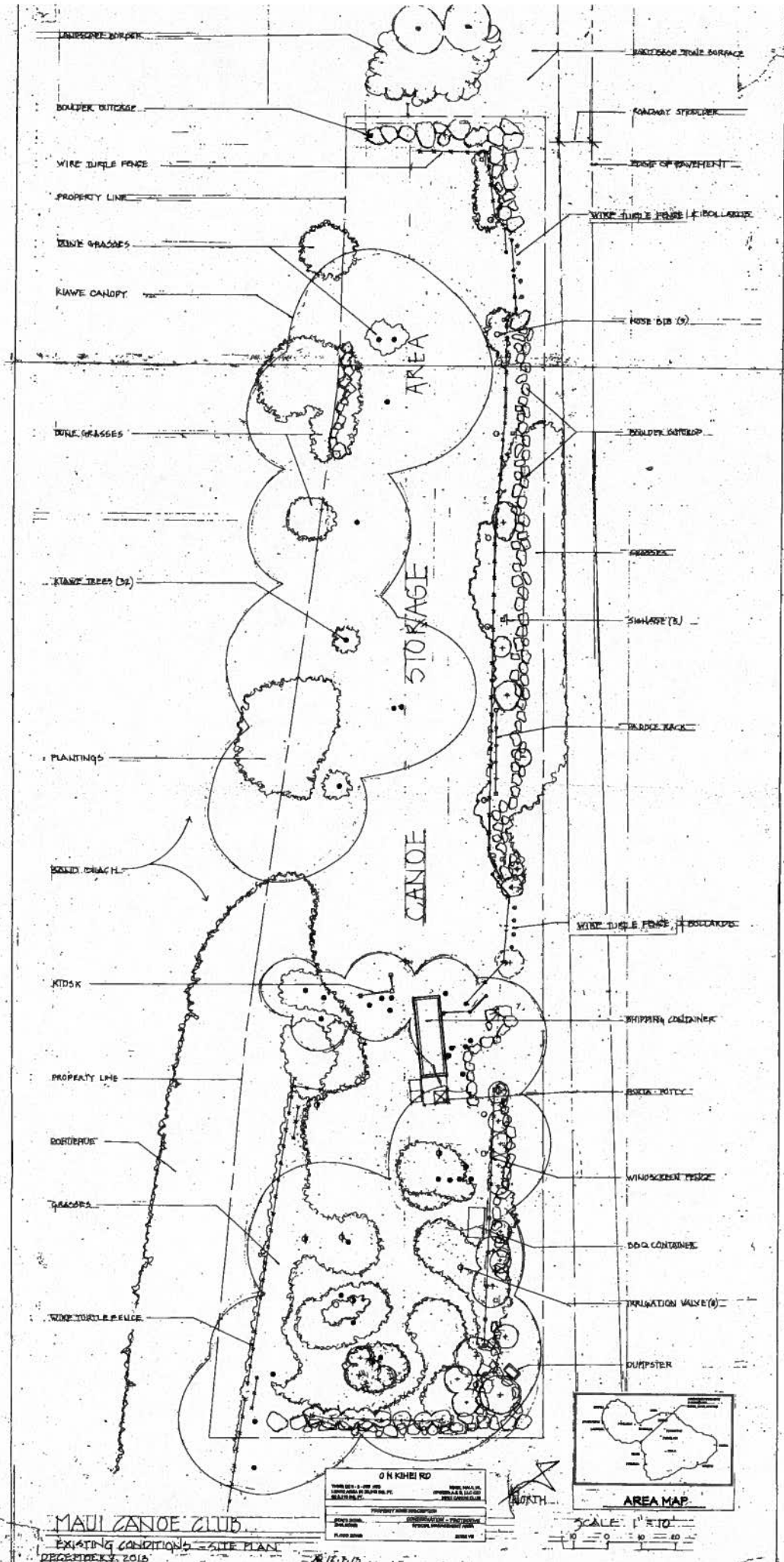


Photo 5 – Storage container, picnic table, kiosk and signage area



Photo 6 – Southeast view of area fronting storage container, picnic tables and native plant restoration areas

EXHIBIT 5



MAUI CANOE CLUB
 EXISTING CONDITIONS - SITE PLAN
 DECEMBER 7, 2018

0 N KHEI RD	
OWNER: MAUI CANOE CLUB	DESIGNER: [illegible]
DATE: [illegible]	SCALE: 1" = 10'
PROJECT NO: [illegible]	DATE: [illegible]

