

FEB 8 1996

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**HAWAII KAI  
ENVIRONMENTAL IMPACT REPORT  
PREPARATION NOTICE**

**Hawaii Kai, Oahu, Hawaii**

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**January 1996**

**Prepared For: Department of Corporation Counsel  
City and County of Honolulu**

**In Accordance With: Federal Court Pre-Trial Settlement  
Order, Dated January 26, 1996**

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**Prepared By:** William E. Wanket, Inc.  
AM Partners, Inc.  
Helber Hastert & Fee, Planners  
PBR Hawaii

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**SUMMARY INFORMATION**

**Project Name:** Hawaii Kai Environmental Impact Report

**Proposing Agency:** Department of the Corporation Counsel  
City and County of Honolulu  
530 South King Street, 1st Floor  
Honolulu, Hawaii 96813

**Applicant:** In accordance with a mandated court settlement procedure relating to six pending land use litigations, the City and County of Honolulu is proposing the approval of entitlements for the development of various parcels which would bind the City and the following landowners:

*Maunaloa Associates, Inc. (formerly Hawaii Kai Development Company)*

*Kaiser Aluminum And Chemical Corporation  
Kamehameha Schools Bernice Pauahi Bishop Estate*

**Agent:** The following firm has been designated to prepare the Environmental Impact Report:

William E. Wanket, Inc.  
Kapolei Building, Suite 320  
1001 Kamokila Boulevard  
Kapolei, Hawaii 96707

**Accepting Authority:** Planning Department  
City and County of Honolulu  
650 South King Street  
Honolulu, Hawaii 96813

**Project Request:** In accordance with the said mandated court settlement procedure, the City is seeking land use changes which would restrict 12 parcels in Hawaii Kai to certain maximum levels of development for a 20-year period.

Summary Information

<b>Land Ownership:</b>	<u>All parcels for which entitlements are sought are privately-owned</u> either by Maunalua Associates, Inc., Kamehameha Schools Bernice Pauahi Bishop Estate, or Kaiser Aluminum and Chemical Corporation.
<b>Tax Map Key:</b>	Tax Map Keys for each of the 12 parcels are shown on Table 2.1.
<b>State Land Use:</b>	<u>All parcels are designated for Urban use by the State Land Use Commission.</u>
<b>City Development Plan Land Use:</b>	<u>City's existing Development Plan Land Use for the parcels are provided under Tables 2.2 and 2.3.</u>
<b>City Zoning:</b>	City's existing Zoning for the parcels are provided under Tables 2.2 and 2.3.
<b>Project Location:</b>	The project area is located in Hawaii Kai of the East Honolulu district of the island of Oahu. There are a total of 12 parcels proposed for development in Hawaii Kai under the court's settlement procedural order.
<b>Project Description:</b>	The proposed developments consist of <u>residential, commercial, a business park, an inn, and a golf course.</u>

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**SECTION 1.0  
INTRODUCTION**

This Environmental Impact Report Preparation Notice has been prepared pursuant to a court mandated settlement process involving land use disputes in Hawaii Kai between the City and County of Honolulu (City) and the following parties: 1) Maunalua Associates, Inc. (MAI), formerly Hawaii Kai Development Company, 2) Kaiser Aluminum and Chemical Corporation (KACC), and 3) Kamehameha Schools Bernice Pauahi Bishop Estate (KSBE).

Since the early 1980s, Hawaii Kai has encountered numerous land use disputes with the City costing taxpayers millions of dollars in litigation costs along with disruptive effects on key City personnel. In an effort to resolve these disputes, the parties involved have reached a mutual agreement to address current and future land uses in Hawaii Kai. Subsequently, a comprehensive settlement procedural order has been entered with the courts. Under this settlement procedural order (included in Appendix B of this document), the following actions will be taken:

- An Environmental Impact Report (EIR) will be prepared to address the impacts and necessary mitigation resulting from 12 parcels proposed for entitlements in Hawaii Kai ranging from residential, commercial, golf course, a business park, and resort uses.
- A single integrated review and approval process will be conducted by the City for all of the discretionary entitlements required for the 12 parcels proposed for development in Hawaii Kai.
- The EIR will serve in lieu of planning, zoning, and Special Management Area Use Permit applications normally submitted and procedures carried out by the City for all discretionary land use approvals.

**Environmental Impact Report**

This EIR is not regulated by Chapter 343, HRS nor the content and processing guidelines described under Title 11, Chapter 200, of the State Department of Health's Administrative Rules. However, this EIR will disclose substantially the same information that would be required under Chapter 343, HRS in accordance with the settlement procedural order. In addition, the publication and processing of this document in the manner provided by the court order will generally mirror the normal Chapter 343, HRS environmental review process to provide the public with a substantially equivalent review.

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This document thus serves as the EIR Preparation Notice (EIRPN) to be filed with the State Office of Environmental Quality Control (OEQC) and published in The Environmental Notice (formerly called OEQC Bulletin). As with the normal review process, a 30-day Comment Period would be provided after publication of the EIRPN and a 45-day Comment Period provided after publication of the Draft EIR to allow the public an opportunity to review the document before a Final EIR is published.

Settlement Procedural Order

This settlement is intended to create planning certainty in Hawaii Kai for the next 20 years through an expedited, comprehensive, and all inclusive land use review process. The entitlements being sought include all necessary discretionary permit approvals such as a General Plan amendment, Development Plan amendments (land use and public facility), Zoning changes, Special Management Area Use Permit (SMP), Plan Review Use (PRU) approval, and Cluster Housing approvals. The end result of this process would be a court consent decree and City ordinance concerning the 12 parcels. Table 1.1 lists the land use approvals needed for each parcel while a description of the specific changes sought are provided in Section 2.0.

If successfully completed, the City would obtain fee simple title at no cost to over 30 acres of ocean view property mauka (north) of Wawamalu Beach and Sandy Beach parks (referred to as the Golf Course 5 and 6 parcels), and a mutual 20-year covenant of no further change in density beyond that proposed for the 12 parcels.

As a result of the settlement, no further compensation shall be imposed on the parties through either land dedication, conditions or monetary contribution, nor the provisions of services and programs, such as, but not limited to, park land or facilities, school sites or facilities, low/moderate income housing, child care facilities, transportation programs, or other similar community benefits intended for public use. The landowners would also receive vested assurances that their entitlements will remain protected for that 20-year period.

<b>SITE IDENTIFICATION</b>	<b>GENERAL PLAN</b>	<b>DEV. PLAN</b>	<b>ZONING</b>	<b>SMP</b>	<b>PRU</b>	<b>CLUSTER HOUSING</b>
1. Kalama Valley		X	X			
2. Kamilo Ridge <sup>1</sup>		X	X			
3. Kamilonui 1		X	X			
4. Kamilonui 2		X	X			X
5. Marina 4B			X			X
6. Mauuwai		X	X			
7. Queen's Rise		X	X			
8. Golf Course 2/1A Residential		X	X			
9. Queen's Beach				X	X	
10. Golf Course 2/1A Industrial		X	X			
11. Golf Course 2/1A Inn	X <sup>2</sup>	X	X			
12. Marina 1 / Strip 1 <sup>3</sup>		X	X	X		

Source: PBR Hawaii, Helber Hastert & Fee, Planners, and AM Partners, Inc.

- Notes:
1. Although a significant portion of Kamilo Ridge is designated Urban, only a portion of this area is being proposed for development within the 20-year planning window.
  2. Although it is believed that a General Plan change may not be necessary, one is being sought to eliminate any questions on this point.
  3. Planning options have been optimized through the joint consideration of the park-and-ride and adjacent parcels.

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**SECTION 2.0  
PROPOSED ENTITLEMENTS**

This section describes the entitlements sought and provides a brief description of the Hawaii Kai area. The developments described and shown are preliminary and subject to change as more detailed marketing, engineering and environmental studies are performed.

Hawaii Kai Area

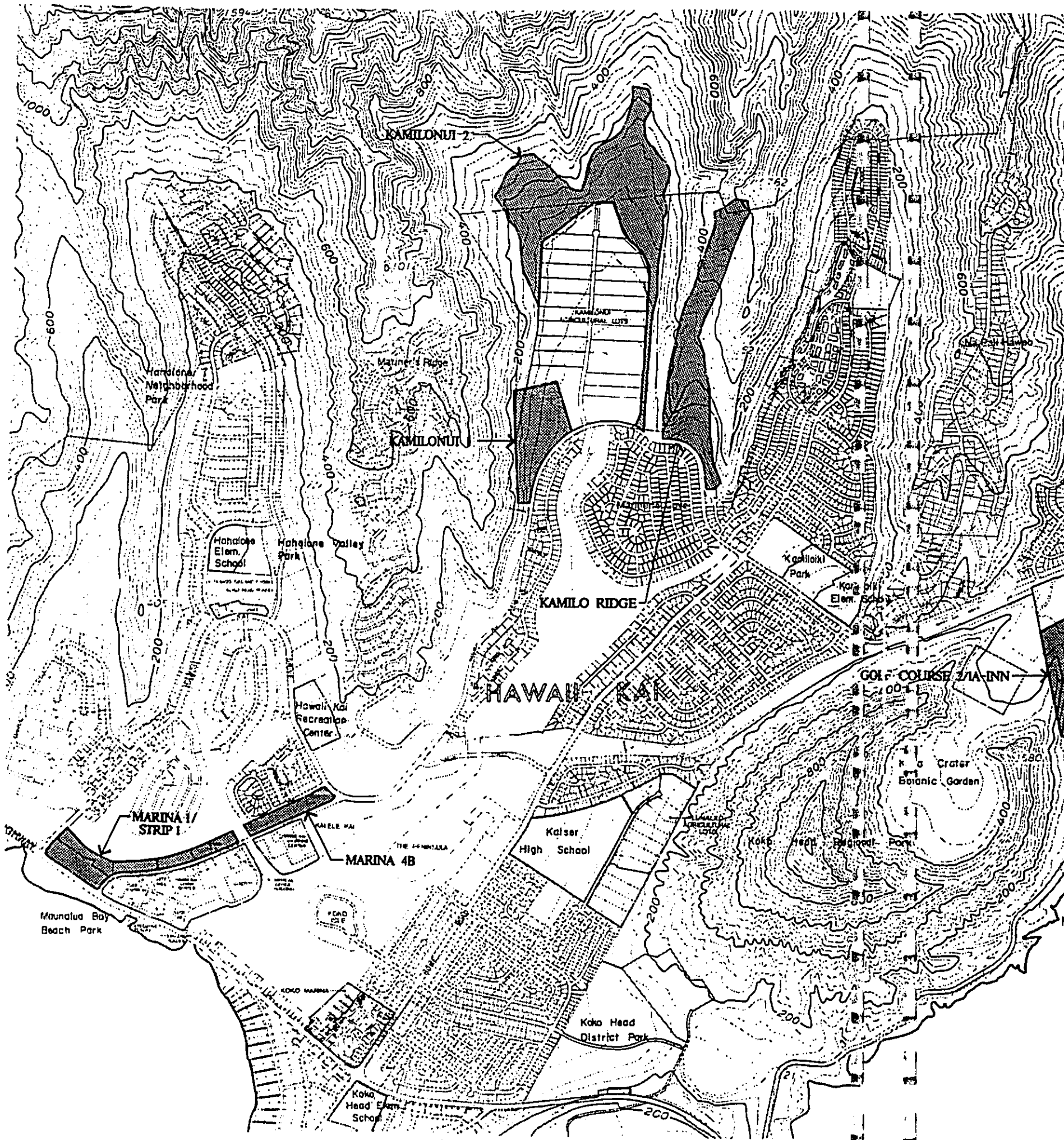
The Hawaii Kai region generally includes the area east of Kuliouou to Makapuu Head, and is comprised of six census tracts (CT 1.02, 1.04, 1.05, 1.06, 1.07 and 1.08) used by the U.S. Bureau of the Census. This area is situated on the southwesterly flanks of the Koolau Range which forms the eastern end of the island of Oahu commonly referred to as East Honolulu. Typical weather conditions for Hawaii Kai are generally warm and dry with average temperatures ranging from 65° to 85° Fahrenheit throughout the year. Rainfall in the area is generally low with monthly rainfall averaging less than 2 inches throughout most of the year.

Hawaii Kai is a master-planned community encompassing a large portion of the City's East Honolulu Development Plan (DP) area. This planning area has a firmly established suburban character essentially consisting of a string of residential communities clustered along Kalaniana'ole Highway. Hawaii Kai is generally more developed as a self-contained community having most of the commercial centers centrally located there along with several popular recreational amenities which include a significant portion (about 25%) of the City's total park acreage for the island. These amenities include Koko Head Regional Park, Hanauma Bay Nature Park, Koko Crater Botanical Garden, Koko Head District Park, Sandy Beach, and Wawamalu Beach. Hawaii Kai is made up of a fairly homogeneous population in terms of socio-economic characteristics and background. The 1990 Census data indicates a resident population of about 27,430 people (less than 4% of Oahu's population) with an average of about 3.1 persons per household.

**2.1 SUMMARY OF PROPOSED LAND USES**

Entitlements are sought for a total of 12 properties which involve about 546 acres of land. These entitlements would allow the development of various land uses which include a diversity of residential units, commercial and office space, a business park, an inn, and a golf course. Figure 2.1.1 shows the location for each of these project sites within the Hawaii Kai region. All of these entitlements would involve lands situated within the Urban District established by the State Land Use Commission under their Land Use Boundaries Map (O-15 Koko Head) for the region.

A total of 1,512 residential units would be permitted over a 20 year period (1996 - 2016) which may generally consist of about 826 detached single-family and townhome residences developed under the City's cluster provisions, and about 686 multi-family apartment or condominium units. A reserve of an additional 200 units would also be available to MAI following a ministerial review. A total of about 192,000 square feet of commercial space, 100,800 square feet of space for a business park with limited industrial uses, a golf course, and a 140-unit inn would also be permitted. It should be noted that the unit counts and development plans for all parcels are preliminary at this time and may be modified pending further marketing, engineering and environmental studies. Table 2.1 provides a breakdown of the preliminary land uses proposed.



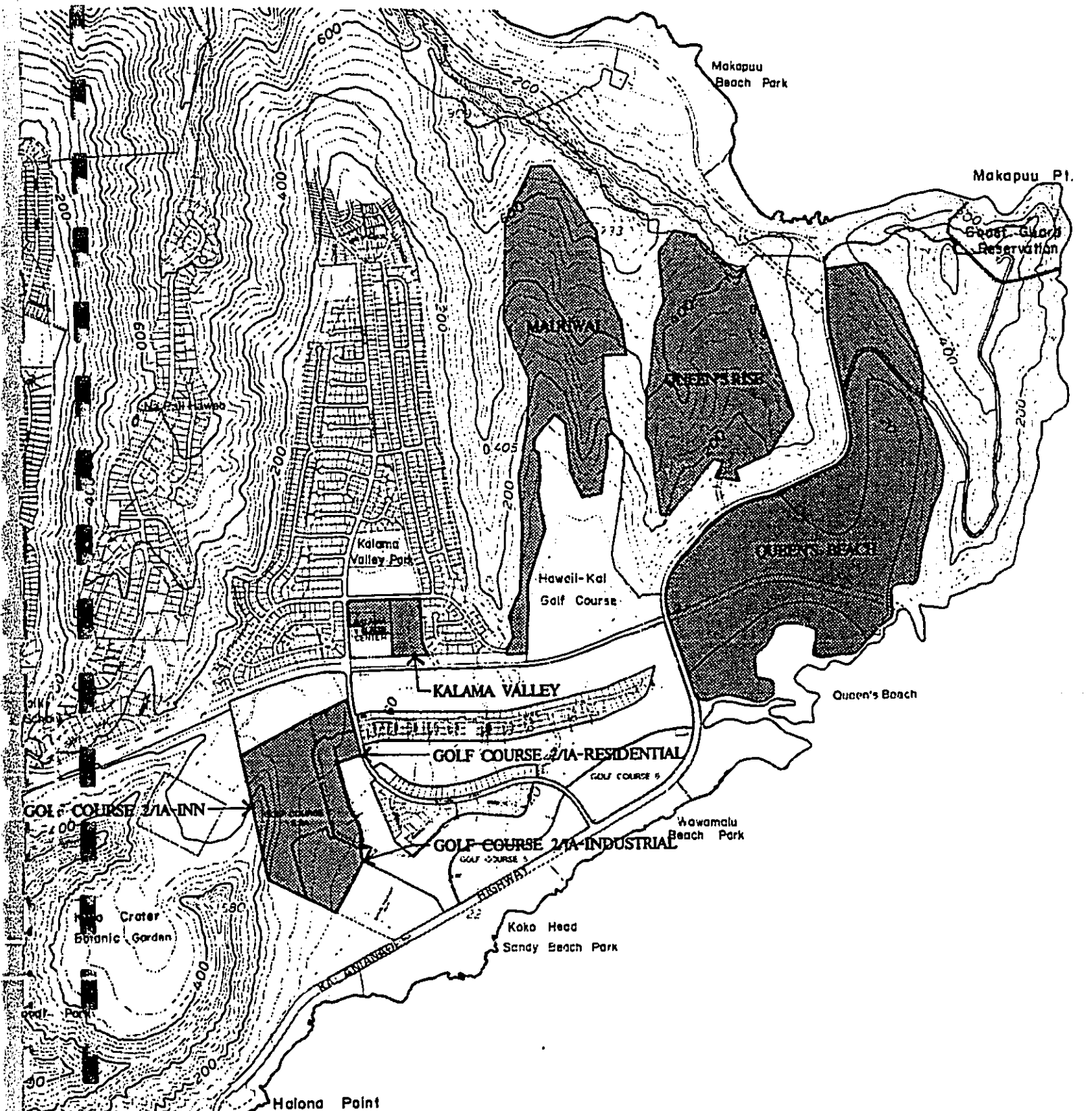


FIGURE 2.1.1  
LOCATION MAP  
**HAWAII KAI EIR**

HAWAII KAI OAHU

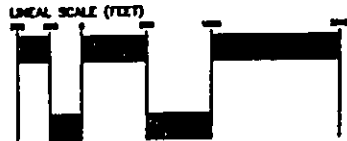


Table 2.1 Summary Of Land Uses					
Site Identification	Tax Map Key	Acres <sup>1</sup>	Land Use	Units <sup>2</sup>	Others
<b>Residential Developments</b>					
1. Golf Course 2/1A Residential	3-9-10: por 1	9.8	Residential	45	
2. Kalama Valley	3-9-82: 60, 61 & por 62	9.6	Apartment	176	
3. Kamilo Ridge	3-9-8: por 13	36.5	Residential	5	
4. Kamilonui 1	3-9-8: por 13	17.4	Apartment	510	
5. Kamilonui 2	3-9-8: por 13	62.8	Residential	364	
6. Marina 4B	3-9-8: 29	5.1	Residential	75	
7. Mauuwai	3-9-10: por 1	82.7	Residential	143	
8. Queen's Rise	3-9-10: por 1	101.9	Residential	194	
<b>Non-Residential Developments</b>					
9. Golf Course 2/1A Business Pk.	3-9-10: por 1	10.9	Business Park		100,800 sf
10. Golf Course 2/1A Inn	3-9-10: por 1	29.1	Resort		140 rooms
11. Marina 1/Strip 1					192,000 sf
Marina 1	3-9-17: 20	4.3	Commercial		
Strip 1	3-9-17: 38	2.3	Commercial		
City Park And Ride	3-9-17: 21	5.0	Public Facility		
Hawaii Kai Yacht Club	3-9-17: por 33	2.4	Yacht Club		
12. Queen's Beach	3-9-11: 3, por 2	166.0	Golf Course		18-holes

Source: PBR Hawaii, Helber Hastert & Fee, Planners, and AM Partners, Inc.

- Notes:
1. Acreages are approximate since the actual lots will in most cases be subdivided from larger parcels following consumation of the settlement.
  2. The settlement focuses on an aggregate number of residential units (1,512 along with an additional 200 unit reserve) without allocation to individual parcels. For illustrative purposes, these units have been allocated to depict one possible allocation scenario. The reserve could be allocated among the following parcels: Kamilonui 1, Kamilonui 2, Marina 4B, and a Kaluanui 2&3 parcel not listed. (The Kaluanui 2&3 parcel is located mauka of Marina 4B near the intersection of Keahole Street with Hawaii Kai Drive. Kaluanui 2&3 has a Medium-Density Development Plan Land Use and A-2 Zoning classification.)





## 2.2 RESIDENTIAL DEVELOPMENTS

As previously shown under Table 2.1, a total of 1,512 residential units are planned to be constructed on 8 separate parcels which amount to approximately 326 acres of land. These projects consist of a wide diversity of residential units such as detached single-family dwelling units, various townhome units designed under the City's Cluster Housing provisions, and medium-density multi-family apartment/condominium units.

Table 2.2 identifies the existing and proposed Development Plan Land Use designations and Zoning, and indicates whether a SMP is required for these parcels. A description of each residential development is provided later.

Site Description	Existing Development Plan Land Use	Proposed Development Plan Land Use	Existing Zoning	Proposed Zoning	SMP Required
1. Golf Course 2/1A Residential	Preservation/Industrial	Residential'	R-5 / P-2	R-5	No
2. Kalama Valley	Commercial	Low-Density Apartment	AG-2 / R-5 B-1	A-1	No
3. Kamilo Ridge	Preservation	Residential'	P-2	R-5	No
4. Kamilonui 1	Low-Density Apartment	Medium-Density Apartment	AG-2	A-2	No
5. Kamilonui 2	Preservation	Residential'	P-2	R-5	No
6. Marina 4B	Residential	Residential	P-2	R-5	No
7. Mauuwai	Preservation	Residential	P-2	R-5	No
8. Queen's Rise	Preservation	Residential'	P-2	R-5	No

Source: Helber Hastert & Fee, Planners and PBR Hawaii

Notes: A 200 unit floating reserve, available following a ministerial review, is proposed for allocation among the following parcels: Kamilonui 1, Kamilonui 2, Marina 4B, and a Kaluanui 2&3 parcel not listed. Kaluanui 2&3 has a Medium-Density Development Plan Land Use and A-2 Zoning classification.

**2.2.1 Golf Course 2/1A Residential**

Golf Course 2/1A Residential refers to an approximately 9.8-acre site proposed for a single-family residential subdivision. The parcel is located near the foot of the eastern end of Koko Head Crater between the East Honolulu Wastewater Treatment Plant and Hawaii Kai Golf Course's Championship Course.

This Golf Course 2/1A Residential development would consist of about 45 detached single-family dwelling units situated along Kealahou Street and one of the Championship Course's holes. The Queen's Gate residential development is located east of this site across Kealahou Street, while a proposed inn and business park are located to the west and south, respectively. Figure 2.2.1 shows the site's boundaries and existing topography while Figure 2.2.1A shows a preliminary conceptual site plan for this residential project.

These house lots are planned to average between 6,000 and 7,500 square feet in size. The architectural design of these residential units would reflect a similar character to existing residential homes located along the Hawaii Kai Golf Course. All lots will be serviced by a secondary street connecting with Kealahou Street which ends in a cul-de-sac.

**2.2.2 Kalama Valley**

The Kalama Valley parcel is an approximately 9.6-acre site located next to the Kalama Village Shopping Center at the corner of Hawaii Kai Drive with Kealahou Street. This mostly vacant and relatively level property is planned for the residential development of about 176 low-density multi-family condominium units. Two drainage canals, a 40-foot wide street, and a commercial center surround the property. Figure 2.2.2 shows the site's boundary and existing topography while Figure 2.2.2A shows a preliminary conceptual site plan for this parcel.

To integrate the multi-family units with the surrounding commercial and single-family residential land uses, the building structures may contain modules ranging from 2 to 3 stories in height. A recreation center may be provided for residents and visitors of this development along with necessary parking spaces to meet City requirements.

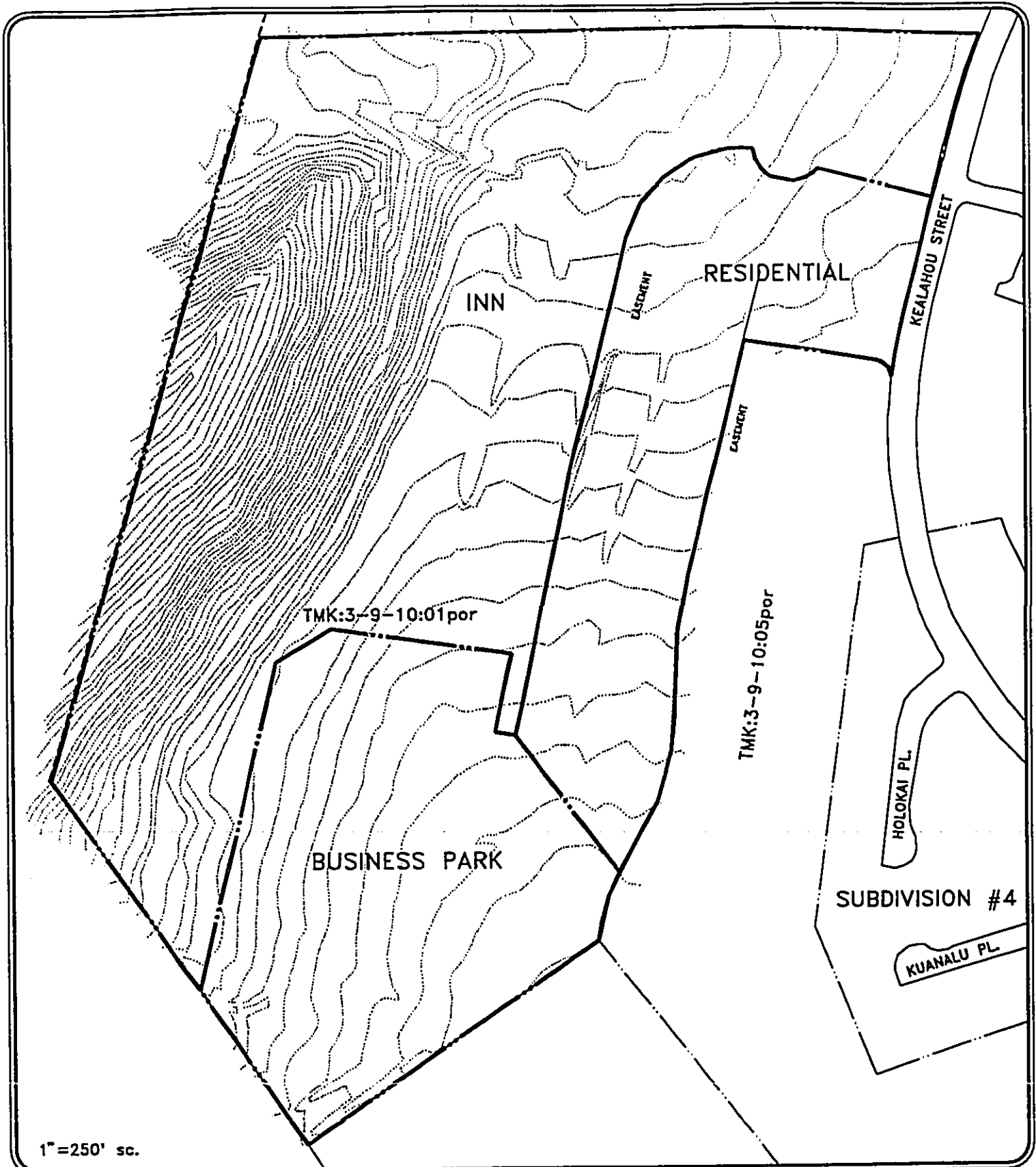


FIGURE 2.2.1  
 HAWAII KAI EIR PREP NOTICE  
**GOLF COURSE 2/1A**

HAWAII KAI, OAHU

AREA SCALE



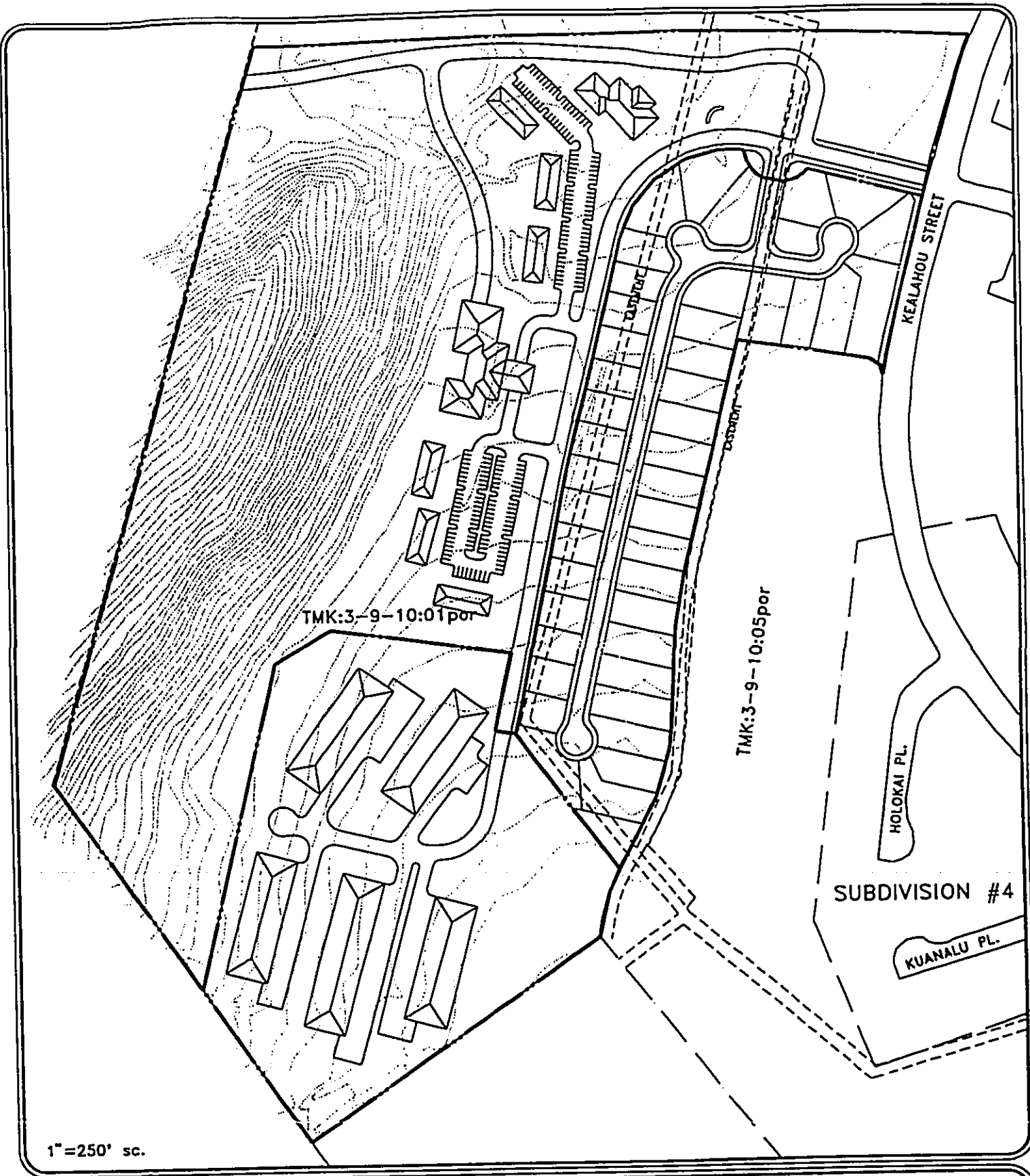
NORTH



LINEAL SCALE (FEET)



SCALE



1" = 250' sc.

**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
•DEV. PLAN	PRES/IND	RES/RESORT/IND
•ZONING	R-5/P-2	R-5/RESORT/1-1

•AREA 49.8 AC.

•PROPOSED UNITS  
 RESORT 140  
 RESIDENTIAL 45

FIGURE 2.2.1A  
 HAWAII KAI EIR PREP NOTICE  
**GOLF COURSE 2/1A**

HAWAII KAI OAEU



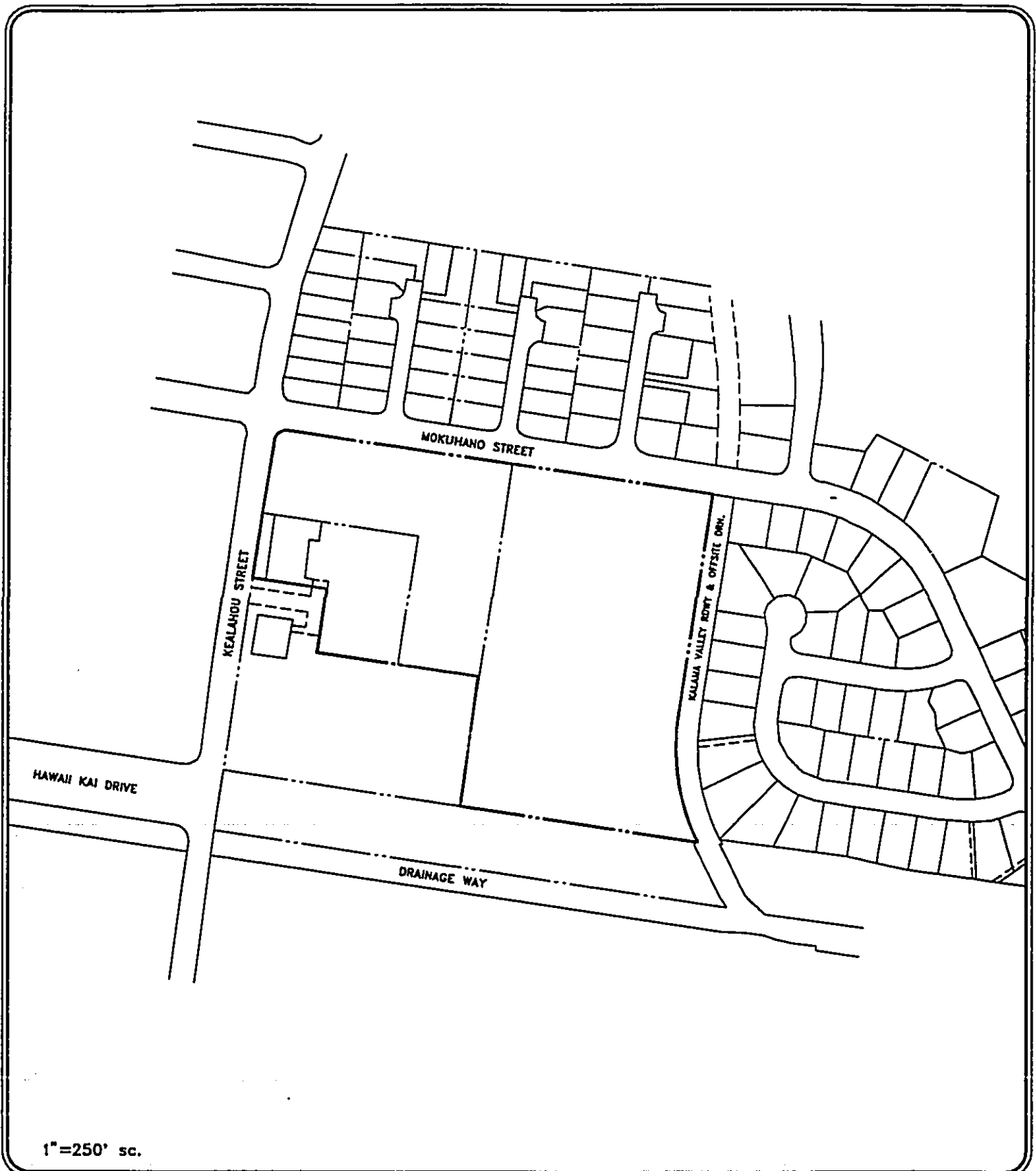


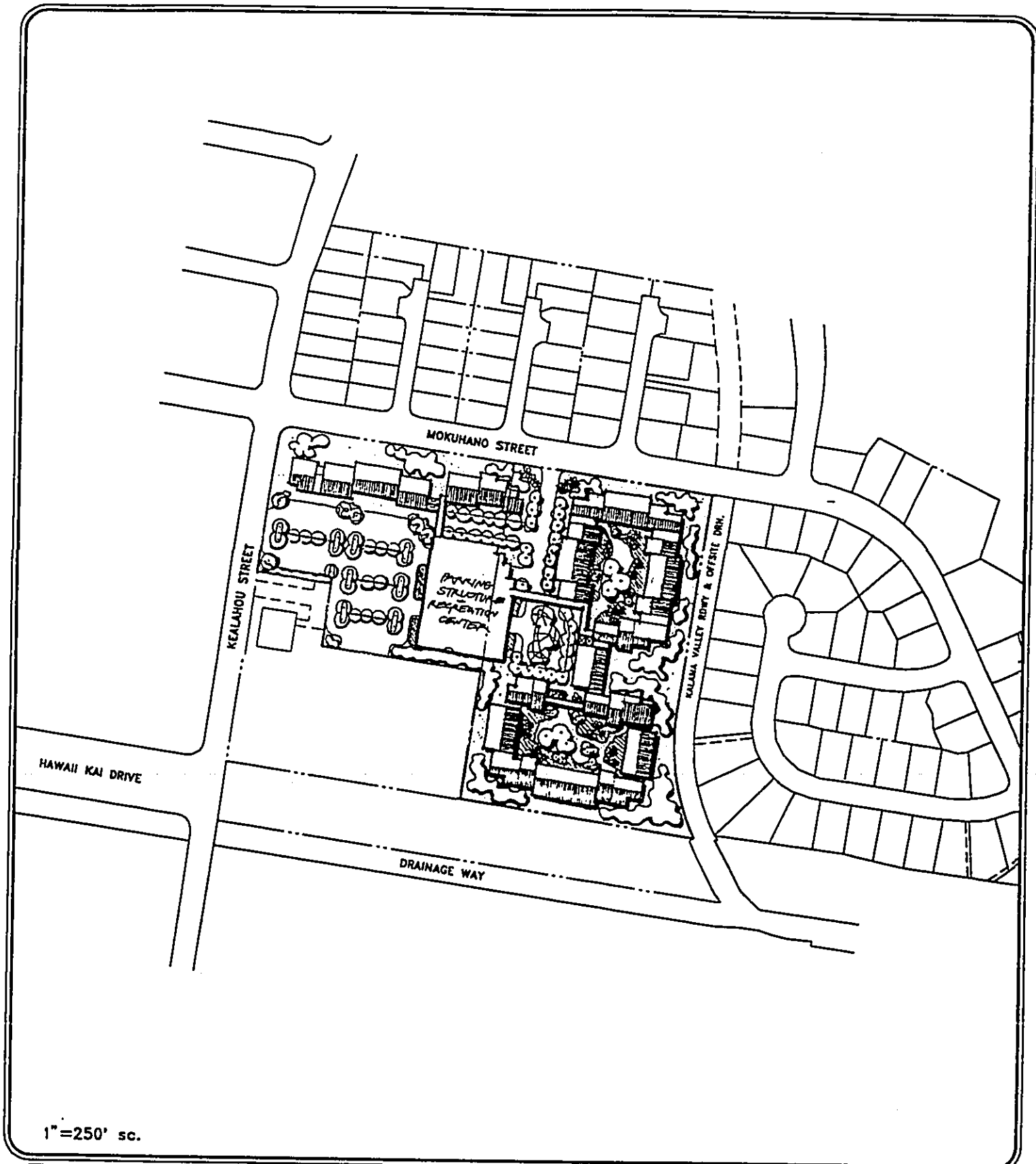
FIGURE 2.2.2  
 HAWAII KAI EIR PREP NOTICE  
**KALAMA VALLEY**

HAWAII KAI OAEU

AREA SCALE: 1" = 100' (indicated by a square with a diagonal line)

NORTH: (indicated by a circle with a vertical line)

LINEAL SCALE (FEET): (indicated by a horizontal bar with markings for 0, 25, 50, 75, 100)

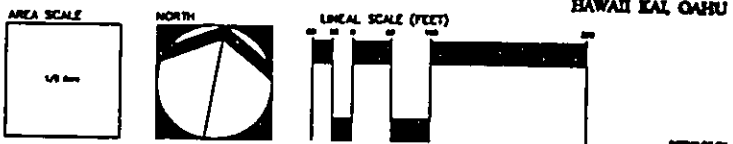


**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
*DEV. PLAN	COMM	LDA
*ZONING	B-1/AG-1/R-5	A-1

\*AREA 9.6 AC.  
 \*PROPOSED UNITS 176

FIGURE 2.2.2A  
 HAWAII KAI EIR PREP NOTICE  
**KALAMA VALLEY**



**2.2.3 Kamilo Ridge**

Kamilo Ridge encompasses an approximately 36.5-acre site located along the planned extension of Hawaii Kai Drive at the foot of Kamilo Ridge. Although the Urban district extends to the top of this ridge, the balance of this area would be utilized as a limited purpose access road to serve that site and a possible water reservoir. Approximately five detached single-family residential dwellings would be developed along the lower portion of the property adjacent to the planned extension of Hawaii Kai Drive. Figure 2.2.3 and 2.2.3A show the existing topography and a preliminary conceptual site plan for this development, respectively.

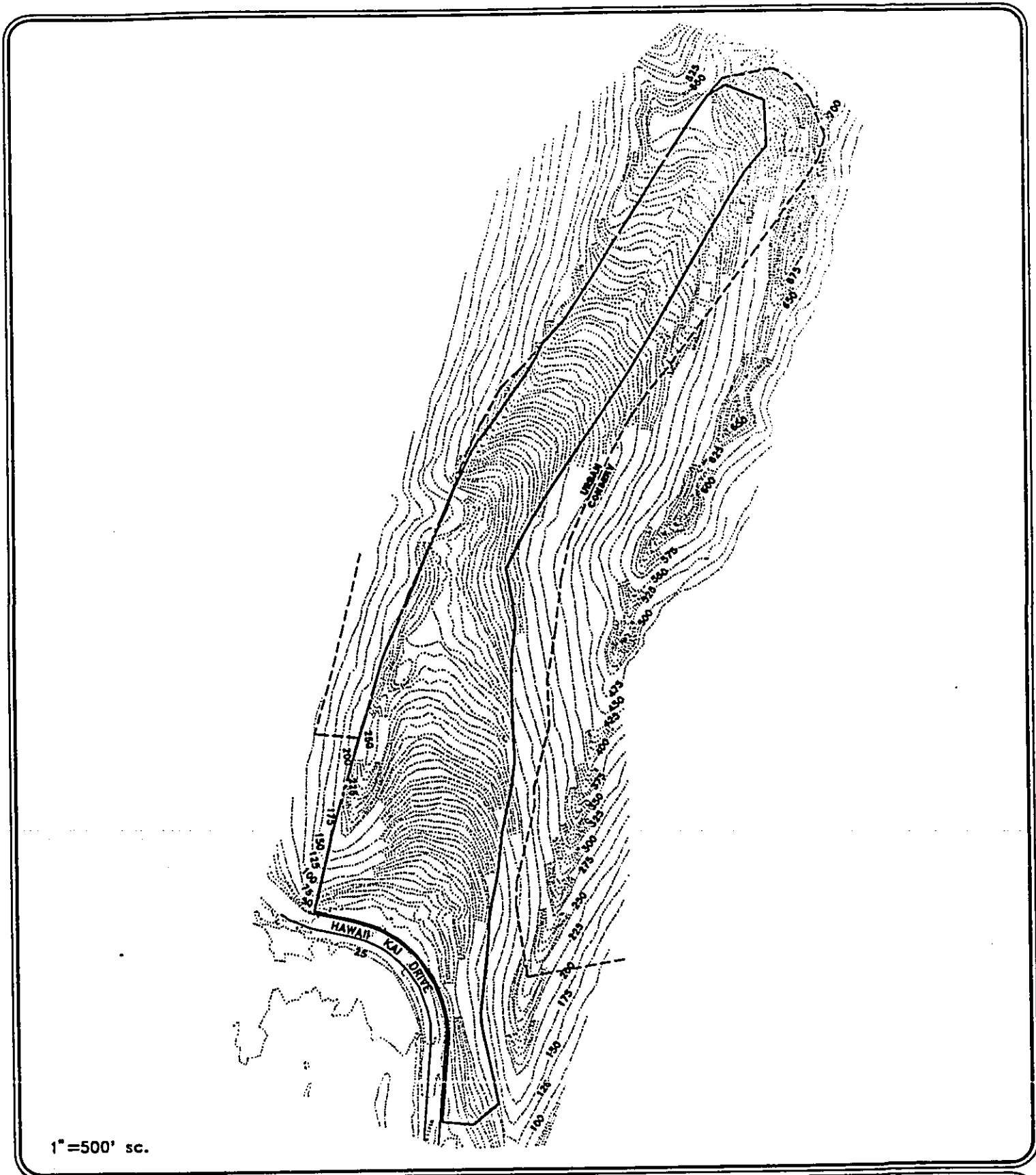
These house lots are presently planned to be at least 5,000 square feet. They would be configured to permit the development of the access roadway leading to the top of the ridge. Necessary infrastructure, such as water, wastewater, electrical, and communication systems, would be designed into the planned extension of Hawaii Kai Drive.

**2.2.4 Kamilonui 1**

Kamilonui 1 consists of an approximately 17.4-acre parcel generally situated at the foot of Mariner's Ridge mauka of Makaa Street and the proposed extension of Hawaii Kai Drive into Kamilonui Valley. Most of this parcel is comprised of fill material deposited from earlier dredging activities for Kuapa Pond while the mauka half of the property encompasses the rising face of the ridge. Figure 2.2.4 shows the existing topography and Figure 2.2.4A shows a preliminary conceptual site plan for this parcel.

Due to relatively steep slopes situated on portions of this parcel, medium density multi-family condominium units are proposed which would be similar to existing condominiums in nearby Hahaione Valley. Setback against the slopes of this ridge, 3 condominium buildings having about 170 units each could be constructed within the City's Floor Area Ratio guidelines for a total of about 510 units on this parcel. A fourth building could be built to absorb most if not all of the reserve units. Recreational amenities which could be provided include tennis courts and a swimming pool with the balance of the property retained as open space or housing reserve.



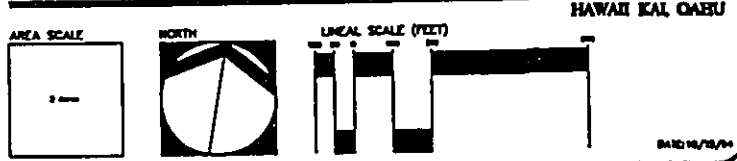


1"=500' sc.

**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
•DEV. PLAN	PRES	RES
•ZONING	P-2	R-5
•AREA	365 AC.	
•PROPOSED UNITS	5	

FIGURE 2.2.3  
HAWAII KAI EIR PREP NOTICE  
**KAMILO RIDGE**

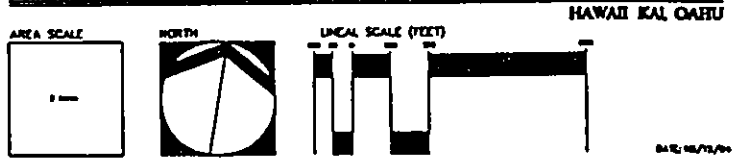




**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
•DEV. PLAN	PRES	RES
•ZONING	P-2	R-5
<hr/>		
•AREA	365 AC.	
•PROPOSED UNITS	5	

FIGURE 2.2.3A  
HAWAII KAI EIR PREP NOTICE  
**KAMILO RIDGE**



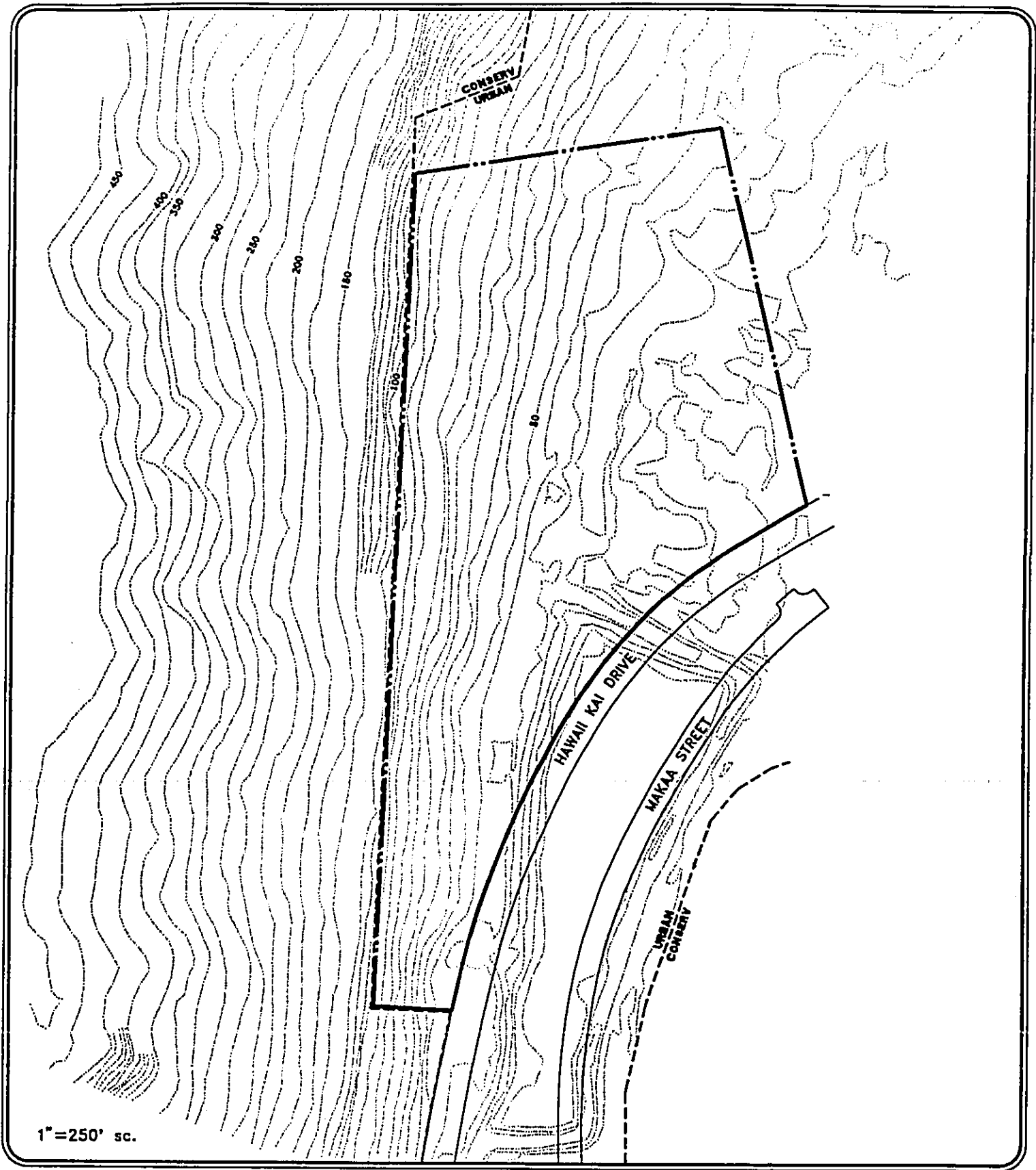
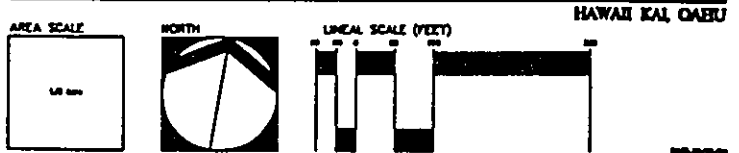
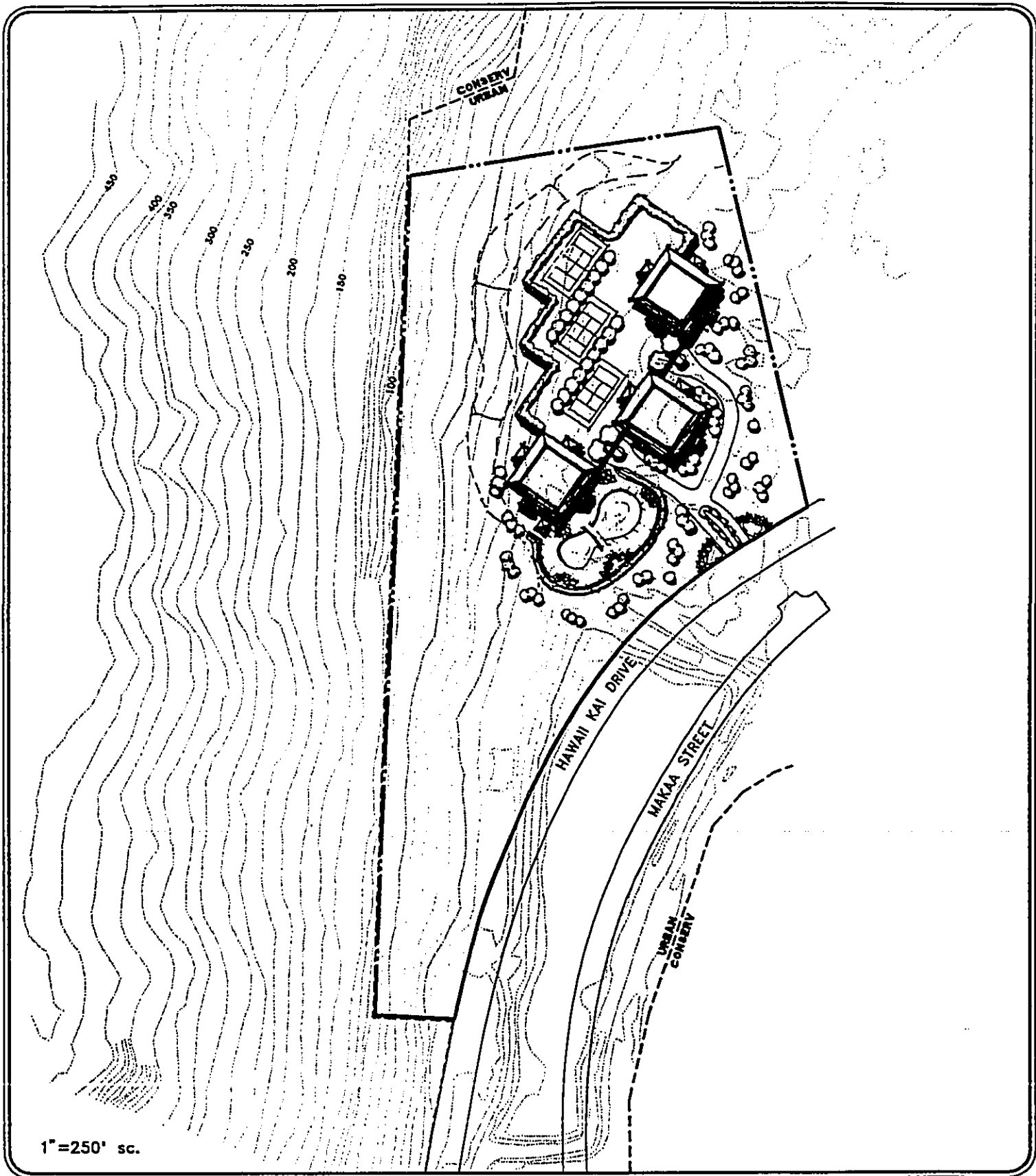


FIGURE 2.2.4  
HAWAII KAI EIR PREP NOTICE  
**KAMILONUI 1**





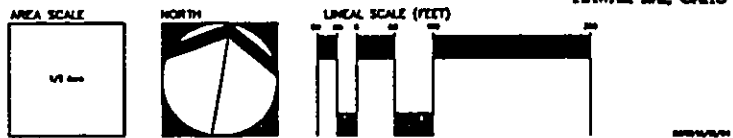
1" = 250' sc.

**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
•DEV. PLAN	LDA	MDA
•ZONING	AG-2	A-2

•AREA 17.4 AC.  
 •PROPOSED UNITS 510

FIGURE 2.2.4A  
 HAWAII KAI EIR PREP NOTICE  
**KAMILONUI 1**



Future access into this site would be provided by the planned extension of Hawaii Kai Drive which has already been partially graded through this property. Onsite parking would be provided for residents and visitors. Hawaii Kai Drive is also planned to be extended from Kamilonui Valley to the base of Kamilo Ridge where Hawaii Kai Drive presently terminates.

**2.2.5 Kamilonui 2**

Kamilonui 2 is comprised of approximately 62.8 acres situated in the back of Kamilonui Valley mauka of the existing agricultural lots. Figures 2.2.5 and 2.2.5A show the existing topography and a preliminary conceptual site plan, respectively. This site would have a total of about 364 residential units consisting of a mix of detached single-family dwellings and townhome units developed in accordance with the City's Cluster Housing regulations. The settlement contemplates the issuance of cluster approval with certain administrative flexibility as the units are developed. Single-family home sites may be 5,000 square feet or larger, and would be located on the eastern half of the site while the townhome units would be located on the western half of the site.

The design of these townhomes may be similar in size and scale to other townhome developments located in Hahaione Valley and along Kawaihae Street. In the central portion of the site, a detention pond may be established to serve as both an open space area and drainage control feature to better manage surface runoff during periods of heavy rainfall. Vehicular access into this development would be from a new access roadway which connects to the proposed Hawaii Kai Drive extension on the eastern side of Kamilonui Valley.

**2.2.6 Marina 4B**

Marina 4B is an approximately 5-acre parcel situated along Keahole Street comprised of fill material deposited on-site from previous construction work in Hawaii Kai. This site is planned for the development of approximately 75 townhome units under the aforementioned cluster concept. Figure 2.2.6 shows the project boundaries and existing topography while Figure 2.2.6A shows a preliminary conceptual site plan for this development. Parking would be provided and accessed from Ainahou Street while all applicable height and setback requirements would be complied with. This site is relatively level with all necessary water, wastewater, electrical, communication, and transportation improvements available.

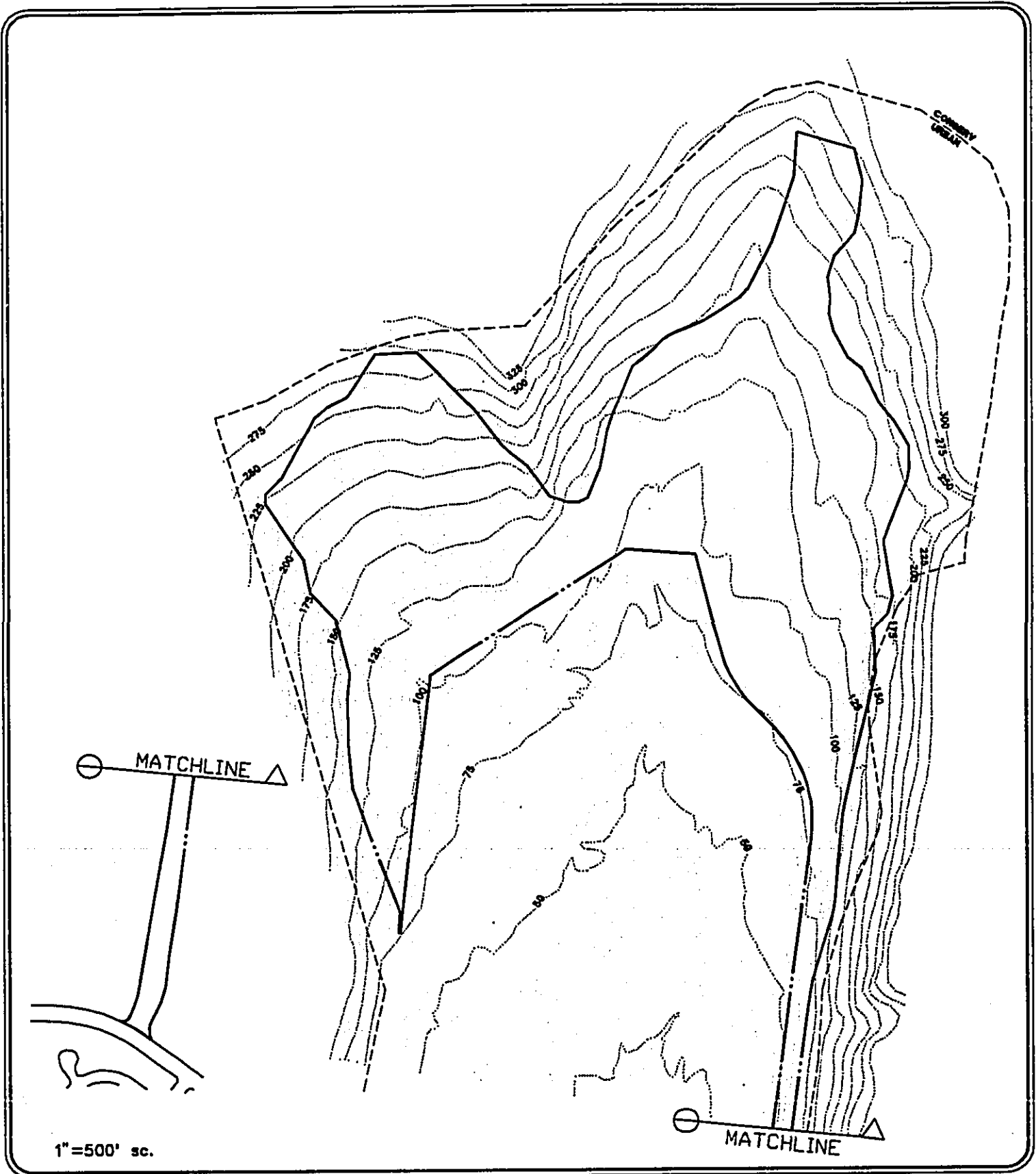
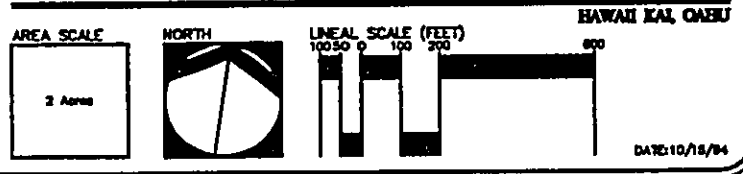
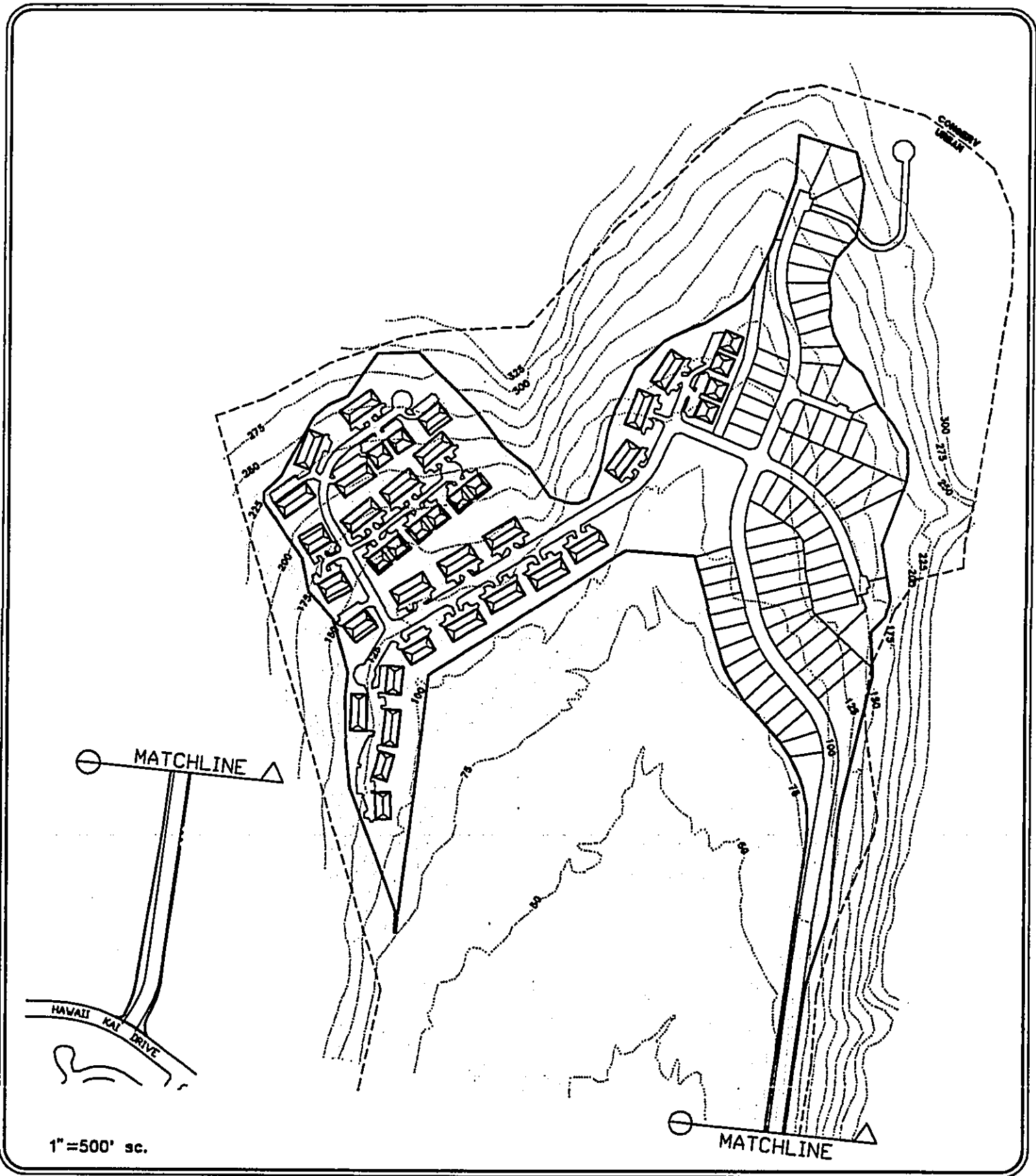


FIGURE 2.2.5  
 HAWAII KAI EIR PREP NOTICE  
 KAMILONUI 2

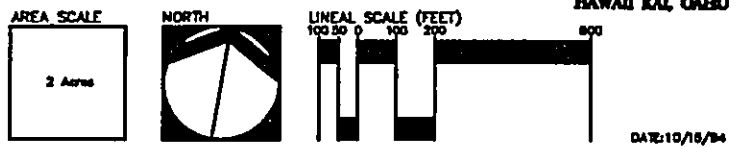




**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
•DEV. PLAN	PRES	RES
•ZONING	P-2	R-5
<hr/>		
•AREA	628 AC.	
•PROPOSED UNITS	364	

FIGURE 2.2.5A  
HAWAII KAI EIR PREP NOTICE  
**KAMILONUI 2**



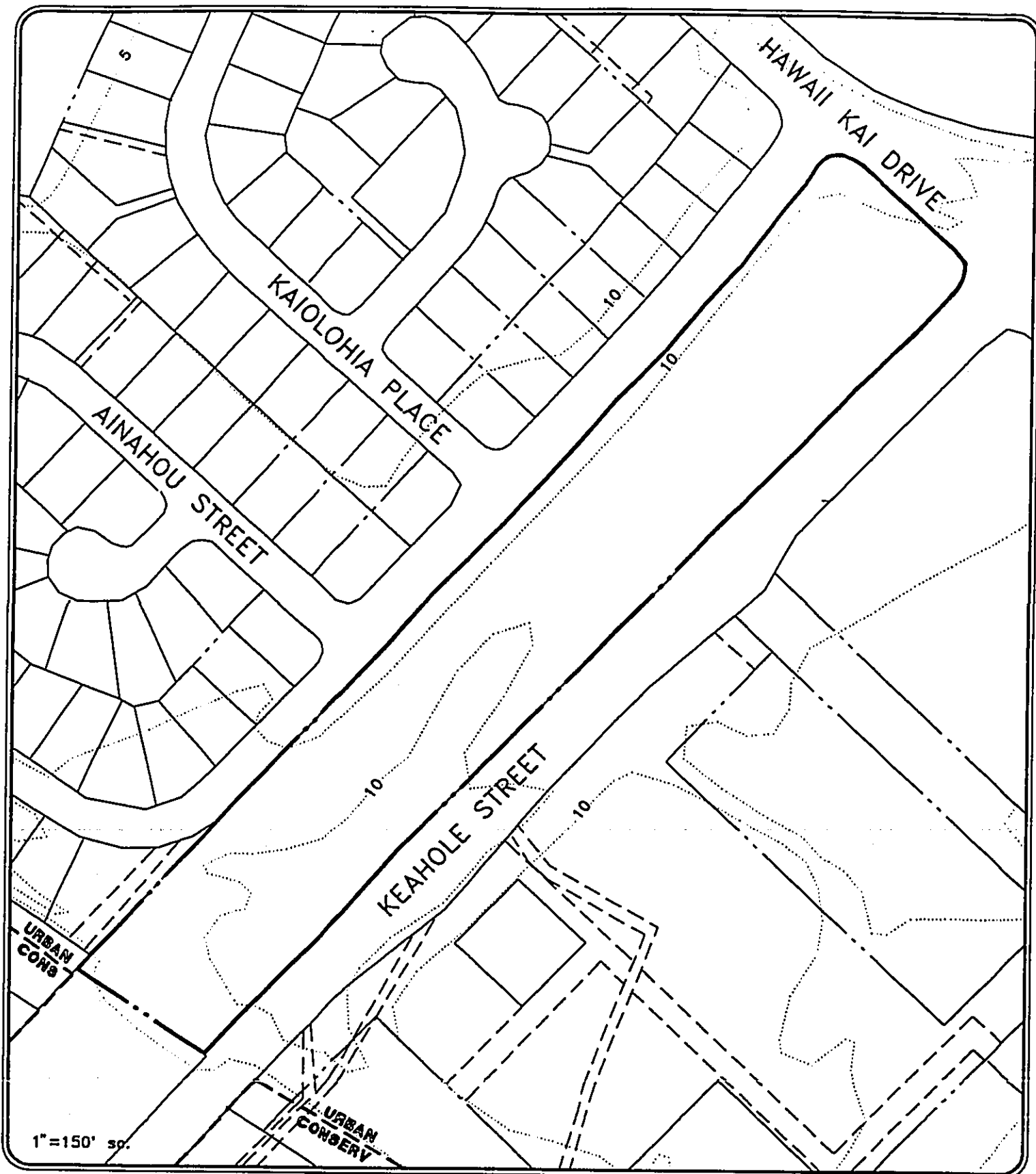
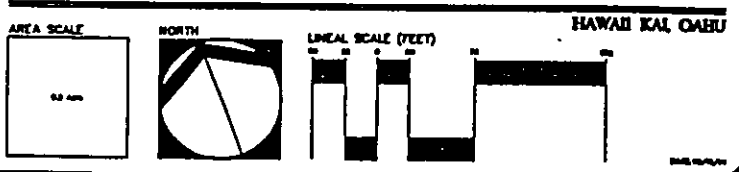
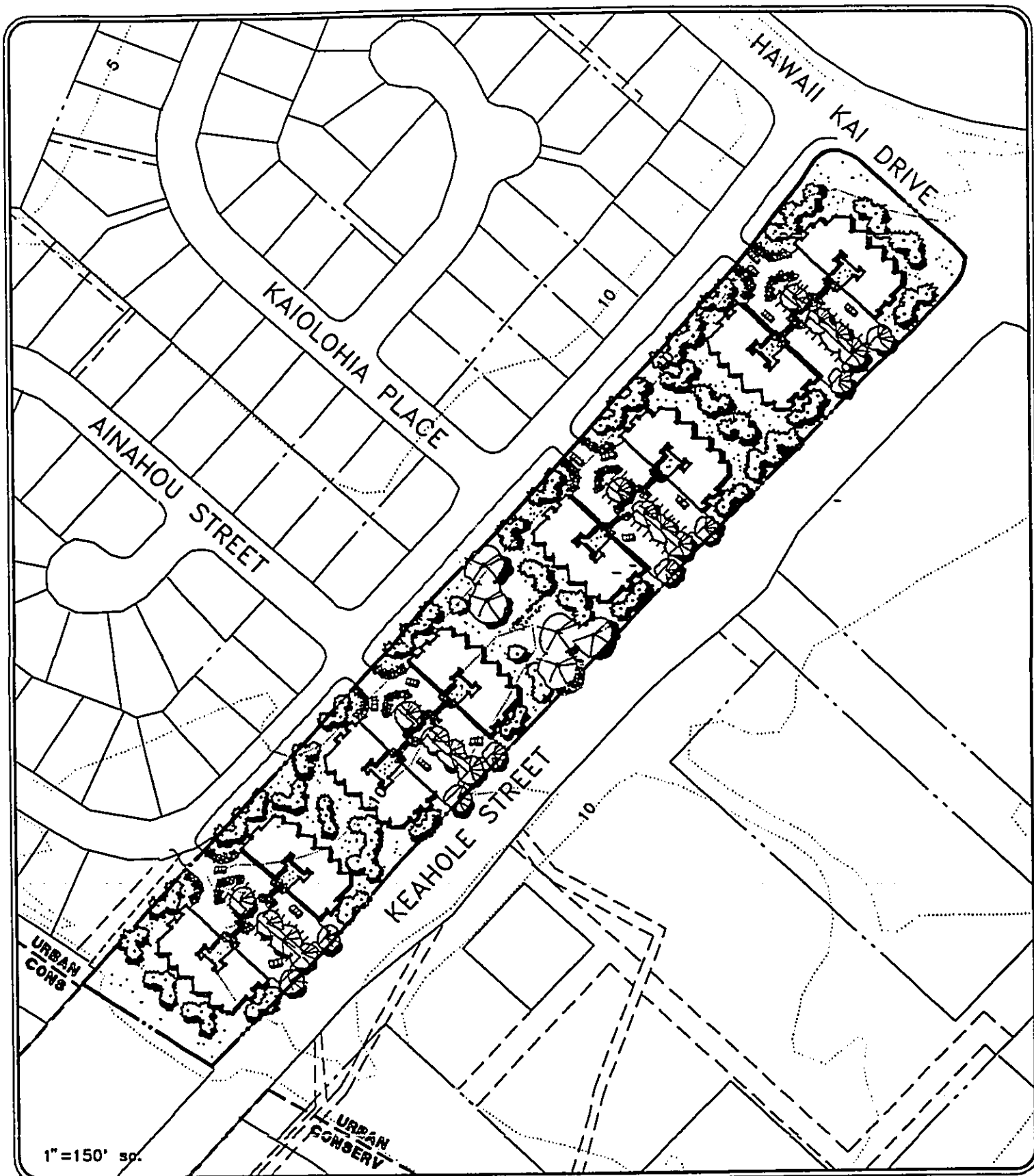


FIGURE 2.2.6  
 HAWAII KAI EIR PREP NOTICE  
**MARINA 4B**



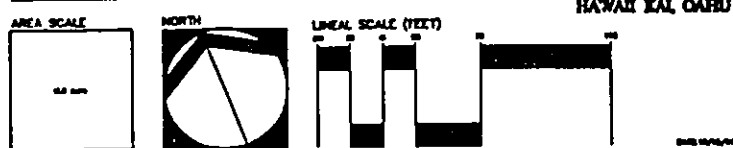




**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
*DEV. PLAN	RES	RES
*ZONING	P-2	R-5
*AREA	51 AC.	
*PROPOSED UNITS	60-75	

FIGURE 2.2.6A  
HAWAII KAI EIR PREP NOTICE  
**MARINA 4B**



**2.2.7 Mauuwai**

Mauuwai is an approximately 82.7-acre site situated mauka of the Hawaii Kai Golf Course's Executive (Par 3) Course in Mauuwai Valley, and has long been planned for single-family residential development. A conceptual plan for this site might involve developing approximately 143 detached single-family dwelling sites having a minimal lot size of 5,000 square feet. Figure 2.2.7 shows the project boundary and existing topography while Figure 2.2.7A shows the preliminary conceptual site plan.

Within Mauuwai, areas of steep slope may be left in the current condition to serve as open space or landscaped as an amenity, and all internal infrastructure may be located underground. Other design constraints developed to minimize the visual impact could include restrictions on building height, color, materials, landscaping and plant materials, and architecture. Access into Mauuwai may be provided from a new roadway routed along the western end of the Executive Golf Course site leading into the valley or directly in from Kalaniana'ole Highway. This road may connect to the extension of Hawaii Kai Drive originating at the Kalama Valley Shopping Center and terminating at the Mauuwai access road. In addition, new water reservoirs may be constructed to serve the area's residents.

**2.2.8 Queen's Rise**

Queen's Rise is an approximately 101.9-acre site located mauka of Kalaniana'ole Highway and the Kealakupapa Valley (Queen's Beach) area. This site is situated in a large bowl shaped valley area between Mauuwai Valley to the west and Makapuu Head to the east. The existing topography and boundaries are shown on Figure 2.2.8 and a preliminary conceptual site plan for the development is shown on Figure 2.2.8A.

This single-family subdivision would have about 194 detached single-family dwellings with lot sizes and infrastructure similar to Mauuwai, except that access into the property would be provided from Kalaniana'ole Highway and not the extension of Hawaii Kai Drive. Home lots would be at least 5,000 square feet. Lots having areas of steeper slope may be larger to retain these areas as landscaped open space. All electrical and communication lines would probably be located underground and the design guidelines applicable to Mauuwai's subdivision would also be implemented for Queen's Rise. Water reservoirs serving this development may be constructed within the project area.

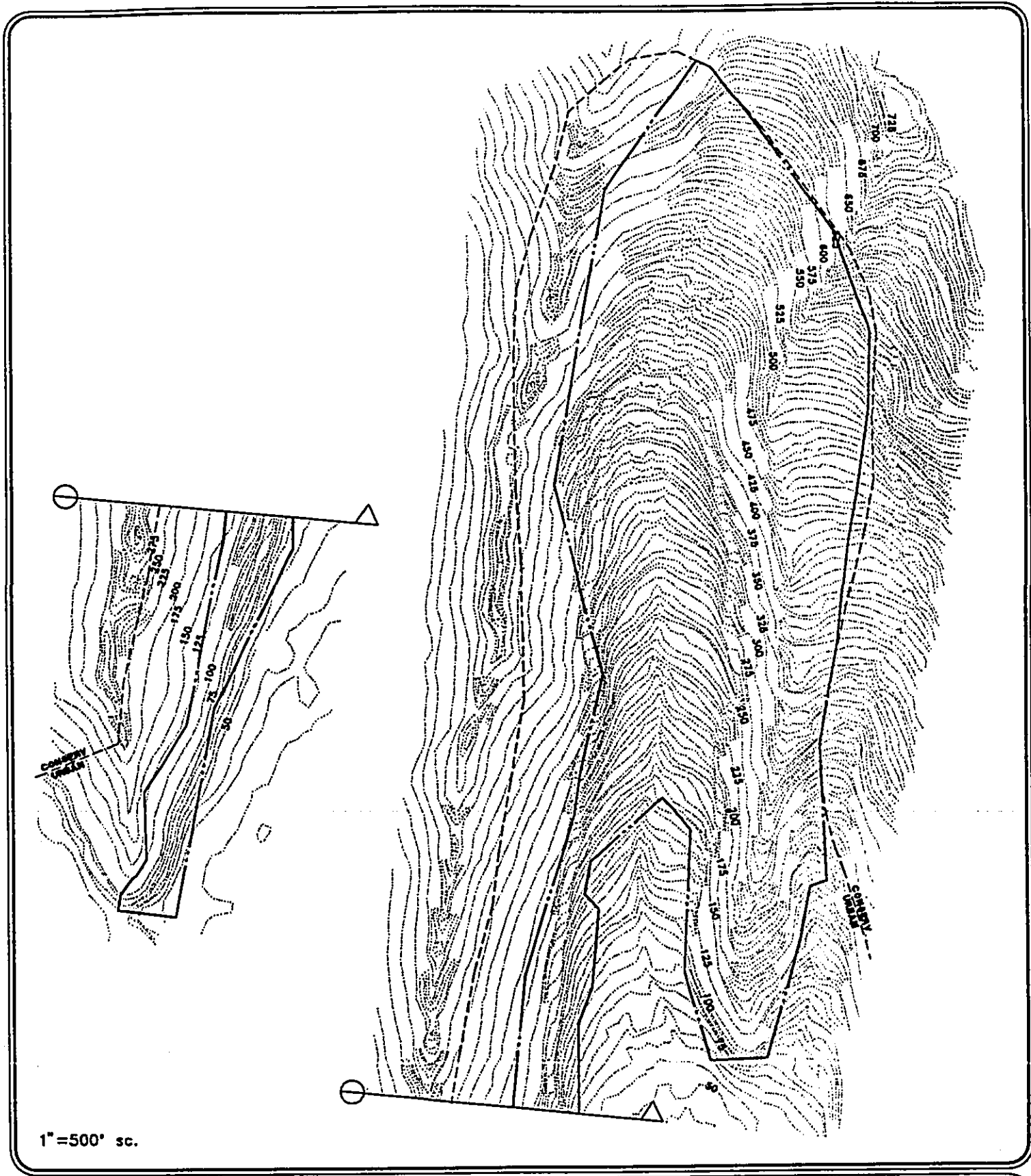
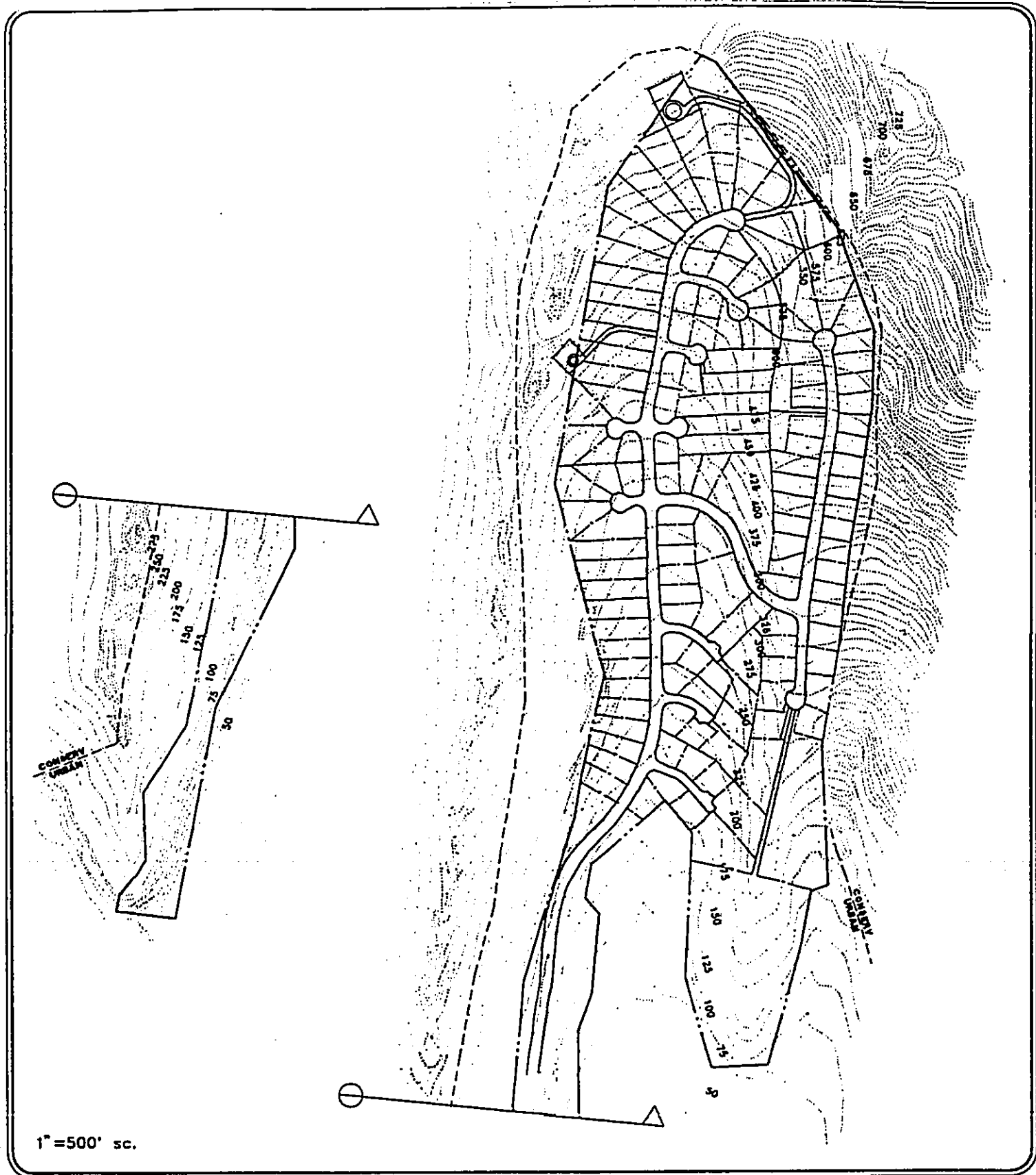


FIGURE 2.2.7  
 HAWAII KAI EIR PREP NOTICE  
**MAUWAI**

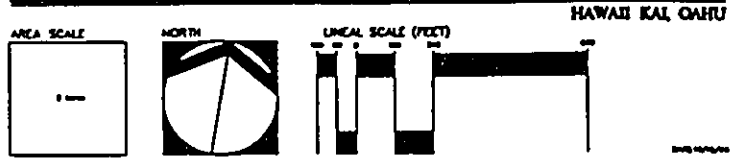
AREA SCALE      NORTH      LINEAL SCALE (FEET)      HAWAII KAI, OAHU



**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
•DEV. PLAN	PRES	RES
•ZONING	P-2	R-5
<hr/>		
•AREA	82.7 AC.	
•PROPOSED UNITS	143	

FIGURE 2.2.7A  
HAWAII KAI EIR PREP NOTICE  
**MAUUWAI**





**FIGURE 2.2.8**  
**HAWAII KAI EIR PREP NOTICE**  
**QUEEN'S RISE**

<b>AREA SCALE</b>	<b>NORTH</b>	<b>LINEAL SCALE (FEET)</b>	<b>HAWAII KAI, OAHU</b>
2 Acres		100 50 0 100 200 300	

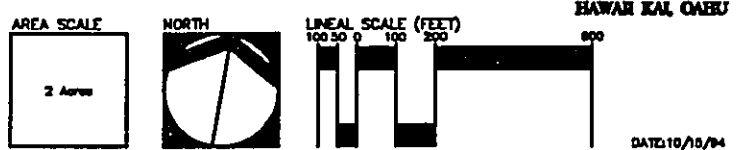
DATE: 10/18/94



**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
•DEV. PLAN	PRES	RES
•ZONING	P-2	R-5
<hr/>		
•AREA	101.9 AC.	
•PROPOSED UNITS	194	

**FIGURE 2.2.8A  
HAWAII KAI EIR PREP NOTICE  
QUEEN'S RISE**



### 2.3 NON-RESIDENTIAL DEVELOPMENTS

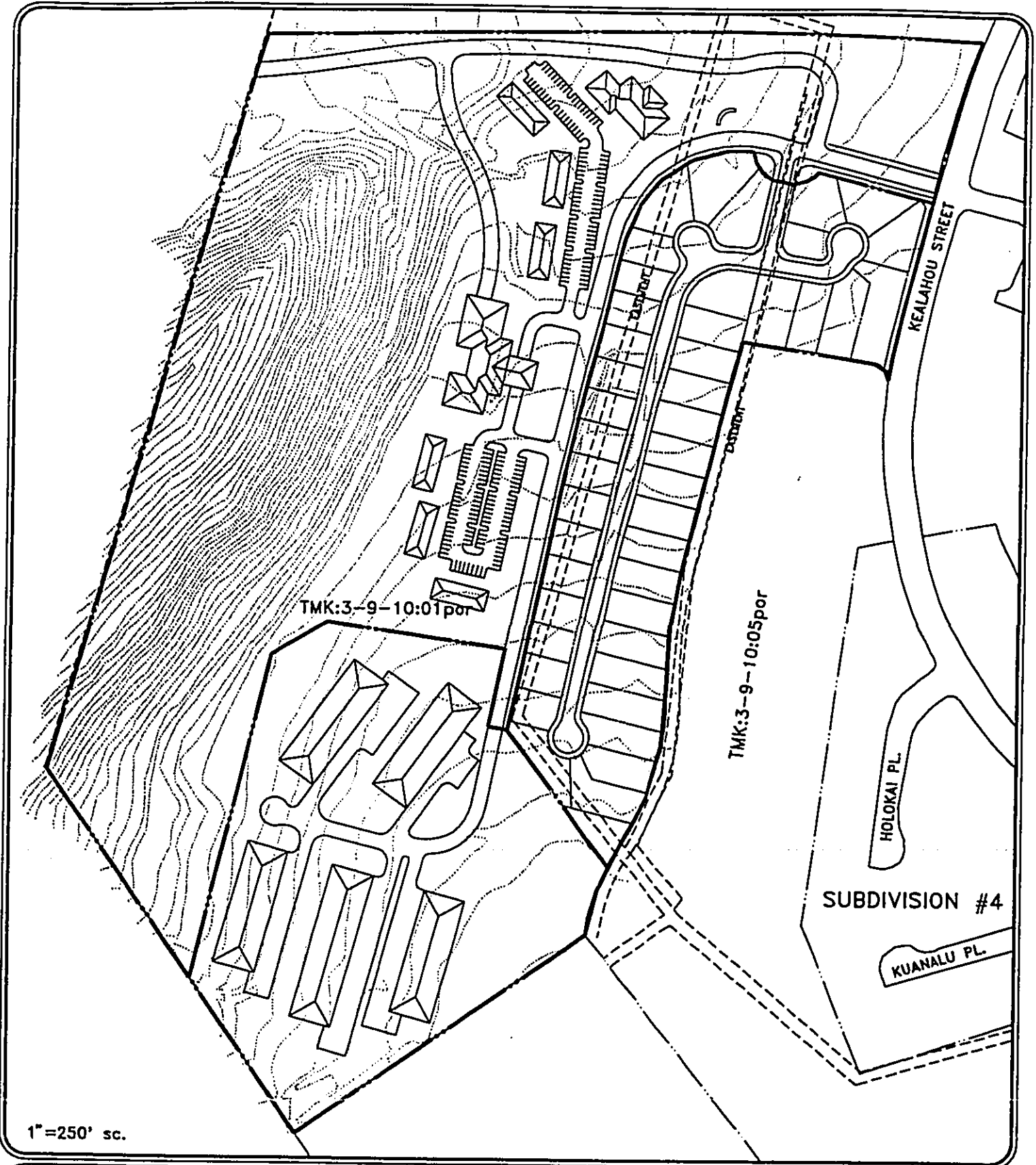
A total of four parcels in Hawaii Kai are proposed for non-residential development. These developments would consist of various types of land uses such as commercial and office space, a business park with limited light industrial uses, a golf course, and an inn. These sites are respectively identified as Marina 1/Strip, Golf Course 2/1A Business Park, Queen's Beach, and Golf Course 2/1A Inn. Table 2.3 identifies the existing and proposed Development Plan Land Use designations, Zoning, and SMP requirements applicable to these parcels.

Site Description	Existing Development Plan Land Use	Proposed Development Plan Land Use	Existing Zoning	Proposed Zoning	SMP Required
1. Golf Course 2/1A Business Park	Preservation/ Industrial	Industrial	R-5 / P-2	I-1	No
2. Golf Course 2/1A Inn	Preservation/ Industrial	Resort	R-5 / P-2	Resort	No
3. Marina 1 / Strip 1 Strip 1 Parcel	Public Facility	Commercial	P-2	B-1	No
Marina 1 Parcel	Preservation	Commercial	P-2	B-1	Yes
4. Queen's Beach	Preservation	Preservation	P-2	P-2	Yes

Source: AM Partners, Inc. and Helber Hastert & Fee, Planners

#### 2.3.1 Golf Course 2/1A Business Park

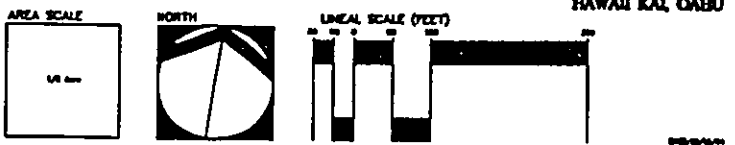
Golf Course 2/1A Business Park is an approximately 10.9-acre site proposed for the development of a business park providing about 100,800 square feet of space for commercial and limited industrial use. The business park site is situated on the southern end of the Golf Course 2/1A parcel mauka of the Hawaii Kai Wastewater Treatment Facility and Golf Course 2/1A Residential site. The project boundaries and existing topography of the site were previously shown on Figure 2.2.1. A preliminary conceptual site plan for this business park is shown on Figure 2.3.1



**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
*DEV. PLAN	PRES/IND	RES/RESORT/IND
*ZONING	R-5/P-2	R-5/RESORT/I-1
<hr/>		
*AREA	49.8 AC.	
*PROPOSED UNITS	140	
RESORT	45	
RESIDENTIAL	95	

FIGURE 2.3.1  
HAWAII KAI EIR PREP NOTICE  
**GOLF COURSE 2/1A**





Under the preliminary plans, a complex of five buildings ranging in size from about 19,000 to 24,000 square feet would be constructed in accordance with the existing topography to promote a high level of internal traffic efficiency. Sufficient open spaces would also be provided to create a buffer between the buildings and adjacent Golf Course 2/1A Residential development. Landscaping along the perimeter of the site may be provided to minimize visual concerns.

### 2.3.2 Golf Course 2/1A Inn

Golf Course 2/1A Inn refers to a site situated at the foot of Koko Head Crater adjacent to the other business park and residential developments in this area. This 29.1-acre site is planned for the development of an inn having about 140 rooms with over 30,000 square feet available for ancillary uses and retail space. The existing topography of this site was previously shown on Figure 2.2.1 while a preliminary conceptual site plan for this project was also shown on Figure 2.3.1.

This inn is planned to be a low-rise development having about 8 buildings of which 6 could be used as guest wings for visitor accommodations and 2 for retail and recreational facilities. The buildings for guest accommodation would be 24-unit complexes three stories high which are aligned to take advantage of the northeasterly golf course views. An entry driveway would lead to the main common facilities building serving as the inn's main lobby with restaurant, administrative services, retail space, lounge, and rooms for holding functions. The last building would be a freestanding health and fitness complex with space for retail and a snack bar. This building may serve as a central activity for all guests and community users depending upon the project's market orientation.

At-grade parking lots would front each building to allow unobstructed views of the golf course. Extensive landscape features may be located behind the guest wings to provide quiet areas and additional focal points toward Koko Head Crater. The entry road leading into this site would also be used for vehicle access into the business park site.

### 2.3.3 Marina 1 / Strip 1

Marina 1/Strip 1 is proposed as a 14.0-acre commercial development situated on the vacant block along Kalaniana'ole Highway between Hawaii Kai Drive and Keahole Street. This site would extend mauka along Keahole Street opposite of the Hawaii Kai Towne Center. This project involves the use of four separate sites which would be constructed as a single development. These sites, previously listed under Table 2.1, consist of Marina 1 and Strip 1 parcels, the City's park-and-ride facility, and a parcel owned by the Hawaii Kai Yacht Club.

Under preliminary plans for this development, about 192,000 square feet of commercial space may be provided for tenants consisting of both office and retail space. Figure 2.3.2 shows the project boundaries and existing topography and Figure 2.3.2A shows a preliminary conceptual site plan for this project. A total of 8 buildings are planned to be constructed along with about 62 boat slips for the yacht club. In addition, the City's existing park-and-ride facility would be relocated to the eastern end of the site along Keahole Street.

Two terraced 3-story buildings designed to provide a sense of enclosure by shielding open parking areas from Kalaniana'ole Highway are planned to be situated at the intersections along Hawaii Kai Drive and Keahole Street. A series of 2-story structures may also be located along the marina fronting the boat slips. The Hawaii Kai Yacht Club would be located on the second level of one of these buildings overlooking the marina. Situated between these buildings, a central pavilion may be provided serving as an entry focal point for the development and conveying a maritime character. Further along Keahole Street would be a series of single-story retail shops lining the marina and providing convenient access to the adjacent park-and-ride. These buildings would be interspersed with open, park-like areas for al fresco dining and seating. Extensive landscaping may be used to integrate and transition this retail area from the adjacent park-and-ride facility.

Vehicular access would be provided at four points along the entire commercial complex. A formal entry would be located mid-block along Kalaniana'ole Highway with another located along Hawaii Kai Drive. Two signalized entries could be provided along Keahole Street which correspond to the entrances into the Hawaii Kai Corporate Plaza and Hawaii Kai Towne Center. Restricted left-turn movements could be implemented to minimize traffic congestion and other unsuitable conditions as required.

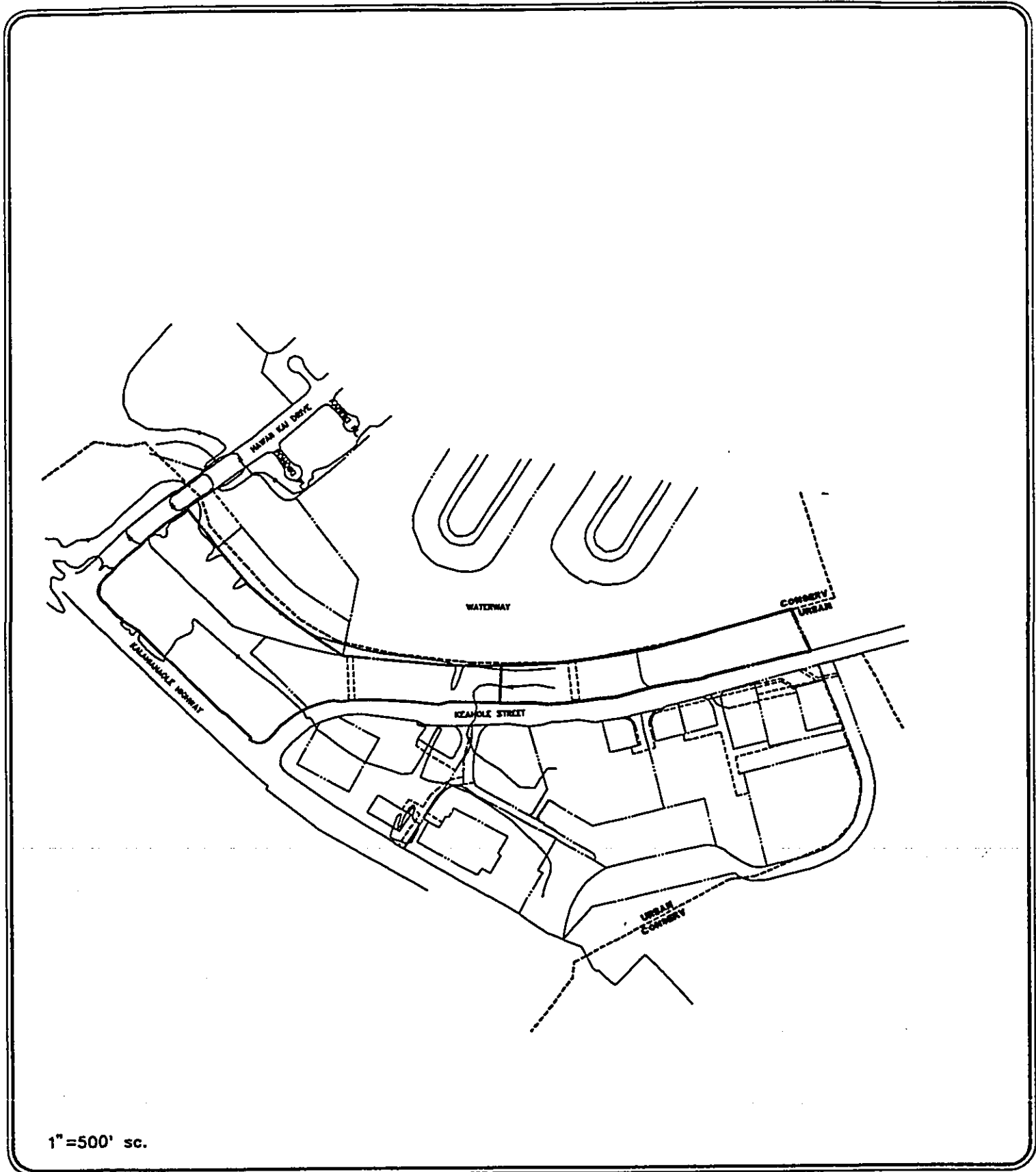
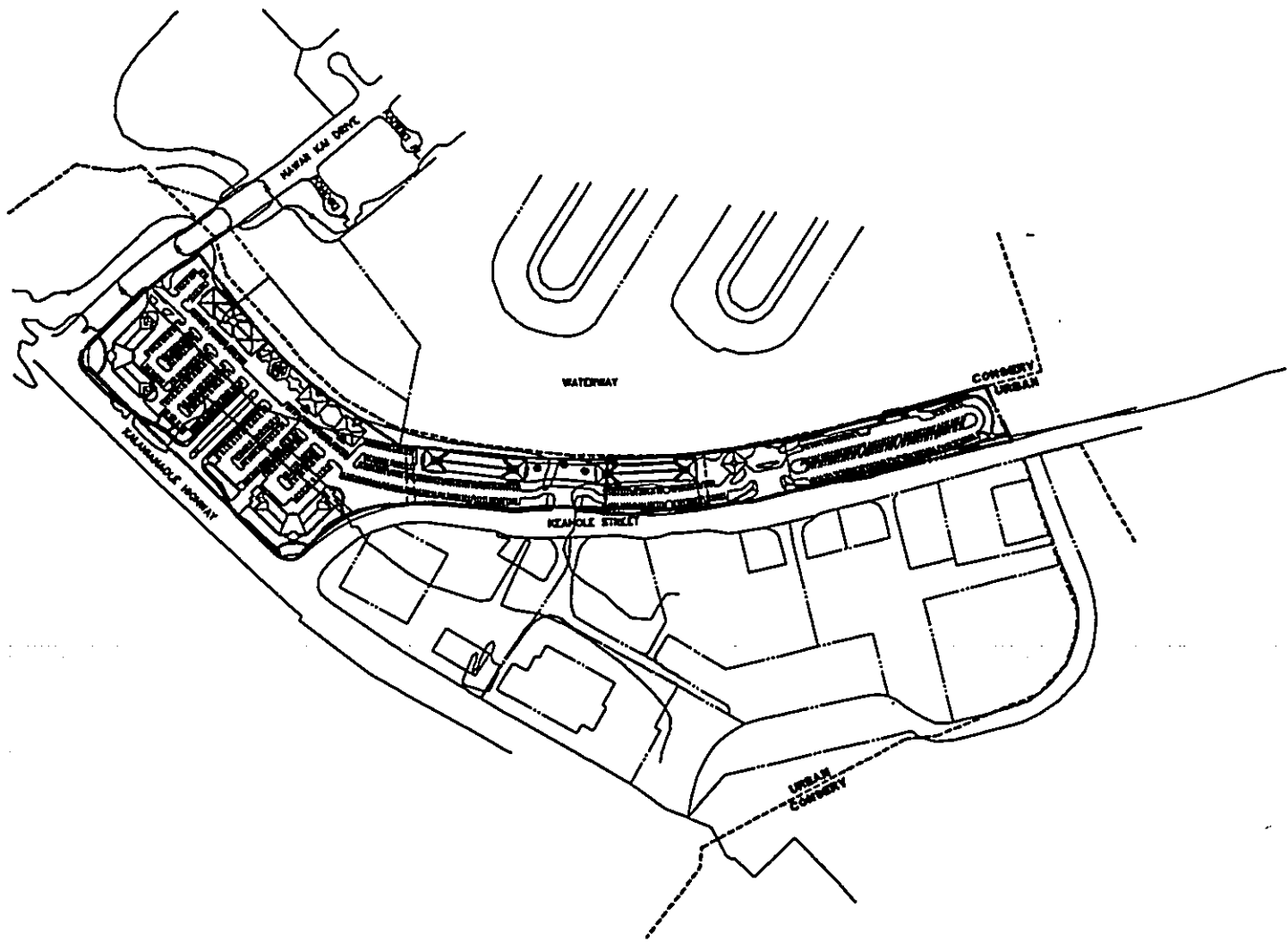


FIGURE 2.3.2  
 HAWAII KAI EIR PREP NOTICE  
**MARINA 1/STRIP 1**

HAWAII KAI, OAEU





1" = 500' sc.

**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
•DEV. PLAN	PRES	COMM
•ZONING	P-2	B-1

- MARINA 1 AREA 43 AC.
- STRIP 1 AREA 23 AC.

FIGURE 2.3.2A  
HAWAII KAI EIR PREP NOTICE  
**MARINA 1/STRIP 1**

HAWAII KAI OAEU



**2.3.4 Queen's Beach**

An 18-hole championship golf course on an approximately 166.0-acre site with clubhouse and amenities is planned for development on the Queen's Beach parcel. Originally intended for the development of a major resort community with hotel rooms, commercial, and recreational facilities, the present plan derives from the City's defense of its down zoning of this parcel to Preservation where it maintained that it was possible to develop a golf course.

Queen's Beach is located makai (east) of Kalaniana'ole Highway encompassing the general area along the shoreline and inland from Wawamalu Beach to Makapuu Head. The proposed golf course would include a regulation par 72 layout extending from the upper reaches of Kealakupapa Valley to the coastal plain mauka of Kaloko, Kailili and Kahooahai Inlets. The existing topography and project boundaries are shown on Figure 2.3.3 while a preliminary conceptual site plan for this project is shown on Figure 2.3.3A.

Accessory facilities to the golf course would include a driving range, clubhouse/pro shop, restaurant, locker rooms and cart barn. The course would be private but public play will be provided including kama'aina rates for Hawaii residents. Vehicular access would be from Kalaniana'ole Highway. To the extent possible, the design concept for the golf course intends to integrate existing topography and vegetation with the overall result being more of a "links" type of course. Grading is planned to be kept to a minimum, and turf-grasses and other landscaping species may be selected to complement the dryland environment currently found in Kealakupapa Valley.

As part of this development, approximately 29 acres of land on the western side of Kaloko Inlet would be set aside as park land for use by the general public. Pedestrian access to and along the ocean will be provided to serve as one avenue of access to the Queen's Beach coastline for fishermen, hikers, etc. A second avenue of pedestrian access to the ocean may be provided along the existing lighthouse access road which would connect to a pedestrian path in the vicinity of Kahooahai Inlet. No vehicular access would be permitted along the shoreline or within the project area. No structures associated with the golf course are planned within 400 feet of the shoreline in order to maintain views of coastal areas from Kalaniana'ole Highway.



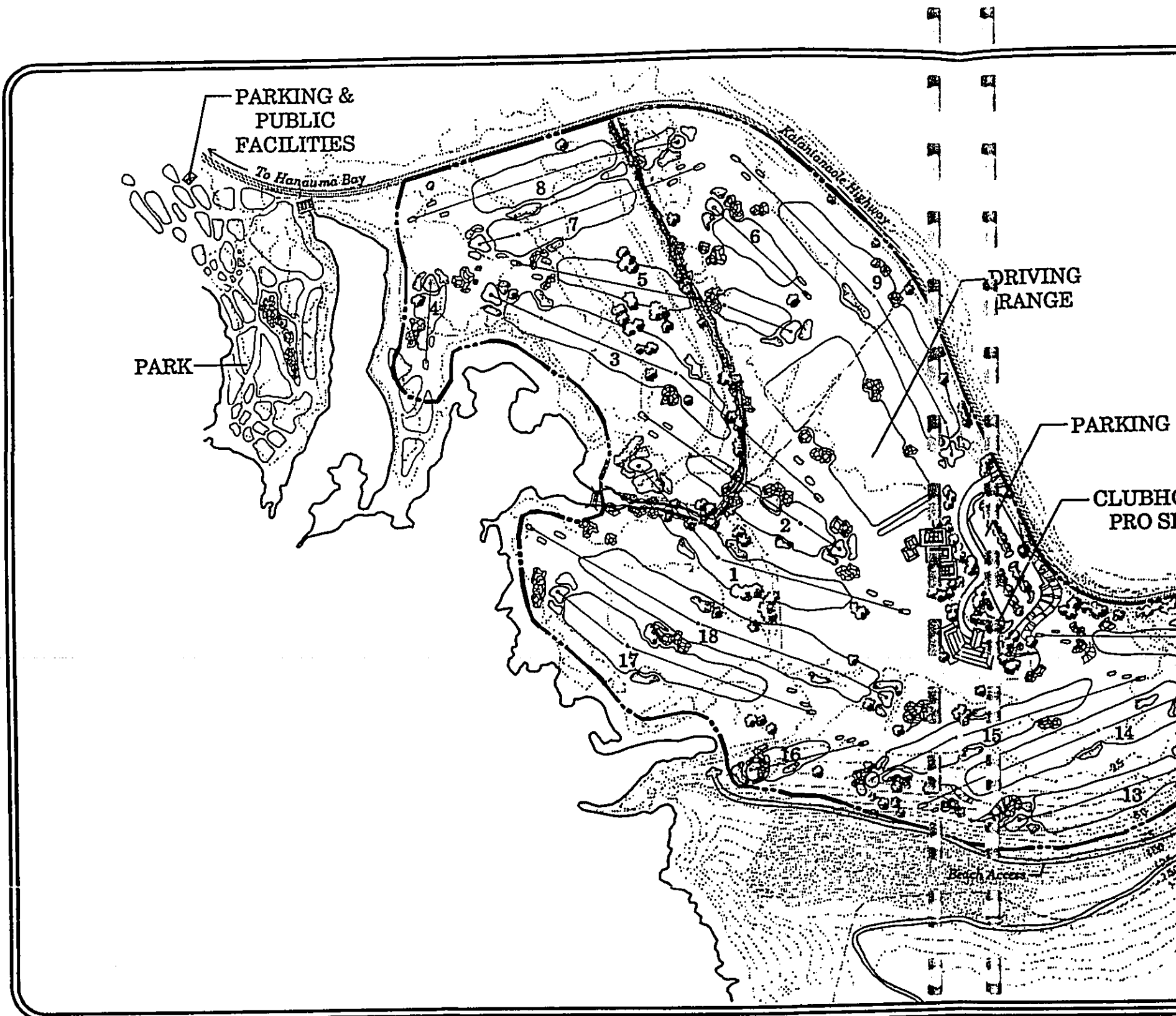
**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
*DEV. PLAN	PRES	PRES
*ZONING	P-2	P-2

\*AREA 166.0 AC.  
\*PROPOSED SIZE 18 HOLES

FIGURE 2.3.3  
HAWAII KAI EIR PREP NOTICE  
**QUEEN'S BEACH**

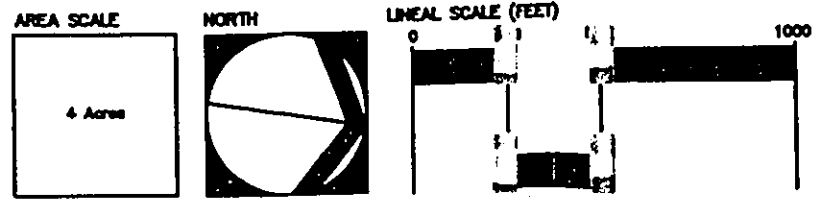




**PROJECT DESCRIPTION**

	<u>EXISTING ENTITLEMENTS</u>	<u>PROPOSED ENTITLEMENTS</u>
*DEV. PLAN	PRES	PRES
*ZONING	P-2	P-2

\*AREA 166.0 AC.  
 \*PROPOSED SIZE 18 HOLES



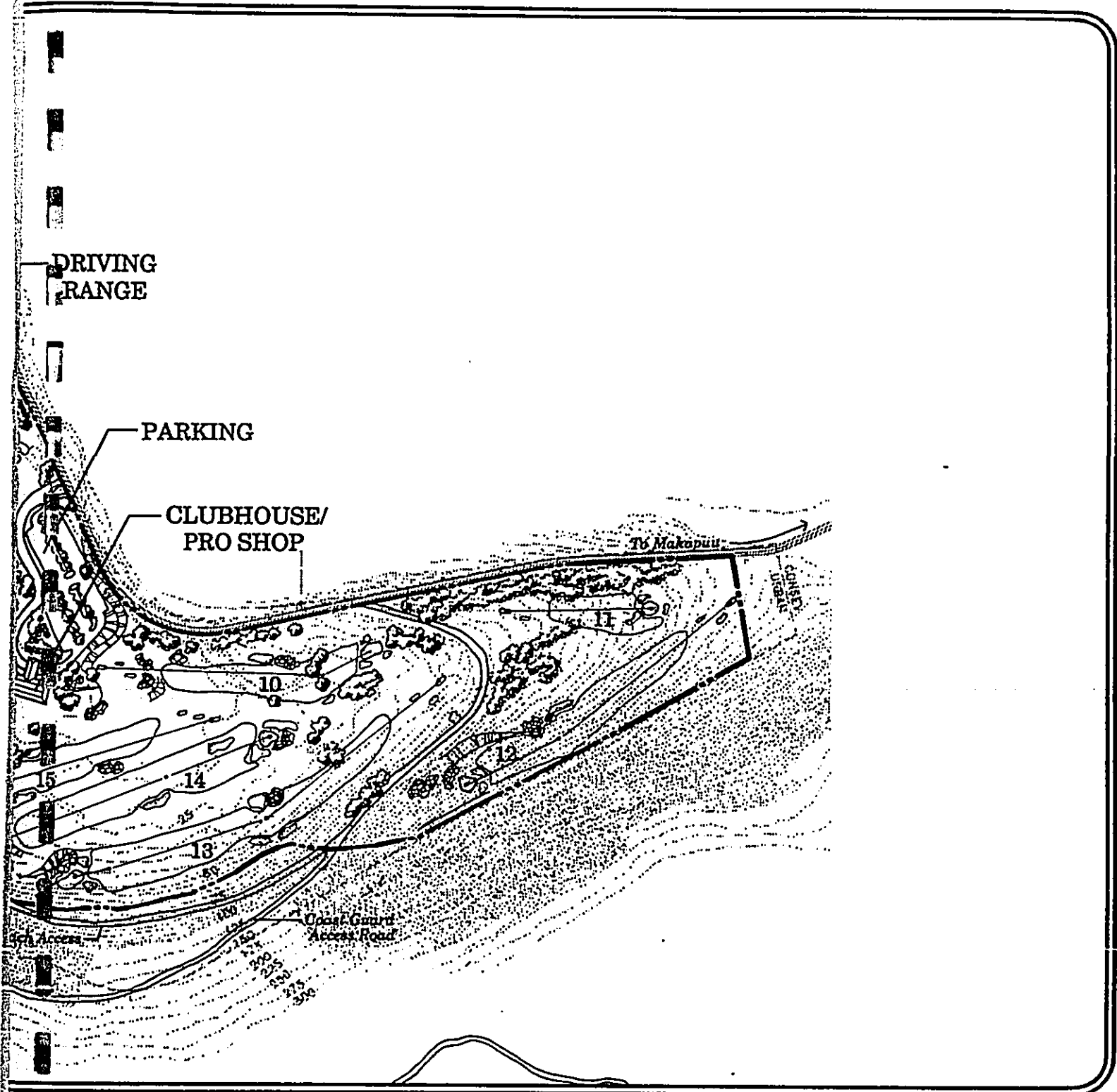


FIGURE 2.3.3A  
HAWAII KAI EIR PREP NOTICE  
**QUEEN'S BEACH**

HAWAII KAI, OAHU

JANUARY 12, 1995



**2.4 SCHEDULE AND PHASING PLAN**

Implementation of these entitlements would begin after compliance with the conditions stipulated under the court's settlement procedural order which includes the completion and acceptance of the Final Environmental Impact Report by the City. In addition, a City Council ordinance would need to be adopted approving the settlement which provides all necessary discretionary land use approvals. Subsequently, other ministerial regulatory permit requirements from pertinent agencies would be pursued before construction activities can commence. If all entitlements are not utilized within the 20-year timeframe (by the year 2016), any of the three landowners would then be permitted to submit applications for changes as appropriate.

**2.5 PROJECT NEED AND OBJECTIVES**

**2.5.1 Historical Development Of Hawaii Kai Region**

In 1959, the Kaiser Hawaii Kai Development Company (KHKD), a wholly-owned subsidiary of Kaiser Industries Corporation, was formed by Henry Kaiser for the purpose of developing a portion of East Honolulu now known as Hawaii Kai. At the time, the development area constituting the 6,000 acre project area was owned in fee by KSBE. To develop the land, KHKD entered into an agreement with KSBE in 1961 that granted them the exclusive development rights for Hawaii Kai. By subsequent agreement, the land has been divided between the landowners for the completion of Hawaii Kai.

To provide for the orderly development of Hawaii Kai, the Hawaii Kai Master Plan (Master Plan) was prepared by John Carl Warnecke and Associates after years of study and analysis during the early 1960s. The primary goals of the Master Plan were to provide a "complete urban community" and "to create a setting for a better way of urban life." In 1966, this Master Plan was officially adopted as the "Detailed Land Use Map" (DLUM) by the Honolulu City Council (City Ordinance Number 2808). This ordinance served as the primary planning and land use enforcement tool used by the City and KHKD to implement the Hawaii Kai Master Plan until being replaced by the City's present "Development Plan" program.

The original master plan for Hawaii Kai was envisioned to be a resort community for 60,000 people on approximately 6,000 acres of land. The recent 1990 Census indicates that approximately 27,400 individuals reside in the census tracts encompassing Hawaii Kai. Although the project area was 6,000 acres, approximately half the area did not lend itself to typical subdividing and development due to

topography and location. What is presently known as the marina area contained what was once a fishpond which silted leaving large areas of marsh with lands exposed at low tide. Adjacent areas were semi-arid and used largely by truck farmers, flower farmers, pig farmers, and ranching activities in the Kalama area.

**2.5.2 Project Need And Objectives**

Of the original 6,000 acres in the master plan area, approximately 600 acres remain to be developed for residential, commercial, business park, recreational, and visitor-related land uses planned under the Master Plan. Several modifications to the Master Plan have been made over the last 30 years, some voluntary and involuntary, resulting in the litigation which are sought to be resolved by the settlement procedural order. Consequently, the developments proposed for the parcels included under the court settlement are intended to complete the build-out of Hawaii Kai.

As one of Hawaii's most desirable planned communities, Hawaii Kai has been a strong and consistent market for single-family dwellings in East Honolulu. The area has proven to be a popular choice for home buyers because of its climate, proximity to recreational opportunities, and its attractiveness to families. Over the last few years, retail and office opportunities have expanded considerably in Hawaii Kai, thereby providing a fuller range of employment opportunities and services to residents.

A marketing study for the residential developments will be prepared by KPMG Peat Marwick LLP to discuss the market demand for residential units in Hawaii Kai. This study will be included in the Draft EIR to further discuss the project need and objectives for the residential developments. In addition, market studies will also be prepared by KPMG Peat Marwick LLP to address the demand for commercial, business park, resort, and golf course uses planned.

**SECTION 3.0  
DETERMINATION AND FINDINGS**

**3.1 DETERMINATION**

As mutually agreed to by the parties involved in the court settlement, a Draft EIR is being prepared to disclose the probable impacts and necessary mitigation resulting from the entitlements sought under the settlement agreement. Subsequently, the City has authorized the preparation and publication of this EIR Preparation Notice.

**3.2 FINDINGS AND REASONS SUPPORTING DETERMINATION**

Given that entitlements are sought for a total of 12 parcels proposed for development which encompasses about 546 acres of land in Hawaii Kai, there would be some impact on the existing environment. The entitlements provided and resulting development of over 1,500 residential units in Hawaii Kai and new commercial uses would increase the number of residents and visitors in the area causing some impact on the social environment. This increased population would also have an impact on existing infrastructure serving the region such as water supply, wastewater treatment, and traffic.

The parties and the court believed that it was appropriate to incorporate this EIR process into the settlement procedure to enable not only the parties but also the public to review the information accumulated. Due to the types of uses proposed and magnitude of these combined developments, the risk that there would be an impact to the existing environment, some of which may be significant, entailed preparing a full disclosure and detailed study of the probable impacts on the existing environment in Hawaii Kai prior to the City adopting the proposed solution. In addition, the land uses proposed may meet several of the 11 significance criteria outlined in Section 11-200-12 of the State DOH's Administrative Rules if incorporated as a guide based upon these findings.

Studies Being Conducted In The Draft EIR

Detailed technical studies will be performed by several consultants to address the probable impacts and necessary mitigative measures in preparing the Draft EIR. A listing of the various technical studies being conducted along with a brief outline of the scope of work for each discipline is included in Appendix A of this EIR Preparation Notice. These various scopes of work have been reviewed and approved by the City in accordance with the settlement package. The consultants retained to perform these technical studies are identified below.

<b>Technical Discipline</b>	<b>Consultants</b>
1. <b>Agricultural Economics</b>	Decision Analysts Hawaii, Inc.
2. <b>Air Quality</b>	J.W. Morrow
3. <b>Archaeology</b>	Cultural Resource Management Paul H. Rosendahl, Ph.D., Inc.
4. <b>Botanical Resources</b>	Char & Associates
5. <b>Civil Engineering</b>	Community Planning, Inc. Park Engineering Sam O. Hirota, Inc.
6. <b>Economic Factors</b>	KPMG Peat Marwick LLP
7. <b>Entomology*</b>	Dr. Steve Montgomery
8. <b>Environmental Chemistry*</b>	William Walker, Ph.D.
9. <b>Marine Biology*</b>	Marine Research Consultants
10. <b>Market Studies</b>	KPMG Peat Marwick LLP
11. <b>Noise</b>	Darby & Associates
12. <b>Planning</b>	AM Partners, Inc. Helber Hastert & Fee PBR Hawaii
13. <b>Social Factors</b>	Community Resources, Inc.
14. <b>Terrestrial Fauna</b>	Phillip Bruner
15. <b>Traffic</b>	Wilbur Smith Associates
16. <b>Visual Resources</b>	Michael S. Chu, Land Architect
17. <b>Water Hydrology</b>	Mink & Yuen, Inc. Water Resource Associates Water Resources Engineering

\* Note: These studies will be conducted only for Queen's Beach (golf course).

**SECTION 4.0**  
**PARTIES TO BE CONSULTED DURING THE PREPARATION**  
**OF THE DRAFT ENVIRONMENTAL IMPACT REPORT**

Below is a listing of government agencies, community associations, and elected representatives which would be distributed a copy of the EIR Preparation Notice for review and comments on the proposed developments. Comments received would be incorporated into the preparation of the Draft EIR.

Elected Representatives

The Honorable Donna Ikeda, Hawaii State Senator, District 8  
The Honorable Matt Matsunaga, Hawaii State Senator, District 9  
The Honorable Whitney Anderson, Hawaii State Senator, District 25  
The Honorable David Stegmaier, Hawaii State Representative, District 15  
The Honorable Gene Ward, Hawaii State Representative, District 16  
The Honorable Eve Anderson, Hawaii State Representative, District 51  
The Honorable John DeSoto, City Council Chair  
The Honorable Duke Bainum, City Council  
The Honorable John Henry Felix, City Council  
The Honorable Mufi Hanneman, City Council  
The Honorable Steve Holmes, City Council  
The Honorable Rene Mansho, City Council  
The Honorable Donna Mercado Kim, City Council  
The Honorable Andy Mirikitani, City Council  
The Honorable Jon Yoshimura, City Council

Federal Agencies

Department of Agriculture, Soil Conservation Service  
Department of Commerce, National Oceanic and Atmospheric Administration,  
National Marine Fisheries Service  
Department of Defense

- Department of the Army, Army Corps of Engineers
- Department of the Army, Army Support Command Hawaii
- Department of the Navy, Naval Base, Pearl Harbor

Department of the Interior

- Fish and Wildlife Service
- Geological Survey

Section 4.0

Federal Agencies (continued)

- Department of Transportation
  - Coast Guard
  - Federal Highways Administration
- Environmental Protection Agency, Regional Division

State Agencies

- Department of Accounting and General Services
- Department of Agriculture
- Department of Budget and Finance
  - Housing Finance and Development Corporation
  - Public Utilities Commission
- Department of Business, Economic Development, and Tourism
  - Hawaii Community Development Authority
  - Land Use Commission
- Department of Defense
- Department of Education
- Department of Hawaiian Home Lands
- Department of Health
  - Environmental Management Division
  - Office of Environmental Quality Control
- Department of Human Services, Hawaii Housing Authority
- Department of Land and Natural Resources
- Department of Transportation
- Office of Hawaiian Affairs
- Office of the Governor, Office of State Planning
- University of Hawaii, Environmental Center

City and County of Honolulu Agencies

- Board of Water Supply
- Building Department
- Department of Housing and Community Development
- Department of Human Resources
- Department of Land Utilization
- Department of Parks and Recreation
- Department of Public Works
- Department of Transportation Services
- Department of Wastewater Management

Section 4.0

City and County of Honolulu Agencies (continued)

Fire Department  
Honolulu Public Transit Authority  
Police Department  
Planning Department

Public Utilities

East Honolulu Community Services  
GTE Hawaiian Tel  
Hawaiian Electric Company, Inc.

Neighborhood Boards

Hawaii Kai Neighborhood Board #1  
Kuliouou/Kalani Iki Neighborhood Board #2  
Waialae/Kahala Neighborhood Board #3  
Waimanalo Neighborhood Board #32

Community Associations

Aina Haina Community Association  
Aina Haina Professional and Businessmen Association  
Hawaii Kai Community Council  
Hawaii Kai Marina Community Association  
Hawaii Kai Yacht Club  
Hawaii's Thousand Friends  
Koko Isle Homeowner's Association  
Kamilonui Farmers Cooperative  
Kuliouou Community Association  
League of Women Voters  
Life of the Land  
Niu Peninsula Community Association  
Save Our Surf  
Sierra Club, Hawaii Chapter  
Spinnaker Isle Association  
The Anchorage Community  
The Outdoor Circle

Section 4.0

News Media and Oahu Libraries

Aina Haina Library  
Hawaii Kai Library  
Honolulu Advertiser  
Honolulu Star-Bulletin  
Kaimuki Regional Library  
Sun Press



# APPENDICIES

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# APPENDIX A

## Technical Studies Scope Of Work

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**APPENDIX A**  
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**Agricultural Impact Study**  
**Scope of Work**

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1. Assess the agronomical conditions of the sites, including soil types and agricultural uses, soil ratings, climatic conditions, and availability of water.
2. Assess the impact of development on agricultural activities in Kamilonui Valley.
3. Assess the impact of these projects on the growth of diversified agriculture, addressing the Oahu and Statewide supply of agricultural land for diversified agriculture relative to the demand.
4. Identify probable impacts (direct and cumulative) and develop mitigative measures, where appropriate.
5. Identify consistency with State and County goals, objectives, and policies which address agriculture.

**The Agricultural Study will pertain only to those parcels designated Agriculture or lie adjacent to properties pursuing agriculture activities.**

**Air Quality Impact Analysis**  
**Scope of Work**

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1. Collect, review, and process appropriate existing meteorological data for use in air quality simulation modeling.
2. Generate localized mobile source emission factors.
3. Perform a microscale analysis of carbon monoxide levels to address both existing and projected conditions on the critical road segment(s) identified by the traffic consultant.
4. Conduct peak-hour carbon monoxide sampling at the three most critical intersections.
5. Prepare a mesoscale impact analysis based on annual emissions from electric power generation and solid waste disposal.
6. Assess the long-term and short-term impacts and mitigative measures associated with the proposed land uses.

## Archaeological Inventory Survey Report

### Scope of Work

---

1. Retrieve and review pertinent literature and other data related to the Hawaii Kai area.
2. Conduct systematic, walk-through surface survey of predetermined parcels to locate and record any extant surface remains.
3. Conduct excavations, stratigraphic trenching, shovel/auger probes as appropriate.
4. Organize, analyze, interpret, process, and catalog accumulated data and recovered materials, artifacts, and midden using laboratory procedures, radiocarbon and other specialized analyses.
5. Recommend mitigation as needed.

## **Botanical Study**

### **Scope of Work**

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1. Conduct a field investigation of the project site and prepare: (1) a general description of the major vegetation types; (2) an inventory of plant species and any officially listed, proposed, candidate threatened or endangered plant species designated by the federal and/or state governments located within the project site. Information concerning the status, abundance, habitat, physiology, and condition will be recorded. Location(s) will be mapped.
2. Conduct a literature review and prepare a summary of extant botanical knowledge pertinent to the various sites to include a bibliographic section.
3. Analyze, as necessary, soil samples to identify any dormant spores that may be present in the soil.
4. Determine the presence/absence of any permanent or intermittent wetlands on the project site and the approximate boundaries of the wetlands and also beach strand vegetation, if any exist.
5. Identify and discuss areas of potential environmental problems or concerns and propose possible mitigation.

**Chemical Impact Assessment**  
**Scope of Work**

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1. Describe the physical site, including slope, soil types, and microclimate at proposed golf course.
2. Working with a hydrogeologist, conduct modeling studies to evaluate the risk of fertilizer or biocides from the proposed golf course leaching into the groundwater or reaching the ocean via groundwater pathways or runoff and the concentration of such agents reaching groundwater and the ocean.
3. Identify alternative biocides for use on the proposed golf course which are considered to be lower in toxicity.
4. Identify appropriate turf grasses for use on the proposed golf course, taking into consideration the microclimate of the site and the characteristics of the irrigation source.
5. Analyze the potential for wind drift of applied chemicals to the golf course.
6. Prepare an integrated pest management plan for the site, based on its unique characteristics, including the selection of appropriate turf grasses for the golf course.



## Economic and Fiscal Impact Assessment

### Scope of Work

---

1. **Economic Impacts** - Assess the economic impacts of the various elements of the project (visitor expenditures, construction and operational employment, labor availability, personal income, on- and off-property population) for the years 2000, 2005, 2010, and 2015.
2. **Fiscal Impacts** - Estimate the direct additional revenues and expenditures that could be expected to accrue to the State and County governments as a result of the developments proposed for the years 2000, 2005, 2010, 2015.

**Engineering Study**  
**Scope of Work**

---

1. On-site engineering analysis

- Research and review available plans and information, prepare cost estimates, schematics, and expected demand for utility services, including wastewater, soils, grading, drainage, drinking water, irrigation water, electricity and telephone expected to be generated by the proposed project.

2. Off-site engineering analysis

- Research and review available plans and information on existing off-site solid waste disposal and major storm drainage and utility systems; complete cumulative demand of proposed development; prepare preliminary engineering report to include information on storm drainage system; sanitary sewer system; water system; electric and communication systems; and solid waste disposal.

3. Shoreline survey

- A shoreline survey will be submitted during the grading or other construction permit stage.

## **Entomological Resources**

### **Scope of Work**

---

1. Conduct a literature review and prepare a summary of extant entomological knowledge pertinent to the proposed golf course.
2. Conduct an entomological survey of the project site with particular emphasis on determining the presence/absence of endangered insects, mapping their location and indicate the approximate boundaries of their habitat.
3. Analyze the probable impacts of a golf course on the project site as it relates to entomological resources and propose possible mitigation if appropriate.

## **Faunal (Bird and Mammal) Survey**

### **Scope of Work**

---

1. Conduct reconnaissance survey of the properties to assess visual and auditory census data and examine all habitat types present on each property.
2. Review pertinent published and unpublished information of the fauna in the area, giving special attention to any native species that may occur in the area, especially any that are considered endangered or threatened.
3. Describe existing conditions, impacts and recommend mitigative measures, as appropriate.

## Groundwater Impact Study

### Scope of Work

---

1. Review all literature relative to the Hawaii Kai area, particularly with respect to groundwater and its development and protection.
2. Study and describe the hydrology and geology of the area and determine the rate, volume, direction of groundwater flow, and permeability of the geological formations.
3. Ascertain environmental effects of the development on the aquifer and stream flows, the possible effects of construction activities, and develop mitigative measures where necessary.
4. For the golf course, work with a marine biologist and an environmental chemist to analyze the existing quality of and potential impacts to the groundwater and ocean water resources in the vicinity of the proposed golf course. Recommend mitigative measures as appropriate.

**Marine Environmental Survey and Nearshore Marine Community Structure**  
**Scope of Work**

---

1. Identify a quantitative baseline set of water chemistry parameters that delineate the present environmental conditions of the nearshore ocean offshore of the proposed golf course.
2. Conduct a survey of the nearshore biological community structure, which defines the abundance, diversity, and distribution of stony and soft corals, motile benthos such as echinoderms, and pelagic species such as reef fish.
3. Working with an environmental chemist and hydrogeologist, predict the impacts of the application of biocides and fertilizers to the proposed golf course on the nearshore marine environment.
4. Identify and discuss areas of potential environmental problems or concerns and propose possible mitigation.

## Market Assessment

### Scope of Work

---

1. Provide Oahu and Hawaii Kai economic and demographic overview, describing the historical and projected factors likely to affect the demand for housing, retail areas, golf and other uses.
2. Residential - Update and summarize the existing and future housing demand and supply in East Oahu and project anticipated market performance for single-family and multifamily housing at the subject sites, in terms of: (1) overall sales absorption rate; (2) range of sales prices; (3) target market mix.
3. Commercial/Retail - Review the market performance of selected retail and office developments in terms of: (1) competitive existing and planned projects; (2) purchaser demand indicators - (occupancy rates, annual absorption rates of new space, rental rates, user profile and motivation for choosing Hawaii Kai projects etc.)
4. Industrial - Review the market performance of selected industrial developments in terms of competitive existing and planned projects and purchaser demand indicators (similar to that described above for commercial uses).
5. Resort/Inn - Review the market needs for transient accommodations in Hawaii Kai and assess the market performance of potential selected alternatives.
6. Recreational/Golf - Provide an overview of the potential for an 18-hole course in Hawaii Kai that includes: (1) the market performance of selected comparable golf courses; and (2) the overall demand and supply for a golf course in Hawaii Kai.

## **Noise Assessment Study**

### **Scope Of Work**

---

1. Conduct noise measurements, make visual and aural observations, examine maps, and identify noise sensitive areas to assess existing acoustical environment.
2. Identify applicable local (DOH and LUO) and federal (EPA, DOT, HUD, etc.) noise regulations, standards and guidelines.
3. Assess probable noise impacts (with and without the project) related to traffic and other future noise sources associated with the project e.g., construction, air conditioners, condensers, pumps, etc., using DOH noise limits at noise sensitive areas.
4. Develop recommended noise mitigation, if warranted.



**Planning Report**  
**Scope of Work**

---

1. Provide a background and historical perspective.
2. Describe area-wide and site specific planning objectives.
3. Identify existing site conditions and development constraints.
4. Prepare conceptual site plans.
5. Identify and mitigate visual and community design impacts.
6. Develop planning and design guidelines relative to heights, setbacks, materials, colors, and landscaping.
7. Estimate development timetable and cost.
8. Assess the project's conformance to State/City planning policies.
9. Identify and assess possible alternative land uses.

## **Social Impact Assessment**

### **Scope of Work**

---

1. Compile, research and conduct quantitative analyses on archival and census data, prior surveys and studies on social issues in Hawaii Kai.
2. Contact agencies providing public services or facilities in the area.
3. Conduct a community assets/needs planning survey as appropriate.
4. Conduct interviews with a representative sampling of persons from the general community, including elected officials, community leaders, business leaders and others.
5. Analyze community concerns and describe mitigative measures as appropriate.

**Transportation Impact Study**  
**Scope of Work**

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1. Conduct turning movement counts and evaluate existing weekend traffic conditions along key roadway sections.
2. Estimate the number of parcel-generated vehicle trips and distribute and assign the vehicle trips to the planned future roadway network in the East Honolulu area.
3. Analyze future weekday and weekend peak hour traffic conditions at key intersections, typical highway sections and project access connections.
4. Identify potential roadway problem locations and proposed roadway improvements, as appropriate .
5. Develop conceptual layouts for the proposed improvements.
6. Assess the potential for travel demand management actions and the effects upon public transit services.
7. Prepare a final traffic assignment and roadway analysis with the recommended roadway improvements and demand management actions.

**Visual Assessment  
Scope of Work**

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1. Define the visual framework of Hawaii Kai.
  - Identify, describe and classify known visual resources and other visual features.
  - Research existing governmental policies, guidelines and regulations which pertain to public views, visual resources and visual impacts.
  - Identify the primary viewing points from which significant visual impacts may occur.
2. Evaluate the projects in terms of its impact on the visual framework.
3. Develop planning and design guidelines to mitigate and/or reduce visual impacts.

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**APPENDIX B**

**Court Settlement Procedural Order**

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FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

1996 JAN 26 PH 3:36

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nka KRDC, INC. and KAISER HAWAII  
KAI DEVELOPMENT CO., aka HAWAII  
KAI DEVELOPMENT CO. through its  
successor MAUNALUA ASSOCIATES, INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

KAISER DEVELOPMENT COMPANY, ) a/k/a/ KACOR DEVELOPMENT ) COMPANY, a California ) corporation, KAISER HAWAII KAI ) DEVELOPMENT CO., a Nevada ) corporation, ) Plaintiffs, ) vs. ) CITY AND COUNTY OF HONOLULU, a ) municipal corporation, ) Defendant. )	CIVIL NO. 88-3767-12 (Other Civil Action)  STIPULATION REGARDING PRETRIAL SETTLEMENT PROCEDURE AND ORDER
<hr/>	
MATSUO TAKABUKI, MYRON B. ) THOMPSON, WILLIAM S. ) RICHARDSON, and HENRY H. ) PETERS, JR., Trustees of the ) Kamehameha Schools/Bishop ) Estate, ) Plaintiffs, ) vs. )	CIVIL NO. 89-0357-02 (Other Civil Action)

CITY AND COUNTY OF HONOLULU, a)  
municipal corporation, )

Defendant. )

BEDFORD DEVELOPMENT COMPANY )  
fka KAISER DEVELOPMENT )  
COMPANY, and HAWAII KAI )  
DEVELOPMENT COMPANY fka KAISER )  
HAWAII KAI DEVELOPMENT )  
COMPANY, )

Plaintiffs, )

vs. )

CITY AND COUNTY OF HONOLULU, a)  
municipal corporation, )

Defendant. )

MATSUO TAKABUKI, MYRON B. )  
THOMPSON, WILLIAM S. )  
RICHARDSON, and HENRY H. )  
PETERS, JR., Trustees Under )  
the Will and of the Estate of )  
Bernice Pauahi Bishop, )  
Deceased, )

Plaintiffs, )

vs. )

CITY AND COUNTY OF HONOLULU, a)  
municipal corporation, )

Defendant. )

CIVIL NO. 89-3539-11  
(Other Civil Action)

CIVIL NO. 89-3540-11  
(Other Civil Action)

**STIPULATION REGARDING  
PRETRIAL SETTLEMENT PROCEDURE AND ORDER**

On October 3, 1995, and jointly with the Honorable  
Barry M. Kurren, United States Magistrate Judge, in the United  
States District Court for the District of Hawaii, on October 6,

11 and 13, 1995 and January 26, 1996, this Court convened pretrial settlement conferences with respect to the following eight state and federal civil cases:

1. Richard Lyman, Jr., et al. v. City and County of Honolulu, Civil No. 84-0448, U.S. District Court for the District of Hawaii;
2. Kaiser Development Company aka Kacor Development Company, et al. v. City and County of Honolulu, Civil No. 84-0388, U.S. District Court for the District of Hawaii;
3. Richard Lyman, Jr., et al. v. City and County of Honolulu, Civil No. 84-0449, U.S. District Court for the District of Hawaii;
4. Matsuo Takabuki, et al. v. City and County of Honolulu, Civil No. 89-0357-02, First Circuit Court, State of Hawaii;
5. Kaiser Development Company, et al. v. City and County of Honolulu, Civil No. 84-0389, U.S. District Court for the District of Hawaii;
6. Kaiser Development Company aka Kacor Development Company, et al. v. City and County of Honolulu, Civil No. 88-3767-12, First Circuit Court, State of Hawaii;
7. Matsuo Takabuki, et al. v. City and County of Honolulu, Civil No. 89-3540-11, First Circuit Court, State of Hawaii; and



8. Bedford Development Company fka Kaiser Development Company, et al. v. City and County of Honolulu, Civil No. 89-3539-11, First Circuit Court, State of Hawaii (collectively "Lawsuits"; Civil Nos. 84-0388, 84-0389, 84-0448 and 84-0449 collectively "Federal Cases", and Civil Nos. 88-3767-12, 89-0357-02, 88-3539-11 and 89-3540-11 collectively "State Cases").

Since the filing of these lawsuits the names of some of the parties have changed and some interests have been divided. At the settlement conferences the parties were represented as follows: Kaiser Development Company, aka Kacor Development Company and Bedford Development Company, nka KRDC, Inc., and Kaiser Hawaii Development Company, aka Hawaii Kai Development Company, through its successor in interest, Maunalua Associates, Inc. ("Maunalua"), was represented by Kenneth R. Kupchak and Jennifer Z. Brooks; Richard Lyman, Jr., Matuso Takabuki, Myron B. Thompson, William S. Richardson, and Henry H. Peters, Jr., Trustees of the Kamehameha Schools Bishop Estate; nka Oswald Kofoad Stender, Richard Sung Hong Wong, Marion Mae Lokelani Lindsey, Henry H. Peters, Jr., and Gerard Aulana Jarvis, Trustees of the Kamehameha Schools Bishop Estate ("KSBE") were represented by C. Michael Hare and Gail Tamashiro; Kaiser Aluminum & Chemical Corporation ("KACC"), a real party in interest in Civil Nos. 84-0388, 84-0389, and 88-3767-12, was represented by James W. Boyle (KSBE, KACC and

Maunaloa, collectively "Owners"); and the City and County of Honolulu ("City") was represented by Jane H. Howell.

Pursuant to the consent of all parties, the State Cases have been referred to the undersigned Judge for settlement purposes. Pursuant to the consent and stipulation of all parties, the Federal Cases have likewise been consolidated and referred to Magistrate Judge Kurren for settlement purposes, by Consent to Exercise of Jurisdiction by a United States Magistrate Judge and Order of Reference, filed October 19, 1995.

As these numerous cases reflect and, for the purposes of this Order only, the parties have provided the following representations:

Since the early 1980s East Honolulu has been the site of numerous complex land use controversies between the parties. Two of these have reached the Hawaii Supreme Court and one the United States Supreme Court. In its efforts to cope with these complex and interwoven controversies, City has often had to seek assistance from independent specialty consultants, with national reputations in land use controversies and various land valuation consultants. The cost to the taxpayer has been enormous, already exceeding \$1,500,000.00 (One Million Five Hundred Thousand Dollars), not including the time-consuming and disruptive effect of these controversies on key City personnel. The almost constant need to devote significant City attention to legal dispute resolution, by its nature a backward looking

process, has diverted and diluted City attention from ongoing and future public needs.

Since the summer of 1989, by mutual agreement and at the request of the City Council, the parties to these cases have been actively seeking alternative methods of resolving not only these disputes but also potential future Hawaii Kai land use controversies. (For purpose of this Order, "Hawaii Kai" shall encompass the area from Kuliouou to Makapuu Point on the Island of Oahu.) After approximately six years of extensive joint effort, with significant oversight by and cooperation from the state and federal courts, a comprehensive settlement procedural order is believed necessary in order to resolve the existing and as many of the potential controversies as are mutually deemed practicable.

Through the use of a special focused comprehensive land use review process involving the joint development of information together with widespread public notice and extensive public review, the parties are contemplating a twenty year period of planning certainty for the portions of Hawaii Kai covered by the settlement. The end result may need to be policed by both a court consent decree and a City ordinance.

The downside risks of litigation -- millions of dollars in fees and costs and untold hours of disruption time on each side, as well as the specter of a large resort at Queen's Beach, houses at Parcels "5" and "6", or the payment by

City of anywhere from \$20 million to \$500+ million in dollars -  
- can be avoided.

While City attorneys are fairly confident that City will prevail with respect to retaining Queen's Beach in a P-2 zone, this hope was to a significant degree predicated upon a golf course being permitted to be built, essentially along the lines proposed in the exhibits attached to this Order. If a golf course were not allowed, there is a significant risk that the Owners' claims of resort use dating back to the early 1980s would be revived.

Parcels 5 and 6 present quite a different risk for City. In this case the last discretionary permits not only were obtained but also had been tested through the appeal process raising a significant probability of vesting as well as inverse condemnation. Based upon brisk home sales at the time in Queensgate, a somewhat less desirable location, up to a \$100 million judgment against City, together with interest accruing on that amount since 1989, could be a worrisome possibility.

Following approximately a three-quarter year review, the City Council's Policy Committee granted its approval and on October 11, 1995, the City Council adopted a report of this Committee supporting a conceptual procedure developed over a six year period between City's Corporation Counsel and the Owners aimed at providing extensive public involvement in the settlement of the Lawsuits.

Under the settlement concept, the Owners agree to be bound to settle these Lawsuits, while City undertakes an extensive approximately ten month public land use review of designated parcels in Hawaii Kai, involving approximately a dozen opportunities for public input. If at the conclusion of this process City finds the proposed land uses acceptable, the City avoids the above downside risks and essentially achieves much of what it is seeking: (a) P-2 zoning for both Queen's Beach and Parcels 5 and 6; (b) its acquisition in fee at no cost of Parcels 5 and 6, approximately 30 acres of beach view property for public park or non-commercial open space purposes; (c) the connection of Hawaii Kai Drive in Kamilonui; and (d) a mutual twenty-year covenant of no further density changes for the affected parcels. The City has no obligation to approve the proposed land uses. If it does not, all parties are free to resume the Lawsuits.

On the other hand, the Owners are provided an opportunity to achieve a return on what they consider to be their investment backed expectations through the designated densities on other parcels without further risk of exactions, conditions or community benefit requirements to the extent not explicitly stated. As the existence of a market and land values are difficult to determine over a twenty year period, the process is predicated upon compromise, uncertainty, and opportunity. It could, however, end the disputes on a little

or no cost basis and may provide comfort to the Hawaii Kai community as to where it will be in twenty years.

Based upon the foregoing, the court's own ongoing monitoring of the progress of settlement negotiations the past six years, a review of *Metropolitan Housing Development Corporation v. Village of Arlington Heights*, 373 F. Supp. 208 (N.D. Ill. 1974), rev'd, 517 F.2d 409 (7th Cir. 1975), rev'd and remanded, 429 U.S. 252 (1977), on remand, 558 F.2d 1283 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978), on remand, 469 F. Supp. 836 (N.D. Ill. 1979), and aff'd, 616 F.2d 1006 (7th Cir. 1980); *Mesalic v. Slayton*, 689 F. Supp. 416 (D.N.J. 1988); and *The Use of Consent Decrees in Settling Land Use and Environmental Disputes*, D. L. Callies, 21 Stetson L. Rev. 871 (1992), and with the full concurrence of all parties:

THIS COURT ORDERS AS FOLLOWS:

1. The State Cases are hereby ordered to be consolidated under this Court's jurisdiction for settlement purposes only.
2. Until further order of this Court, all non-settlement activity in each State Case shall continue to be stayed, with all rights preserved in each, from and after the filing of each complaint.
3. All parties shall diligently pursue the settlement procedures set forth in that certain Pretrial Settlement Procedure Order, entered concurrently herewith in the Federal Cases by Magistrate Judge Kurren, a copy of which

is attached hereto and incorporated herein by reference ("Federal Procedure Order"). The successful completion of the process contained in the Federal Procedure Order will result in the dismissal with prejudice of the State Cases as well as the Federal Cases.

4. When and if a Settlement Order and Consent is entered in the Federal Cases ("Settlement Order") and becomes final and non-appealable, the State Cases shall be dismissed with prejudice without further order of this Court. The United States District Court for the District of Hawaii shall thereafter have sole jurisdiction to enforce the Settlement Order.

5. The stay herein shall continue until such time as the Federal Procedure Order terminates or the State Cases are dismissed as contemplated above.

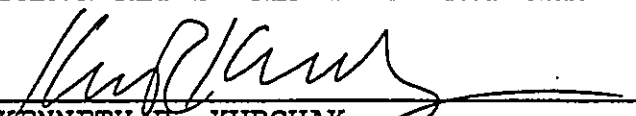
DATED: Honolulu, Hawaii, January 26, 1996.

Colleen K. Hirai  
COLLEEN K. HIRAI  
Judge of the above-entitled Court

-----  
Kaiser Development Company, et al. v. City and County of Honolulu, Civil No. 88-3767-12; Matsuo Takabuki, et al. v. City and County of Honolulu, Civil Nos. 89-0357-02 & 89-0340-11; Beford Development Company et al. v. City and County of Honolulu, Civil no. 89-3539-11, First Circuit Court, State of Hawaii - STIPULATION REGARDING PRETRIAL SETTLEMENT PROCEDURE AND ORDER

All parties, through their respective counsel, HEREBY  
ACKNOWLEDGE THAT THEY HAVE STIPULATED AND CONSENT TO THE  
FOREGOING ORDER.

DAMON KEY BOCKEN LEONG KUPCHAK


  
KENNETH R. KUPCHAK

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KAI DEVELOPMENT CO. aka HAWAII  
KAI DEVELOPMENT CO. through its  
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INC.

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BISHOP, DECEASED

  
JANE H. HOWELL  
Deputy Attorney General

Attorney for Defendant  
CITY AND COUNTY OF HONOLULU

-----  
Kaiser Development Company, et al. v. City and County of  
Honolulu, Civil No. 88-3767-12; Matsuo Takabuki, et al. v. City  
and County of Honolulu, Civil Nos. 89-0357-02 & 89-0340-11;  
Beford Development Company et al. v. City and County of  
Honolulu, Civil no. 89-3539-11, First Circuit Court, State of  
Hawaii - STIPULATION REGARDING PRETRIAL SETTLEMENT PROCEDURE  
and ORDER



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HAWAII KAI DEVELOPMENT CO.,  
through MAUNALUA ASSOCIATES INC.  
its successor

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

FJAN 26 1995  
at 3 o'clock and 1/2 p.m. = M.  
WALTER A. Y. H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

KAISER DEVELOPMENT COMPANY, )	CIVIL NO. 84-0388
also known as KACOR )	(Other Civil Action)
DEVELOPMENT COMPANY, a )	
California corporation, KAISER )	PRETRIAL SETTLEMENT PROCEDURE
HAWAII KAI DEVELOPMENT CO., a )	ORDER; EXHIBITS "A"-"D"
Nevada corporation, )	
Plaintiffs, )	
and )	
OSWALD KOFOAD STENDER, RICHARD )	
SUNG HONG WONG, MYRON B. )	
THOMPSON, MARION MAE LOKELANI )	
LINDSEY and HENRY H. PETERS, )	
Trustees of the Kamehameha )	
Schools/Bishop Estate, )	
Plaintiffs/ )	
Intervenors, )	
vs. )	
CITY AND COUNTY OF HONOLULU, a )	
municipal corporation, )	
Defendant. )	

KAISER DEVELOPMENT COMPANY, )  
also known as KACOR )  
DEVELOPMENT COMPANY, a )  
California corporation, KAISER )  
HAWAII KAI DEVELOPMENT CO., a )  
Nevada corporation, )

Plaintiffs, )

and )

OSWALD KOFOAD STENDER, RICHARD )  
SUNG HONG WONG, MYRON B. )  
THOMPSON, MARION MAE LOKELANI )  
LINDSEY and HENRY H. PETERS, )  
Trustees of the Kamehameha )  
Schools/Bishop Estate, )

Plaintiffs/ )  
Intervenors, )

vs. )

CITY AND COUNTY OF HONOLULU, a )  
municipal corporation, )

Defendant. )

CIVIL NO. 84-0389

OSWALD KOFOAD STENDER, RICHARD )  
SUNG HONG WONG, MYRON B. )  
THOMPSON, MARION MAE LOKELANI )  
LINDSEY and HENRY H. PETERS, )  
Trustees of the Kamehameha )  
Schools/Bishop Estate, )

Plaintiffs, )

and )

KAISER DEVELOPMENT COMPANY, )  
a/k/a KACOR DEVELOPMENT )  
COMPANY, a California )  
corporation, KAISER HAWAII KAI )  
DEVELOPMENT CO., a Nevada )  
corporation, )

Plaintiffs/ )  
Intervenors, )

CIVIL NO. 84-0448 SPK

vs. )  
CITY AND COUNTY OF HONOLULU, a )  
municipal corporation, )  
Defendant. )

OSWALD KOFOAD STENDER, RICHARD )  
SUNG HONG WONG, MYRON B. )  
THOMPSON, MARION MAE LOKELANI )  
LINDSEY and HENRY H. PETERS, )  
Trustees of the Kamehameha )  
Schools/Bishop Estate, )  
Plaintiffs, )

CIVIL NO. 84-0449 SPK

vs. )  
CITY AND COUNTY OF HONOLULU, a )  
municipal corporation, )  
Defendant. )

PRETRIAL SETTLEMENT PROCEDURE ORDER

On October 4, 1995, and jointly with the Honorable Colleen K. Hirai, Judge of the Twentieth Division of the First Circuit Court of the State of Hawaii, on October 6 and 11, 1995 and January 26, 1996, this Court convened pretrial settlement conferences with respect to the following eight state and federal civil cases:

1. Richard Lyman, Jr., et al. v. City and County of Honolulu, Civil No. 84-0448, U.S. District Court for the District of Hawaii;
2. Kaiser Development Company aka Kacor Development Company, et al. v. City and County of Honolulu,

Civil No. 84-0388, U.S. District Court for the District of Hawaii;

3. Richard Lyman, Jr., et al. v. City and County of Honolulu, Civil No. 84-0449, U.S. District Court for the District of Hawaii;
4. Matsuo Takabuki, et al. v. City and County of Honolulu, Civil No. 89-0357-02, First Circuit Court, State of Hawaii;
5. Kaiser Development Company, et al. v. City and County of Honolulu, Civil No. 84-0389, U.S. District Court for the District of Hawaii;
6. Kaiser Development Company aka Kacor Development Company, et al. v. City and County of Honolulu, Civil No. 88-3767-12, First Circuit Court, State of Hawaii;
7. Matsuo Takabuki, et al. v. City and County of Honolulu, Civil No. 89-3540-11, First Circuit Court, State of Hawaii; and
8. Bedford Development Company fka Kaiser Development Company, et al. v. City and County of Honolulu, Civil No. 89-3539-11, First Circuit Court, State of Hawaii (collectively "Lawsuits"; Civil Nos. 84-0388, 84-0389, 84-0448 and 84-0449 collectively "Federal Cases", and Civil Nos.

88-3767-12, 89-0357-02, 88-3539-11 and 89-3540-11 collectively "State Cases").

Since the filing of these lawsuits the names of some of the parties have changed and some interests have been divided. At the settlement conferences the parties were represented as follows: Kaiser Development Company, aka Kacor Development Company and Bedford Development Company, nka KRDC, Inc., and Kaiser Hawaii Development Company, aka Hawaii Kai Development Company, through its successor in interest, Maunalua Associates, Inc. ("Maunalua"), were represented by Kenneth R. Kupchak and Jennifer Z. Brooks; Richard Lyman, Jr., Matuso Takabuki, Myron B. Thompson, William S. Richardson, and Henry H. Peters, Jr., Trustees of the Kamehameha Schools Bishop Estate nka Oswald Kofoad Stender, Richard Sung Hong Wong, Marion Mae Lokelani Lindsey, Henry H. Peters, Jr., and Gerard Aulana Jarvis, Trustees of the Kamehameha Schools Bishop Estate ("KSBE") were represented by C. Michael Hare and Gail Tamashiro; Kaiser Aluminum & Chemical Corporation ("KACC"), a real party in interest in Civil Nos. 84-0388, 84-0389, and 88-3767-12, was represented by James W. Boyle (KSBE, KACC and HKDC, collectively "Owners"); and the City and County of Honolulu ("City") was represented by Jane H. Howell.

Pursuant to the consent of all parties, the Federal Cases have been referred by Order filed October 19, 1995 to the undersigned Magistrate Judge for settlement purposes pursuant

to 28 U.S.C. 636(c) and Federal Rule of Civil Procedure 73. Pursuant to the consent and stipulation of all parties, the State Cases have likewise been consolidated and referred to Judge Hirai for settlement purposes.

As these numerous cases reflect and, for the purposes of this Order only, this Court takes judicial notice of the following facts.

Since the early 1980s East Honolulu has been the site of numerous complex land use controversies between the parties. Two of these have reached the Hawaii Supreme Court and one the United States Supreme Court. In its efforts to cope with these complex and interwoven controversies, City has often had to seek assistance from independent specialty consultants, with national reputations in land use controversies and various land valuation consultants. The cost to the taxpayer has been enormous, already exceeding \$1,500,000.00 (One Million Five Hundred Thousand Dollars), not including the time-consuming and disruptive effect of these controversies on key City personnel. The almost constant need to devote significant City attention to legal dispute resolution, by its nature a backward looking process, has diverted and diluted City attention from ongoing and future public needs.

Since the summer of 1989, by mutual agreement and at the request of the City Council, the parties to these cases have been actively seeking alternative methods of resolving not

only these disputes but also potential future Hawaii Kai land use controversies. (For purpose of this Order and process, "Hawaii Kai" shall encompass the area from Kuliouou to Makapuu Point on the Island of Oahu.) After approximately six years of extensive joint effort, with significant oversight by and cooperation from the state and federal courts, a comprehensive settlement procedural order is believed necessary in order to resolve the existing and as many of the potential controversies as are mutually deemed practicable.

Through the use of a special focused comprehensive land use review process involving the joint development of information together with widespread public notice and extensive public review, the parties are contemplating a twenty-year period of planning certainty for the portions of Hawaii Kai covered by the settlement. The end result may need to be policed by both a court consent decree and a City ordinance.

The downside risks of litigation -- millions of dollars in fees and costs and untold hours of disruption time on each side, as well as the specter of a large resort at Queen's Beach, houses on parcels known as "5" and "6," or the payment by the City of anywhere from \$20 million to \$500+ million in dollars -- can be avoided.

While City attorneys are fairly confident that City will prevail with respect to retaining Queen's Beach in a P-2

zone, this hope was to a significant degree predicated upon a golf course being permitted to be built, essentially along the lines proposed in the exhibits attached to this Order. If a golf course were not allowed, there is a significant risk that the Owners' claims of resort use dating back to the early 1980s would be revived.

Parcels 5 and 6 present quite a different risk for the City. In this case the last discretionary permits not only were obtained but also had been tested through the appeal process raising a significant probability of vesting as well as inverse condemnation. Based upon brisk home sales at the time in Queensgate, a somewhat less desirable location, up to a \$100 million judgment against City, together with interest accruing on that amount since 1989, could be a worrisome possibility.

Following approximately a three-quarter year review, the City Council's Policy Committee granted its approval and on October 11, 1995, the City Council adopted a report of this Committee supporting a conceptual procedure developed over a six year period between the City's Corporation Counsel and the Owners aimed at providing extensive public involvement in the settlement of the Lawsuits.

Under the settlement concept, the Owners agree to be bound to settle these Lawsuits, while City undertakes an extensive approximately ten month or more public land use review of designated parcels in Hawaii Kai, involving



approximately a dozen opportunities for public input. If at the conclusion of this process City finds the proposed land uses acceptable, City avoids the above downside risks and essentially achieves much of what it is seeking: (a) P-2 zoning for both Queen's Beach and parcels 5 and 6; (b) its acquisition in fee at no cost of parcels 5 and 6, approximately 30 acres of beach view property for public park or non-commercial open space purposes; (c) the connection of Hawaii Kai Drive in Kamilonui, and (d) a mutual twenty-year covenant of no further density changes for the affected parcels. City has no obligation to approve the proposed land uses. If it does not, all parties are free to resume the Lawsuits.

On the other hand, the Owners are provided an opportunity to achieve a return on what they consider to be their investment backed expectations through the designated densities on other parcels without further risk of exactions, conditions, or community benefit requirements to the extent not explicitly stated. As the existence of a market and land values are difficult to determine over a twenty year period, the process is predicated upon compromise, uncertainty and opportunity. It could, however, end the disputes on a little or no cost basis and may provide comfort to the Hawaii Kai community as to where it will be in twenty years.

Based upon the foregoing, the court's own ongoing monitoring of the progress of settlement negotiations the past

six years, a review of *Metropolitan Housing Development Corporation v. Village of Arlington Heights*, 373 F. Supp. 208 (N.D. Ill. 1974), rev'd, 517 F.2d 409 (7th Cir. 1975), rev'd and remanded, 429 U.S. 252 (1977), on remand, 558 F.2d 1283 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978), on remand, 469 F. Supp. 836 (N.D. Ill. 1979), and aff'd, 616 F.2d 1006 (7th Cir. 1980); *Mesalic v. Slayton*, 689 F. Supp. 416 (D.N.J. 1988); and *The Use of Consent Decrees in Settling Land Use and Environmental Disputes*, D. L. Callies, 21 Stetson L. Rev. 871 (1992), and with the full concurrence of all parties:

THIS COURT ORDERS AS FOLLOWS:

1. The Federal Cases are hereby ordered to be consolidated under this Court's jurisdiction for settlement purposes only.
2. Until further order of this Court, all non-settlement activity in each Federal Case shall continue to be stayed, with all rights preserved in each, from and after the filing of each complaint.<sup>1</sup>
3. City shall continue to extend all stockpiling permits previously issued with respect to any of the parcels

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<sup>1</sup> Concurrently with the entry of this Order, Judge Hirai has consolidated all State Cases for settlement purposes and stayed those actions pending the completion of the process ordered hereby. The successful completion of this process will likewise result in the dismissal with prejudice of the State Cases as well as the Federal Cases.

involved in the settlement for 12 months following the termination of this Order, unless otherwise provided herein.

4. In settlement of the Lawsuits, City will propose and process, pursuant to this Order's procedure, the Ordinance attached hereto as Exhibit A, which contains not only the planning, zoning and permitted actions necessary to authorize the land uses proposed under the settlement, but also contains all of the remaining settlement conditions not otherwise set forth herein and in Exhibit B hereto. If the Exhibit A Ordinance is adopted by City, as set forth in paragraph 7 below, the Owners shall be obligated to dismiss the Lawsuits as provided hereinbelow.

5. In aid of City's proposal and processing, William E. Wanket, Inc. ("Compiler") shall coordinate, with such assistance as it deems appropriate from AM Partners, Inc., PBR Hawaii and Helber, Hastert & Fee Planners, the compilation of the information set forth in Appendix A ("Information") to Exhibit C hereto in the form of an environmental impact report at the expense of Owners. All parties shall cooperate in the preparation of the Information.

a. Following the entry of this Order, City, through its corporation counsel and with the aid of the Compiler and over twenty planning, engineering, scientific, economic and social discipline consultants, shall promptly deliver a document substantially in the form of Exhibit C with

the Hawaii Office of Environmental Quality Control ("OEQC") and ask that it be treated and notice thereof be published as if it were an environmental impact statement preparation notice ("Prep Notice"). If OEQC is unable or unwilling to accommodate this procedure, the parties will mail a notice whose content shall be similar to that which would appear in the OEQC Bulletin to substantially the same audience that normally is sent the OEQC Bulletin at the expense of the Owners ("Prep Notice Announcement"). Concurrently with the entry of this Order City shall commence its administrative review of the land uses proposed in Exhibit A ("Land Uses") including, if City Council shall elect, a site visit following the dissemination of the Prep Notice Announcement and two public workshops conducted by the City Council, one each shortly after the dissemination of a Prep Notice Announcement and DEIR, defined below, being respectively procedural and substantive in nature; provided that City's review shall also conform with this Order.

b. Upon compilation of the Information, but not earlier than 30 days after the Prep Notice Announcement is disseminated, the parties shall cause the Compiler to file and circulate the Information substantially as and in the manner of a draft environmental impact statement (the "DEIR").

c. Following receipt of public comment regarding the DEIR, including the review of all Land Uses and Information by appropriate government agencies, which City

shall cause to occur within 45 days after the filing of the DEIR with the City's Planning Department ("PD") (any agency whose response is not received within this time frame shall be deemed to have no comment). PD shall have an additional 15 days thereafter to comment. The parties shall thereafter cause the Compiler to prepare and file a final environmental impact report ("FEIR"), substantially in the manner of a final environmental impact statement, with PD and if OEQC accepted and published the Prep Notice with OEQC, and PD shall act as the accepting agency.

d. If the PD shall fail to accept the FEIR within 45 days after it has been filed, this Order shall terminate within 15 days thereafter, unless the Owners through counsel for Maunalua elect to address the reasons given by PD for its non-acceptance and thereafter amend the FEIR ("Amended FEIR") in response thereto or the parties agree or this Court orders upon good cause shown, otherwise.

e. If the Owners elect to address PD's reasons for its non-acceptance of the FEIR, and if PD shall fail to accept the Amended FEIR within 15 days of the filing of the Amended FEIR, this Order shall terminate within 15 days thereafter, unless the parties agree or this Court, upon good cause shown, orders otherwise.

f. If PD accepts either the FEIR or Amended FEIR, PD and the Department of Land Utilization ("DLU") shall

make their recommendation to the City Council and Planning Commission ("PC") regarding the Land Uses within 56 days of the acceptance. Otherwise, PD and DLU will be deemed to approve the Land Uses.

6. The parties shall provide notice by U.S. mail, first class, of both these procedures and opportunities to be heard, in substantially the form of the Prep Notice, Exhibit C, to those classes of persons, agencies and entities set forth in Exhibit C and from time to time, provide such other general public notice substantially as may be required by law.

7. Unless otherwise ordered by this Court or by mutual agreement of the parties, the following review procedure shall be applicable:

a. Within 76 days of acceptance of FEIR or Amended FEIR by PD, all neighborhood boards ("NB"), wishing to comment shall submit their respective comments to the City Council and PC regarding all aspects of the proposed settlement, otherwise they will be deemed to have no comment.

b. Within 80 days of the acceptance of FEIR or Amended FEIR by PD, the PC shall complete a public hearing regarding the Land Uses, and within 14 days thereafter the PC shall complete any action it deems appropriate and report to the City Council, otherwise it will be deemed to approve the Land Uses.

c. Within 108 days of the acceptance of the FEIR or Amended FEIR by PD or such other date as agreed to by the parties, City Council shall consider on first reading and assignment to the Zoning Committee ("Committee") a bill for an ordinance approving settlement of the consolidated cases substantially in the form of Exhibit A, or such other form as the parties may, from time to time, approve ("Bill"). If said Bill shall fail to pass on first reading, this Order shall terminate within 7 days thereafter, unless the parties agree or this Court orders, upon good cause shown, otherwise.

d. Within 14 days after the passage of the Bill on the first reading, the Committee will consider the Bill and report to City Council, otherwise the Committee will be deemed to have no objection to the proposed settlement.

e. Within 28 days after the passage of the Bill on first reading, City Council shall hold its own public hearing ("PH") on the Bill.

f. At the close of the PH but no later than 28 days after the passage of the Bill on first reading, City Council shall consider the Bill on second reading. If said Bill shall fail to pass on second reading, this Order shall terminate within 7 days thereafter, unless the parties agree or this Court orders, upon good cause shown, otherwise.

g. Within 42 days after the passage of the Bill on first reading, the Committee may again consider the

Bill and report to City Council, otherwise the Committee will be deemed to have no objection to the proposed settlement.

h. Within 56 days after the passage of the Bill on first reading, City Council will consider the Bill on third reading. If said Bill shall fail to pass on third reading, this Order shall terminate within 7 days thereafter, unless the parties agree otherwise. Five votes shall be required for passage of the Bill.

i. If the Bill passes third reading, it shall be submitted to the Mayor for action in the ordinary course. If the Bill shall be vetoed by the Mayor and such veto is not overridden by the City Council within the time required by law therefor, this Order shall terminate within 7 days thereafter, unless the parties agree otherwise. Six votes shall be required to override a mayoral veto.

8. If the Bill, which shall be deemed to include the last discretionary permit for the development of the land subject hereto, becomes an ordinance, within 28 days after that date this Court, following a hearing to verify the foregoing, shall thereupon enter a Settlement Order and Consent Decree, substantially in the form attached as Exhibit B or in such other form as the parties agree. (Attached hereto as Exhibit D is a Settlement Procedure Order Timeline, schematically depicting the chronology outlined by this Order.) If such Settlement Order and Consent Decree are not entered when and as



contemplated in this section, this Order shall thereupon terminate unless the parties agree or this Court orders, upon good cause shown, otherwise.

9. When and if the Settlement Order and Consent Decree becomes final and non-appealable, the parties shall concurrently, with Title Guaranty Escrow Services, Inc. acting as escrow agent ("Escrow"), to the extent agreed by the parties or ordered by this Court, cause the following to occur:

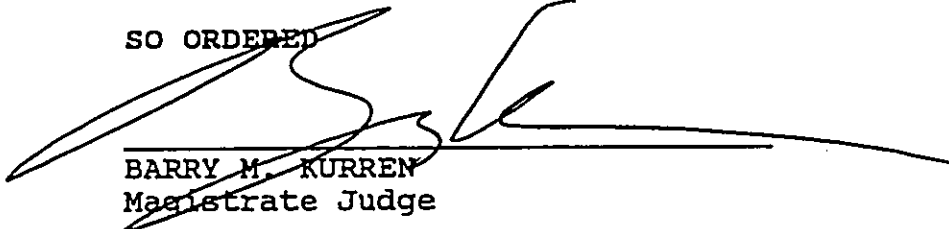
- a. Dismiss each of the Lawsuits with prejudice;
- b. Convey parcels 5 and 6 to City in fee simple for public park or non-commercial open space purposes;
- c. Record a reservation against the lands under the existing Wailua Street and under the proposed realignment of Wailua Street, as shown on Exhibit FF of the Ordinance attached as Exhibit A hereto, for future exchange in conjunction with any public funding and construction of said realignment.

10. This Order is without prejudice to either KACC and/or KSBE filing and processing separate applications for land use entitlements to obtain approval for a golf course at Queen's Beach concurrently and during the settlement process

period contemplated by this Order, which applications themselves would be without prejudice to such settlement process.

DATED: Honolulu, Hawaii, January 24, 1996.

SO ORDERED

  
BARRY M. KURREN  
Magistrate Judge

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Kaiser Development Company, et al. v. City and County of Honolulu, Civil Nos. 84-0388 & 84-0389; Oswald Kofoad Stender, et al. v. City and County of Honolulu, Civil nos. 84-0448 and 84-0449  
United States District Court of the District of Hawaii  
PRETRIAL SETTLEMENT PROCEDURE ORDER; EXHIBITS "A"- "D"

All parties, through their respective counsel, HEREBY  
APPROVE AS TO SUBSTANCE AND FORM THE FOREGOING ORDER.

CITY AND COUNTY OF HONOLULU

By Jane H. Howell  
JANE H. HOWELL, ESQ.  
Deputy Corporation Counsel

KAISER DEVELOPMENT COMPANY  
aka KACOR DEVELOPMENT COMPANY,  
nka KRDC, INC., KAISER  
HAWAII KAI DEVELOPMENT CO.,  
aka HAWAII KAI DEVELOPMENT CO.,  
through its successor MAUNALUA  
ASSOCIATES INC.

By Kenneth R. Kupchak  
KENNETH R. KUPCHAK, ESQ.

TRUSTEES UNDER THE WILL AND OF  
THE ESTATE OF BERNICE PAUHI  
BISHOP, DECEASED

By Gril M. Tamashiro  
MICHAEL HARE, ESQ.  
GRIL M. TAMASHIRO, ESQ.

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Kaiser Development Company, et al. v. City and County of  
Honolulu, Civil Nos. 84-0388 & 84-0389; Oswald Kofoad Stender,  
et al. v. City and County of Honolulu, Civil nos. 84-0448 and  
84-0449  
United States District Court of the District of Hawaii  
PRETRIAL SETTLEMENT PROCEDURE ORDER; EXHIBITS "A"-"D"

**EXHIBIT A**

EXHIBIT "A"

A BILL FOR AN ORDINANCE IN CONTEMPLATION OF SETTLEMENT OF EIGHT LAWSUITS PERTAINING TO LAND IN EAST HONOLULU, BY PRESCRIBING ADOPTION OF A GENERAL PLAN AMENDMENT, AND BY AMENDING THE EAST HONOLULU DEVELOPMENT PLAN LAND USE MAP AND PUBLIC FACILITIES MAP FOR, REZONING, AND ISSUING A PLAN REVIEW USE PERMIT AND SPECIAL MANAGEMENT AREA USE PERMITS PERTAINING TO, VARIOUS PARCELS IN THE HAWAII KAI AND KALAMA VALLEY AREAS.

SECTION I. Findings and purpose. The Council finds that, for more than fourteen years, planning and zoning issues in the Hawaii Kai and Kalama Valley portions of East Honolulu have been controversial and divisive. Applications by landowners and developers for planning, zoning and related approvals have been strongly opposed by members of the community interested in limiting growth in the area, and City actions, whether of approval or denial, have engendered lasting disagreements and concerns. Eight lawsuits are currently pending, and the City Council believes that their litigation to a conclusion may result in a cost of many millions of dollars to the City. Not only is the City, in these straitened times, unable to afford such expenditures, but the City Council also believes that there are more creative and constructive ways to resolve land use disputes.

The City Council finds that the amendments to the development plan land use map and public facilities map for East Honolulu and the rezonings effected by this ordinance, together with the general plan amendment, plan review use permit, special management area use permits and other permits authorized hereby,

as generally indicated on the location map attached as Exhibit AAA, have been subjected to the level of agency and public review required by court order, substantially in accordance with all applicable laws and normally accorded to such Council actions. Based on this review, the Council believes that the actions effected by this ordinance are in compliance with federal law, state law, the Charter, the General Plan, and all components and aspects of the development plans, as the same may be applicable to any particular item herein.

In specific connection with the provisions of the General Plan relating to population distribution, the City Council finds that, pursuant to the September 1, 1995 Development Plan Annual Report, Fiscal Year 1995, although up to 58,000 people are allowable in East Honolulu by the year 2010, the likely population is only 48,200. This ordinance limits growth on the highlighted lands identified on Exhibit AAA to an additional 1,712 units over a period extending to 2016. Even if all units permitted hereunder are completed and sold by 2010, this would add only 5,100 people and the total population would still be well within the 58,000 limit. More significantly, this ordinance continues this unit restriction for an additional six (6) years until 2016.

The City Council also finds that development authorized by the special management area use permits issued pursuant to this ordinance, as conditioned, (a) will not have any substantial adverse environmental or ecological effect, (b) are consistent

with the objectives, policies, and special management area guidelines of Hawaii Revised Statutes Chapter 205A and Chapter 25, Revised Ordinances of Honolulu 1990, and (c) are consistent with the general plan, development plan and zoning applicable to the parcels in question.

SECTION II. General Plan Amendment.

Section 1. The General Plan, Objectives and Policies, of the City and County of Honolulu, is amended by amending Objective B, Policy 6, of the section entitled "Section II. Economic Activity," to read as follows:

Policy 6

Permit the development of secondary resort areas in West Beach, Kahuku, Makaha, and Laie; and permit small-scale visitor-oriented facilities in the Koko Crater/Kalama Valley area to alleviate impacts of visitor activities on residential areas.

New material is underscored.

Section 2. Pursuant to the provisions of the Revised Charter of Honolulu 1973 1994 Ed.) Section 5-410, a Resolution to amend the General Plan as set forth in Section 1 of this SECTION II is attached hereto as Exhibit AA and is hereby adopted.

SECTION III. Development Plan Amendments and Rezonings  
(Residential Development).

Section 1. GOLF COURSE 2/1A RESIDENTIAL (TMK 3-9-10:  
portion of 1, approximately 9.8 acres).

(a) A portion of the Development Plan Land Use Map for East Honolulu is hereby amended by changing the land use designation for an area of land in Hawaii Kai, Oahu, Hawaii, from Preservation and Industrial to Residential, as shown on the map attached hereto, marked Exhibit A and by reference made a part hereof.

(b) A portion of Zoning Map No. 1, Hawaii Kai, is hereby amended, and an area of land situated in Hawaii Kai, East Honolulu, Oahu, Hawaii, is hereby rezoned, from P-2 General Preservation District to R-5 Residential District. The boundaries and area of said R-5 Residential District shall be as shown on the map attached hereto, marked Exhibit B and by reference made a part hereof.

Section 2. KALAMA VALLEY (TMK 3-9-82: 60, 61 and  
portion of 62, approximately 9.6 acres).

(a) A portion of the Development Plan Land Use Map for East Honolulu is hereby amended by changing the land use designation for an area of land in Hawaii Kai, East Honolulu, Oahu, Hawaii, from Commercial to Low-Density Apartment, as shown on the map attached hereto, marked Exhibit C and by reference made a part hereof.



(b) A portion of Zoning Map No. 1, Hawaii Kai, is hereby amended, and an area of land situated in Hawaii Kai, East Honolulu, Oahu, Hawaii, is hereby rezoned, from AG-2 General Agricultural District, R-5 Residential District and B-1 Neighborhood Business District to A-1 Low Density Apartment District. The boundaries and area of said A-1 Low Density Apartment District shall be as shown on the map attached hereto, marked Exhibit D and by reference made a part hereof.

Section 3. KAMILO RIDGE (TMK 3-9-8: portion of 13, approximately 36.5 acres).

(a) A portion of the Development Plan Land Use Map for East Honolulu is hereby amended by changing the land use designation for an area of land in Hawaii Kai, East Honolulu, Oahu, Hawaii, from Preservation to Residential, as shown on the map attached hereto, marked Exhibit E and by reference made a part hereof.

(b) A portion of Zoning Map No. 1, Hawaii Kai, is hereby amended, and an area of land situated in Hawaii Kai, East Honolulu, Oahu, Hawaii, is hereby rezoned, from P-2 General Preservation District to R-5 Residential District. The boundaries and area of said R-5 Residential District shall be as shown on the map attached hereto, marked Exhibit F and by reference made a part hereof.

(c) No building permit shall be issued which authorizes the construction of more than five residential units

within the area hereby redesignated and rezoned.

Section 4. KAMILONUI 1 (TMK 3-9-8; portion of 13, approximately 17.4 acres).

(a) A portion of the Development Plan Land Use Map for East Honolulu is hereby amended by changing the land use designation for an area of land in Hawaii Kai, East Honolulu, Oahu, Hawaii, from Low-Density Apartment to Medium-Density Apartment, as shown on the map attached hereto, marked Exhibit G and by reference made a part hereof.

(b) A portion of Zoning Map No. 1, Hawaii Kai, is hereby amended, and an area of land situated in Hawaii Kai, East Honolulu, Oahu, Hawaii, is hereby rezoned, from AG-2 General Agricultural District to A-2 Medium Density Apartment District. The boundaries and area of said A-2 Medium-Density Apartment District shall be as shown on the map attached hereto, marked Exhibit H and by reference made a part hereof.

(c) Building heights in said area shall not exceed 150 feet.

Section 5. KAMILONUI 2 (TMK 3-9-8: portion of 13, approximately 62.8 acres).

(a) A portion of the Development Plan Land Use Map for East Honolulu is hereby amended by changing the land use designation for an area of land in Hawaii Kai, East Honolulu, Oahu, Hawaii, from Preservation to Residential, as shown on the

map attached hereto, marked Exhibit I and by reference made a part hereof.

(b) A portion of Zoning Map No. 1, Hawaii Kai, is hereby amended, and an area of land situated in Hawaii Kai, East Honolulu, Oahu, Hawaii, is hereby rezoned, from P-2 General Preservation District to R-5 Residential District. The boundaries and area of said R-5 Residential District shall be as shown on the map attached hereto, marked Exhibit J and by reference made a part hereof.

Section 6. MARINA 4B (TMK 3-9-8: portion of 29, approximately 5.1 acres).

(a) A portion of Zoning Map No. 1, Hawaii Kai, is hereby amended, and an area of land situated in Hawaii Kai, East Honolulu, Oahu, Hawaii, is hereby rezoned, from P-2 General Preservation District to R-5 Residential District. The boundaries and area of said R-5 Residential District shall be as shown on the map attached hereto, marked Exhibit K and by reference made a part hereof.

Section 7. MAUWAI (TMK 3-9-10: portion of 1, approximately 82.7 acres).

(a) A portion of the Development Plan Land Use Map for East Honolulu is hereby amended by changing the land use designation for an area of land in Hawaii Kai, East Honolulu, Oahu, Hawaii, from Preservation to Residential, as shown on the

map attached hereto, marked Exhibit L and by reference made a part hereof.

(b) A portion of Zoning Map No. 1, Hawaii Kai, is hereby amended, and an area of land situated in Hawaii Kai, East Honolulu, Oahu, Hawaii, is hereby rezoned, from P-2 General Preservation District to R-5 Residential District. The boundaries and area of said R-5 Residential District shall be as shown on the map attached hereto, marked Exhibit M and by reference made a part hereof.

Section 8. QUEEN'S RISE (TMK 3-9-10: portion of 1, approximately 101.9 acres).

(a) A portion of the Development Plan Land Use Map for East Honolulu is hereby amended by changing the land use designation for an area of land in Hawaii Kai, East Honolulu, Oahu, Hawaii, from Preservation to Residential, as shown on the map attached hereto, marked Exhibit N and by reference made a part hereof.

(b) A portion of Zoning Map No. 1, Hawaii Kai, is hereby amended, and an area of land situated in Hawaii Kai, East Honolulu, Oahu, Hawaii, is hereby rezoned, from P-2 General Preservation District to R-5 Residential District. The boundaries and area of said R-5 Residential District shall be as shown on the map attached hereto, marked Exhibit O and by reference made a part hereof.

SECTION IV. Development Plan Amendments and Rezonings  
(Non-Residential Development).

Section 1. GOLF COURSE 2/1A BUSINESS PARK (TMK 3-9-10: portion of 1, approximately 10.9 acres).

(a) A portion of the Development Plan Land Use Map for East Honolulu is hereby amended by changing the land use designation for an area of land in Hawaii Kai, East Honolulu, Oahu, Hawaii, from Preservation and Industrial to Industrial, as shown on the map attached hereto, marked Exhibit P and by reference made a part hereof.

(b) A portion of Zoning Map No. 1, Hawaii Kai, is hereby amended, and an area of land situated in Hawaii Kai, East Honolulu, Oahu, Hawaii, is hereby rezoned, from P-2 General Preservation District and R-5 Residential District to I-1 Limited Industrial District. The boundaries and area of said I-1 Limited Industrial District shall be as shown on the map attached hereto, marked Exhibit Q and by reference made a part hereof.

(c) The finished grade of the site shall not be above the 80 feet contour line along the base of Koko Crater. All buildings to be constructed on the site shall not exceed 40 feet in height.

Section 2. GOLF COURSE 2/1A INN (TMK 3-9-10: portion of 1, approximately 29.1 acres).

(a) A portion of the Development Plan Land Use Map for

East Honolulu is hereby amended by changing the land use designation for an area of land in Hawaii Kai, East Honolulu, Oahu, Hawaii, from Preservation and Industrial to Resort, as shown on the map attached hereto, marked Exhibit R and by reference made a part hereof.

(b) A portion of Zoning Map No. 1, Hawaii Kai, is hereby amended, and an area of land situated in Hawaii Kai, East Honolulu, Oahu, Hawaii, is hereby rezoned, from R-5 Residential District and P-2 General Preservation District to Resort District. The boundaries and area of said Resort District shall be as shown on the map attached hereto, marked Exhibit S and by reference made a part hereof.

(c) Development of the inn authorized by the Resort District zoning shall be substantially as described in the Hawaii Kai Environmental Impact Report Preparation Notice dated January 1996; provided that the finished grade of the site shall not be above the 110 feet contour line along the base of Koko Crater. Minor deviations therefrom may be approved by the Director of Land Utilization.

Section 3. MARINA 1/STRIP 1 (TMK 3-9-17: 20, 21, portion of 33, and 38, approximately 14 acres).

(a) A portion of the Development Plan Land Use Map for East Honolulu is hereby amended by changing the land use designation for an area of land in Hawaii Kai, East Honolulu, Oahu, Hawaii, consisting of TMK 3-9-17:20, the fast land portion

of 33, and 38, from Preservation to Commercial, as shown on the map attached hereto, marked Exhibit T and by reference made a part hereof.

(b) In the event the landowner exercises its right to relocate the park and ride facility, as set forth in Section VI.2(c) hereinbelow, a portion of the Development Plan Land Use Map for East Honolulu shall be hereby amended by changing the land use designation for the Substitute Parcel, as defined in Section VI.2(c), from Commercial and Public Facility to Public Facility, and by changing the land use designation for the remainder portion of the Park and Ride Parcel which is not included in the Substitute Parcel from Public Facility to Commercial.

(c) A portion of Zoning Map No. 1, Hawaii Kai, is hereby amended and an area of land situated in Hawaii Kai, East Honolulu, Oahu, Hawaii, including TMK 3-9-17:20, the fast land portion of 33, and 38, is hereby rezoned, from P-2 General Preservation District to B-1 Neighborhood Business District. The boundaries and area of said B-1 Neighborhood Business District shall be as shown on the map attached hereto, marked Exhibit U and by reference made a part hereof.

(d) In the event the landowner exercises its right to relocate the park and ride facility to the Substitute Parcel, as set forth in Section VI.2(c) hereinbelow, a portion of Zoning Map No. 1, Hawaii Kai, shall be hereby amended and an area of land situated in Hawaii Kai, East Honolulu, Oahu, consisting of the

remainder of the Park and Ride Parcel which is not included in the Substitute Parcel, shall be hereby rezoned from P-2 General Preservation to B-1 Neighborhood Business District, and an area of land situated in Hawaii Kai, East Honolulu, Oahu, consisting of Strip 1 (TMK 3-9-17:38) shall be hereby rezoned from B-1 Neighborhood Business District to P-2 General Preservation.

SECTION V. Plan Review Use Permit.

Section 1. QUEEN'S BEACH. Pursuant to the provisions of Section 21-3.160 et seq., Revised Ordinances of Honolulu 1990, as amended, a plan review use permit for an 18-hole championship golf course, with an accessory driving range, clubhouse/pro shop, restaurant, locker rooms and cart barn, at the area known as Queen's Beach (TMK 3-9-11:3, portion of 2, approximately 166.0 acres) is hereby adopted by the adoption of a five-year master plan for the area, together with conditions designed to mitigate adverse effects of golf course development. Said master plan is attached hereto as Exhibit BB and incorporated by reference herein. Conditions are as follows:

(a) This Plan Review Use (PRU) pertains to the land area described in the map attached hereto as Exhibit CC.

(b) Development of the site shall be in accordance with the Exhibit BB master plan, entitled "Proposed Five-Year Master Plan for the Queen's Beach Golf Course." The Director of Land Utilization may approve minor impact deviations from said master plan and the conditions herein. Major modifications to



the master plan or conditions shall be subject to the approval by resolution of the City Council.

(c) Programs shall be established as necessary to meet the State Department of Health's ten (10) Guidelines Applicable to Golf Course Development, dated August 1994 (version 5). Verification from the Department of Health that the golf course is operating in compliance with these guidelines shall be submitted annually to the Department of Land Utilization (DLU).

(d) Residents of the State of Hawaii shall be allowed to play on the golf course at discounted rates, otherwise referred to as "kama'aina rates."

(e) Approximately 29 acres of land on the western side of Kaloko Inlet shall be set aside as park land and open for use by the general public.

(f) Pedestrian access to and along the ocean will be provided from the Kaloko Inlet area. Pedestrian access shall also be provided along the existing lighthouse access road, connecting to a pedestrian path in the vicinity of Kahoohaihai Inlet. Said accesses shall be unhindered by vegetation or severe changes in grade or elevation and shall be maintained at the sole expense of the property owner, its subsequent lessees, grantees, assignees, mortgagees, lienors, successors and any other persons who have or claim to have an interest in the land. This requirement to maintain the public access area shall be recorded with the State of Hawaii Bureau of Conveyances.

(g) No offsite vehicular access shall be permitted

along the shoreline or within the project area, except as designated on the Exhibit BB master plan.

(h) No structures, other than comfort stations or facilities to accommodate pedestrian access along the shoreline, shall be allowed within 400 feet of the shoreline, for the purpose of maintaining unobstructed views toward the ocean. Prior to application for any grading or building permits, a shoreline survey shall be submitted to DLU.

(i) To the extent possible, the design concept for the golf course shall integrate existing topography and vegetation. Grading shall be kept to a minimum, and turf-grasses and other landscaping species shall be selected to complement the dryland environment currently found in Kealakupapa Valley. Prior to issuance of grading and other construction permits for the projects, the Director of Land Utilization shall certify that the design complies with these conditions.

(j) The golf course shall use treated effluent from the Hawaii Kai Wastewater Treatment Plant as a source of irrigation water. The golf course shall utilize a salt-tolerant turfgrass species on the fairways. The Council recognizes that, if the treated effluent has a high saline content unsuitable for turfgrasses that are not salt-tolerant, and if the salinity of the treated effluent reaches levels that are detrimental to the health of the salt-tolerant turfgrasses, then the golf course may use potable water to blend with the treated effluent to reduce the salinity of the irrigation water to ensure the long-term

health of the salt-tolerant turfgrass. The Board of Water Supply of the City and County of Honolulu should allow the use of potable water in this instance, and should also allow the use of potable water to blend with treated effluent for use on the greens of the golf course, where salt tolerant turfgrasses are inappropriate. A commitment to this effect from the Board of Water Supply is part of the letter attached hereto as Exhibit GG described in Section XI hereof.

(k) All wastewater and drainage improvements shall be provided at the property owner's cost and in accordance with City standards and requirements.

SECTION VI. Special Management Area Use Permits.

Section 1. QUEEN'S BEACH. Pursuant to the provisions of Hawaii Revised Statutes (HRS) Chapter 205A and Revised Ordinances of Honolulu 1990 Chapter 25, Revised Ordinances of Honolulu 1990, as amended, a special management area use permit (SMP) to develop an 18-hole championship golf course, with an accessory driving range, clubhouse/pro shop, restaurant, locker rooms and cart barn, at the area described in Exhibit CC hereto and known as Queen's Beach (TMK 3-9-11:3, por. of 2, approximately 166 acres), is hereby issued, subject to the following conditions:

(a) If, during construction, any previously unidentified archaeological sites or remains (such as artifacts, shell, bone, charcoal deposits, human burials, rock or coral

alignments, pavings, or walls) are encountered, the ground lessee and/or the property owner shall immediately cause the work in the affected area to stop and promptly contact the Historic Sites Office of the Department of Land and Natural Resources, State of Hawaii. Work in the affected area shall recommence in accordance with any necessary and appropriate approvals from the State.

(b) Conditions (a) through (k) of Section 1 of SECTION V of this Ordinance, pertaining to the plan review use permit for the Queen's Beach Golf Course, shall also be conditions to the SMP for the Queen's Beach Golf Course.

Section 2. MARINA 1/STRIP 1. Pursuant to the provisions of HRS Chapter 205A and Chapter 25, Revised Ordinances of Honolulu 1990, as amended, a special management area use permit (SMP) for the construction of a 14.0 acre commercial development situated on the vacant block along Kalaniana'ole Highway between Hawaii Kai Drive and Keahole Street (TMK 3-9-17:20, 38, 21 and por. 33, subject to the following conditions:

(a) Development may consist of two or more buildings, but no building shall exceed three stories, and total office and retail space shall not exceed 192,000 leaseable square feet.

(b) Development shall otherwise be substantially as described in the Hawaii Kai Environmental Impact Report Preparation Notice dated January 1996. DLU may impose conditions pertaining to design, provided that such conditions are reasonably conceived to promote the objectives and policies of

applicable law and do not thwart the development as described and as permitted under B-1 Neighborhood Business District zoning.

(c) The property owner shall have the right, but not the obligation, at its sole cost and expense, to relocate the park and ride facility located on TMK 3-9-17:21 (the "Park and Ride Parcel") to a substitute parcel consisting of Strip 1 (TMK 3-9-17:38) and as much of the adjacent portion of the Park and Ride Parcel as is required to meet the property owner's obligations under this subsection (the "Substitute Parcel"). The property owner shall undertake and successfully complete the consolidation of Strip 1 and the Park and Ride Parcel, and the resubdivision of the Substitute Parcel as a separate legal parcel, and shall construct on the Substitute Parcel a comparable park and ride facility with no less than the number of parking stalls currently constructed on the Park and Ride Parcel. Upon the resubdivision of the Substitute Parcel and the lien-free completion of construction of the park and ride facility on the Substitute Parcel by the property owner, the property owner shall convey the land comprising the Strip 1 portion of the Substitute Parcel to the City in exchange for the City's conveyance to the property owner of the portion of the land comprising the former Park and Ride Parcel which is not included in the Substitute Parcel. Said consolidation, resubdivision, and land exchange is hereby approved, and the Mayor or his designee is authorized to execute all documents necessary to effectuate that consolidation, resubdivision and land exchange. If the property owner elects to

relocate the park and ride facility to the Substitute Parcel as described herein, then the remainder of the Park and Ride Parcel shall be included as part of the commercial development contemplated in this Section VI.2, subject to the conditions set forth in Sections VI.2(a) and VI.2(b) hereinabove.

SECTION VII. Cluster Housing Development.

Section 1. KAMILONUI 2 AND MARINA 4B. A Cluster-Housing project is approved on the properties herein designated as Kamilonui 2 and Marina 4B as described and illustrated in the Hawaii Kai Environmental Impact Report, provided that such projects comply with the minimum land area, maximum number of units, and other established standards as specified in Section 21-6.50-2, paragraphs (a) through (f), Revised Ordinances of Honolulu 1990, as amended. Reasonable design conditions may be imposed by the Director of Land Utilization that do not reduce the maximum number and types of units proposed in such developments. Sections 21-8.30 and 21-8.30-6, Revised Ordinances of Honolulu 1990, as amended, shall be inapplicable to the processing of any cluster housing applications for said properties.

SECTION VIII. Amendment and Satisfaction of Unilateral Agreement.

Ordinance No. 86-88, approved July 21, 1986, is hereby amended by amending Exhibit B thereto (hereinafter called "the

Unilateral Agreement") in the following respects:

(a) Paragraphs 3 (affordable housing) and 4 (park dedication) of the Unilateral Agreement are hereby deleted, and that certain Affordable Housing Plan Agreement between the City and County of Honolulu and Hawaii Kai Development Company, executed December 14, 1994, and recorded as Regular System Document No. 94-213223 is deemed satisfied and is hereby released.

(b) In addition to the maximum number of units permitted under the Unilateral Agreement (1,780), an additional 200 units may be built on Kaluanui 2 and 3 (TMK 3-9-8:40) upon the completion and acceptance by the Director of Land Utilization of a traffic study which demonstrates that the traffic impact of said additional 200 units can be adequately accommodated by the then traffic improvements or by such additional improvements as may be undertaken by the applicant for such 200 units or are unilaterally offered as a condition of such acceptance.

(c) Paragraphs 6 and 7 of the Unilateral Agreement, relating to traffic mitigation, are deemed satisfied and are hereby deleted.

SECTION IX. GOLF COURSE 5 AND 6 (TMK 3-9-10 41 and 42)

- Acceptance of Land; Development Plan Public Facilities Map Amendment.

Section 1. Acceptance of Land. The conveyance in fee by the property owner to the City and County of Honolulu of

approximately 30.9 acres, as described in Exhibit DD attached hereto, located on the mauka side of Kalaniana'ole Highway near the East Honolulu wastewater treatment facility in Kalama Valley and sometimes known as "Golf Course 5 & 6" (TMK 3-9-10:41 and 42), each piece being subject to reconveyance if used for any purpose other than public park or non-commercial public open space, is hereby accepted; and the Mayor or his designee is authorized to execute all instruments of conveyance on behalf of the City necessary to effectuate this transfer.

Section 2. Development Plan Public Facilities Map Amendment. A portion of the Development Plan Public Facilities Map for East Honolulu is hereby amended by adding a Park symbol, site determined, beyond six years, for a park on the area shown on the map attached hereto and marked Exhibit DD. This public facilities map symbol shall be deleted from the Public Facilities Map by administrative procedure once completion of the facility has been certified in writing by the Department of Parks and Recreation to the Planning Department and the City Council.

SECTION X. Stockpiled Materials.

Section 1. Permits Approved and/or Extended. Any permits necessary for the stockpiling of materials presently stockpiled on the Queen's Beach, Golf Course 2/1A and Marina 1 parcels, or such stockpiles as are necessary for the completion of the projects authorized by this ordinance, are hereby issued or extended for a period of twenty-one (21) years following the



effective date of this ordinance.

Section 2. Use of Stockpiled Materials in Construction.

Said materials may be used in connection with the development authorized by this ordinance, provided that structural use thereof shall be subject to certification by a licensed civil engineer.

Section 3. Removal of Stockpiled Materials. All

existing stockpiled materials not integrated into the development authorized by this ordinance shall be removed upon the expiration of a period of twenty-one (21) years following the effective date of this ordinance.

SECTION XI. Reallocation of Potable Water.

To the extent that wastewater effluent is utilized for irrigating the existing Hawaii Kai golf course, which in turn results in releasing some or all of the current allocation and use of potable water to the Hawaii Kai golf course, the amount of potable water so released should be reallocated to the following parcels: Marina 4B, Mauuwai, Kaluanui 2 and 3, Kamilonui 1 and 2, Queen's Rise and Kalama Valley, as further identified above, for uses permitted hereunder, subject to payment by the appropriate private parties of all facilities fees, if any, prescribed by law and not otherwise previously satisfied.

Attached hereto as Exhibit GG [to be attached when available] is

a commitment letter to this effect from the Board of Water Supply, to which are affixed signatures of acceptance by the owners of the parcels mentioned in this section.

[Note: It is understood by the Council and by the plaintiffs in the litigation referred to in Exhibit HH that the plaintiffs are not committed to dismiss the litigation unless the reallocation described above has occurred, and the commitments with respect to potable water referred to in Section V.1.(j), have been obtained. Conversely, it is also understood that this ordinance will not be enacted by the Council unless the above landowners have stated, in writing, that arrangements with respect to water are satisfactory for purposes of dismissal of the lawsuits. However, this issue is under the jurisdiction of the Board of Water Supply and cannot be prescribed by Council ordinance.]

SECTION XII. Park Dedication.

Upon execution of documents effecting the transfer to the City of "Golf Course 5 & 6" as detailed in Section IX of this ordinance, all park dedication requirements pertaining to development in Hawaii Kai and Kalama Valley and contained in Hawaii Revised Statutes §46-6, Chapter 22, Article 7, Revised

Ordinances of Honolulu 1990, as amended, and the Rules and Regulations of the Department of Land Utilization, shall be deemed satisfied. This satisfaction pertains not only to such park dedication requirements as would be applicable to development authorized by the approvals contained in this ordinance but also to both property zoned by Ordinance No. 86-88, owned by anyone, and to development of property in Hawaii Kai or Kalama Valley owned or leased by Kamehameha Schools/Bishop Estate and/or Maunalua Associates, Inc., or the successors in interest to such parties, which is presently zoned for development but is not yet developed or which has been developed but for which park dedication requirements have not yet been satisfied.

SECTION XIII. Unit Limit and Reserve.

Section 1. Marina Side of Koko Crater. No building permit shall be issued in connection with development authorized by this ordinance which would permit more than 1,154 residential units on the parcels receiving residential entitlements on the Marina side of Koko Crater.

Section 2. Kalama Side of Koko Crater. No building permit shall be issued in connection with development authorized by this ordinance which would permit more than 558 residential units on the parcels receiving residential entitlements on the Kalama side of Koko Crater.

SECTION XIV. Completion, Dedication and Exchange of

Streets and Street Alignments.

Section 1. Hawaii Kai Drive. The landowner(s), or designee(s) thereof, of Kamilonui 1 and 2 shall, prior to the issuance of occupancy permits therefor, construct that portion of Hawaii Kai Drive known as "the Kamilonui Loop" along its 56-foot right of way by a 40-foot wide paved three-lane street and shown on Exhibit EE attached hereto so as to connect Hawaii Kai Drive between Kanoenoe and Kamilo Streets. This construction shall be to City standards, and the road so constructed shall thereafter be dedicated to the City. Such dedication is hereby accepted, and the Mayor or his designee is authorized to execute all documents necessary in connection with that dedication, subject to reconveyance should the use be materially altered or abandoned.

Section 2. Wailua Street. It is acknowledged that neither the developments permitted by Ordinance No. 86-88 nor that permitted by this ordinance requires the widening or realignment of Wailua Street and that no private party has any obligation to construct or pay for any such widening or realignment. If the City chooses, however, to widen and/or realign Wailua Street with public funds to implement the extension of that street presently shown on the Development Plan Public Facilities Map, and if the property owner shall convey to the City the land under the proposed widening and/or realignment, then the City, in exchange therefor, shall convey to the property owner the land under the present alignment, as illustrated on

Exhibit FF attached hereto. Said land exchange is hereby approved, and the Mayor or his designee is authorized to execute all documents necessary to presently reserve such and effectuate that land exchange at the appropriate time.

SECTION XV. Privately Funded Development Plan Public Facilities Map Amendments.

The Development Plan Public Facilities Map for East Honolulu is hereby amended by adding symbols for privately funded public facilities as detailed on the map attached hereto as Exhibit HH-1 and the list attached hereto as Exhibit HH-2.

SECTION XVI. No Further Conditions or Community Benefit Exactions.

Except as to ministerial permit requirements prescribed by law as of October 19, 1995, and/or as specifically provided herein, the land uses authorized by this ordinance shall not be subjected to any conditions, exactions, impact fees, public improvements, facilities or services, affordable housing requirements, park dedication, offsite infrastructure, community benefit requirements or any other land condition on use or development or any fees or assessments regarding any of the foregoing.

SECTION XVII. Vesting.

The entitlements granted hereunder shall be deemed to

create vested rights in favor of the owners of the respective parcels directly benefited for a period of twenty years after the effective date hereof. For a period of twenty years, all laws, ordinances, resolutions, rules, and policies governing permitted uses of the land that is the subject of this ordinance, including but not limited to uses, density, design, height, size and building specification of proposed buildings, construction standards and specifications, shall be those laws, ordinances, resolutions, rules, regulations, and policies made applicable and in force on October 11, 1995, only as specifically conditioned by this ordinance, notwithstanding any subsequent change adopted by the Council or any agency of the City and County of Honolulu which alters or amends said laws, ordinances, resolutions, rules, and policies. Said amendments shall be void with respect to the properties which are the subject of this ordinance; provided, however, that the City and County of Honolulu may, subject to the Fifth and Fourteenth Amendments of the United States Constitution, require the property owner to comply with subsequently adopted laws, ordinances, resolutions, rules and policies if they could have been lawfully applied at the time of the effective date, but only if the City Council finds it is necessary to impose the requirements thereof because a failure to do so would place the residents of the properties or of the immediate community, or both, in a condition perilous to the residents' health or safety, or both. If such action or any action in contradiction to this ordinance amounts to a taking

under the United States Constitution, those with property interests in property subject to this ordinance shall be entitled the just compensation based upon the uses as permitted hereunder.

SECTION XVIII. Hawaii Kai Completed.

No proposal for development plan amendment, rezoning, special management area use permit, plan review use permit or cluster permit on any property specifically subject to this ordinance or specifically in the Settlement Order and Consent Decree entered hereafter by the United States District Court, District of Hawaii, effectuating this ordinance, whether made by the owners of the property in question or the City, shall be effective as to the subject properties for a period of twenty years following the effective date of this ordinance.

SECTION XIX. Ordinance Procedures.

Processing of the amendments and permits authorized by this ordinance in accordance with procedures set forth in the document entitled "Pretrial Settlement Procedure Order" attached hereto, without exhibits, as Exhibit II is hereby ratified.

SECTION XX. Effective Date.

This ordinance shall take effect upon execution and entry by a court of competent jurisdiction of a document entitled

Settlement Order and Consent Decree substantially in the form attached hereto as Exhibit JJ [similar to that attached as Exhibit "B" to the Pretrial Settlement Order (Exhibit II) hereto or as otherwise agreed]. The Corporation Counsel is authorized to take all necessary steps to obtain such execution and entry.

INTRODUCED BY: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Councilmembers

DATE OF INTRODUCTION:

\_\_\_\_\_  
Honolulu, Hawaii

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
JEREMY HARRIS, Mayor  
City and County of Honolulu





R E S O L U T I O N

TO AMEND THE GENERAL PLAN OF THE CITY AND COUNTY OF HONOLULU

WHEREAS, the scenic amenities and unique community flavor of the Windward Oahu area have for many years made that area extremely attractive to visitors to the Islands; and

WHEREAS, bed and breakfast and transient vacation units, legal and otherwise, in the Windward area have for more than fifteen years been a subject of controversy in the Windward communities; and

WHEREAS, the very characteristics that make the area attractive would be lost if full-scale Resort development were to be located in the Windward area, but there is a market for visitor units that exceeds the availability of legal visitor units; and

WHEREAS, the business community in Hawaii Kai is expanding, causing the number of out-of-town business visitors to Hawaii Kai to proliferate and potentially generating additional traffic on Kalaniana'ole Highway; and

WHEREAS, in order to mitigate burgeoning traffic problems, alleviate a burden in Windward Oahu and avoid such a burden in Hawaii Kai, there is a need for modest transient accommodations adjacent to both areas; and

WHEREAS, there is vacant land in the adjacent Koko Crater/Kalama area which, given proper limitations as to size and appearance, could be used for a modest, low-density inn that would address these concerns; now, therefore,

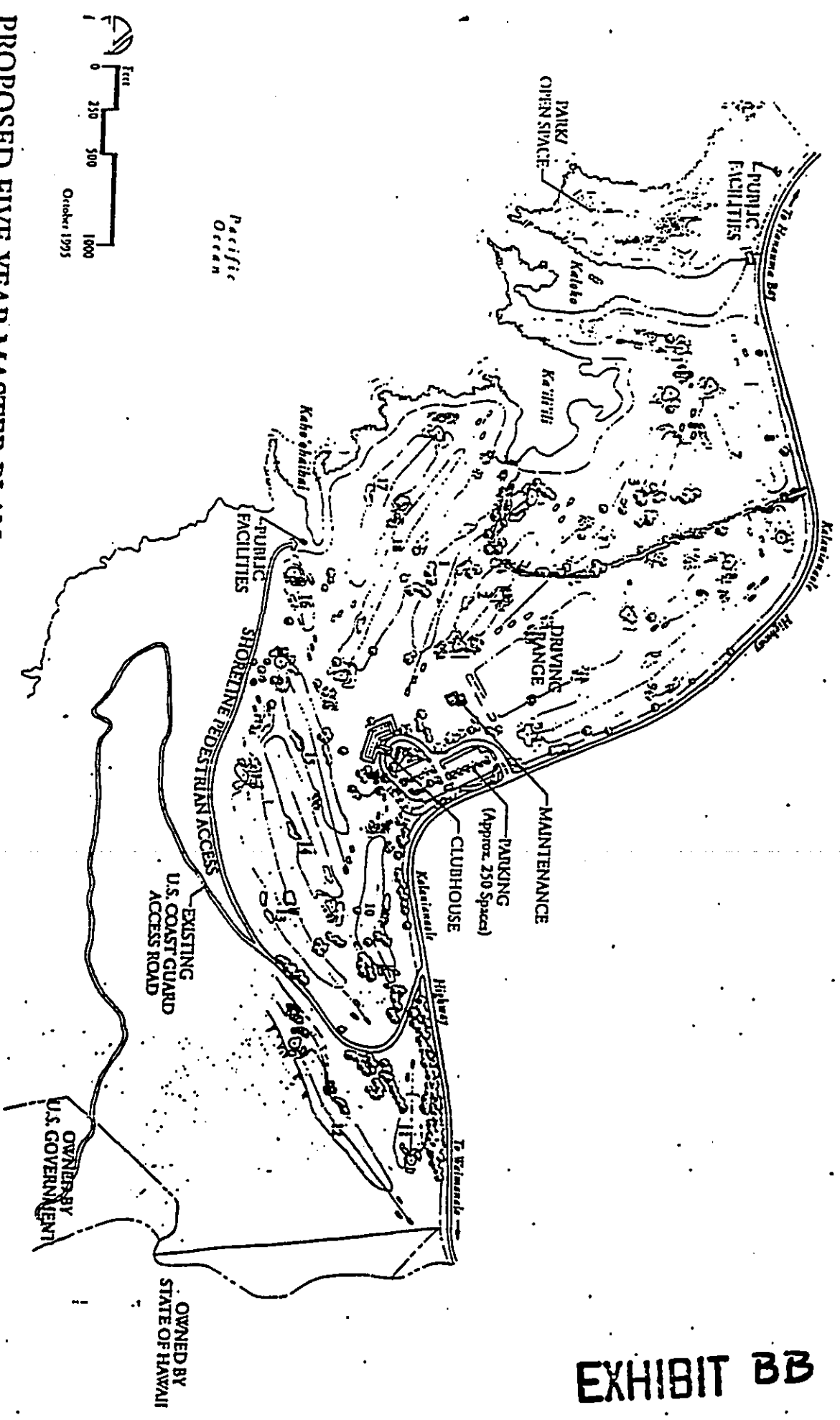
BE IT RESOLVED that the General Plan of the City and County of Honolulu is hereby amended by amending Objective B, Policy 6, of the section entitled Economic Activity, to read as follows (new material is underscored):

Policy 6

Permit the development of secondary resort areas in West Beach, Kahuku, Makaha, and Laie; and permit small-scale visitor-oriented facilities in the Koko Crater/Kalama area to alleviate impacts of visitor activities on residential areas.

BE IT FURTHER RESOLVED that copies of this Resolution shall be filed with the City Clerk and forwarded to the Planning Department.

**EXHIBIT AA**



**PROPOSED FIVE-YEAR MASTER PLAN**  
**Queen's Beach Golf Course**

**EXHIBIT BB**





**EXHIBIT CC**

**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
•DEV. PLAN	PRES	PRES
•ZONING	P-2	P-2
•AREA	1660 AC.	
•PROPOSED SIZE	18 HOLES	

FIGURE 2.3.3  
HAWAII KAI EIR PREP NOTICE  
**QUEEN'S BEACH**



Map of Golf Course 5 & 6 Property  
Substantially per  
Following Metes and Bounds Description

EXHIBIT DD

PARCEL FIRST:

Being a portion of R. P. 4475, L. C. Award 7713  
Ap. 30 to V. Kamamalu  
Situated within Hawaii-Kai Development  
at Maunaloa, Oahu, Hawaii and covered by  
Tax Map Key: 3-9-10

Beginning at the Southwesterly corner of this  
parcel of land, on the Northerly side of Kalaniana'ole  
Highway, the coordinates of said point of beginning referred  
to Government Survey Triangulation Station "KOKO HEAD NO.  
3" being 9,186.34 feet North and 11,673.29 feet East, thence  
running by azimuths measured clockwise from True South:

1. 160° 30'            173.02        feet along the remainder of R.  
P. 4475, L. C. Award 7713, Ap.  
30 to V. Kamamalu;
2. Thence along same on a curve to the right with a radius  
of 775.00 feet, the azimuth  
and distance of the chord  
being: 166° 15' 155.29 feet;
3. Thence along same on a curve to the right with a radius  
of 330.00 feet, the azimuth  
and distance of the chord  
being: 223° 15' 514.72 feet;
4. 274° 30'            402.00        feet along same;
5. Thence along same on a curve to the left with a radius  
of 450.00 feet, the azimuth  
and distance of the chord  
being: 236° 40' 552.03 feet;
6. 198° 50'            207.00        feet along same;
7. 212° 00'            100.95        feet along same;
8. Thence along same on a curve to the right with a radius  
of 672.00 feet, the azimuth  
and distance of the chord  
being: 319° 20' 48" 254.18  
feet;

EXHIBIT DD

9. 330 4' 50" 186.00 feet alo., same;
10. Thence along same on a curve to the right with a radius of 40.00 feet, the azimuth and distance of the chord being: 15° 14' 50" 56.67 feet;
11. 60° 14' 50" 908.61 feet along the Northerly side of Kalaniana'ole Highway;
12. 61° 09' 50" 792.80 feet along same to the point of beginning and containing an area of 13.93 acres, more or less, as per survey of Richard T. Ohta, Registered Professional Surveyor Certificate Number 2282-S.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Exchange of Vehicle Accesses and Consent to Exchange dated February 28, 1974, recorded in Liber 9962 at Page 483; re: exchange of access rights along Kalaniana'ole Highway.

**PARCEL SECOND:**

Being a portion of R. P. 4475, L. C. Award 7713  
 Ap. 30 to V. Kamamalu  
 Situated within Hawaii-Kai Development  
 at Maunaloa, Oahu, Hawaii and covered by  
 Tax Map Key: 3-9-10

Beginning at the East corner of this parcel of land, on the Westerly side of Kalaniana'ole Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KOKO HEAD NO. 3" being 11,154.80 feet North and 14,381.83 feet East, thence running by azimuths measured clockwise from True South:

1. Along the Westerly side of Kalaniana'ole Highway, on a curve to the right with a radius of 904.93 feet, the azimuth and distance of the chord being: 33° 04' 20" 826.58 feet;
2. 60° 14' 50" 755.70 feet along the Northwesterly side of Kalaniana'ole Highway;
3. Thence along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 30 to V. Kamamalu, on a curve to the right with a radius of 40.00 feet, the azimuth and distance of the chord being: 105° 14' 50" 56.67 feet;
4. 150° 14' 50" 186.00 feet along same;
5. Thence along same, on a curve to the left with a radius of 728.00 feet, the azimuth and distance of the chord being: 138° 19' 55" 300.61 feet;
6. 234° 30' 718.00 feet along same;
7. 244° 50' 357.68 feet along same;
8. Thence along same, on a curve to the right with a radius of 900.00 feet, the azimuth and distance of the chord being: 255° 35' 335.74 feet;
9. 266° 20' 29.90 feet along same;
10. 356° 20' 72.00 feet along same;
11. 266° 20' 125.00 feet along same;
12. 176° 20' 72.00 feet along same;
13. 266° 20' 66.00 feet along same to the point of beginning and containing an area of 17.00 acres, more or less, as per survey of Masao Kawahara, Registered



Professional Surveyor  
Certificate Number 1246-S.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Exchange of Vehicle Accesses and Consent to Exchange dated February 28, 1974, recorded in Liber 9962 at Page 483; re: exchange of access rights along Kalaniana'ole Highway.
3. Claims arising out of rights customarily and traditionally exercised for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

COMPLETE HAWAII KAI DRIVE

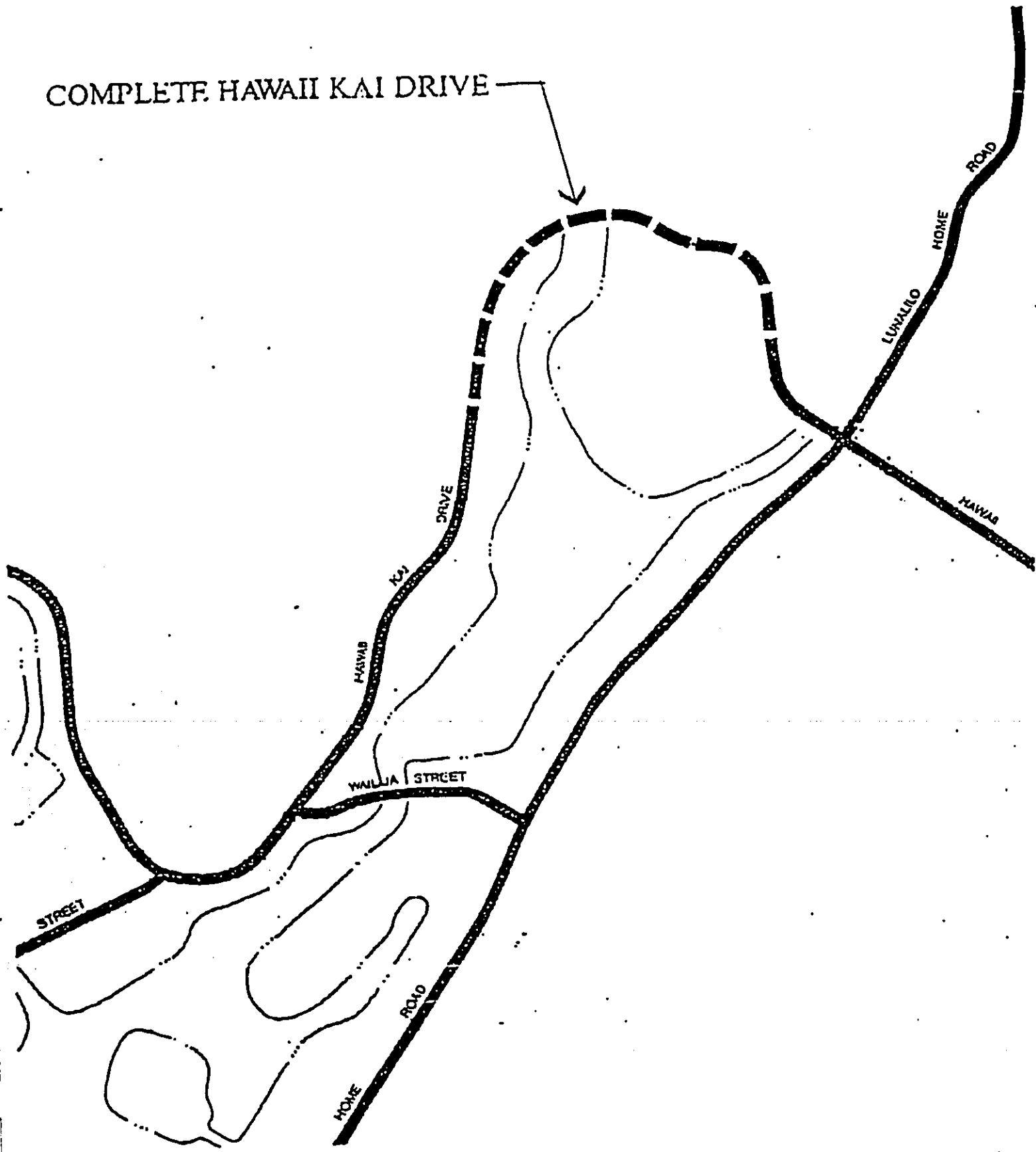
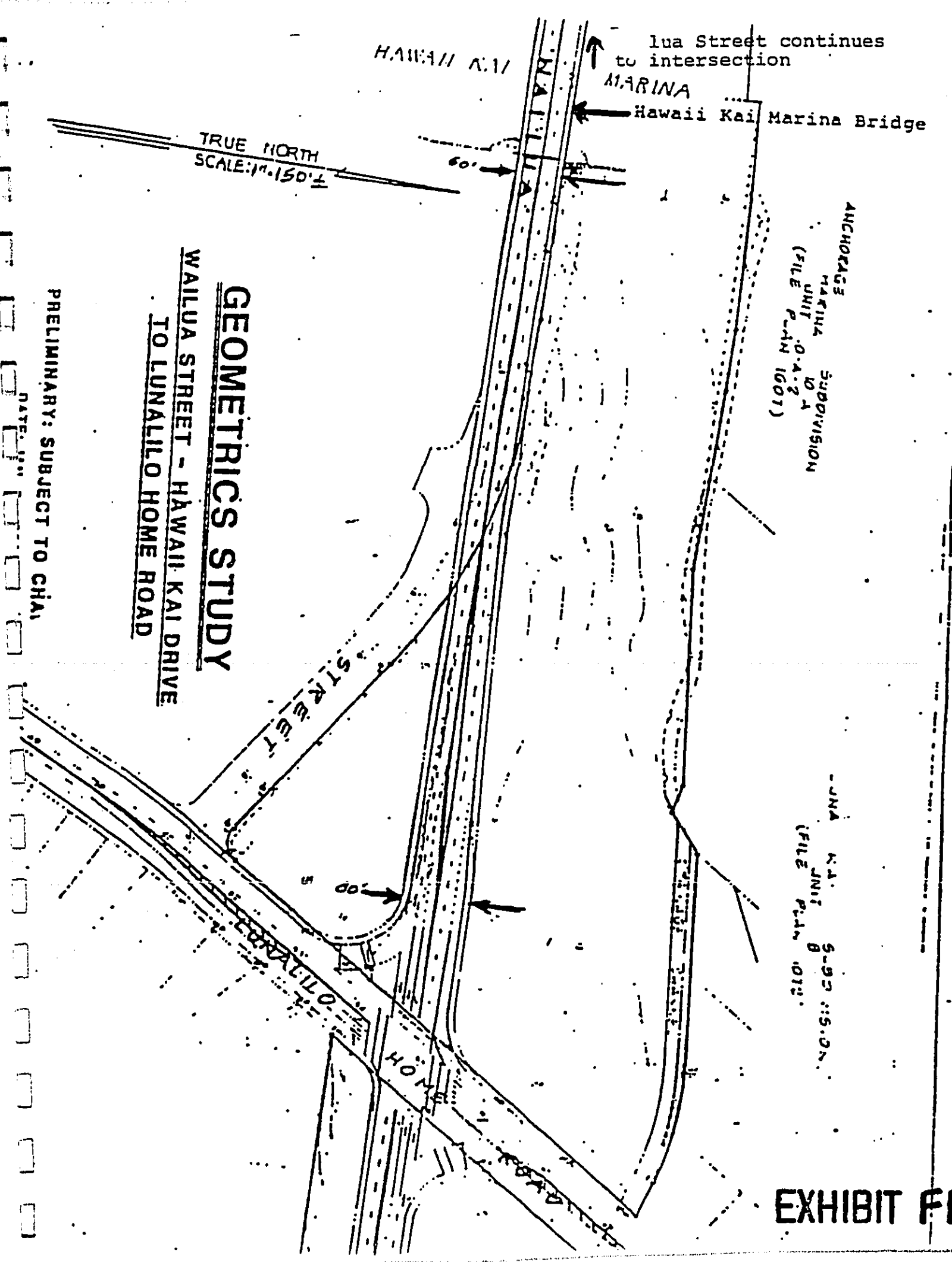


EXHIBIT EE



PRELIMINARY: SUBJECT TO CHA

# GEOMETRICS STUDY

## EXHIBIT FF

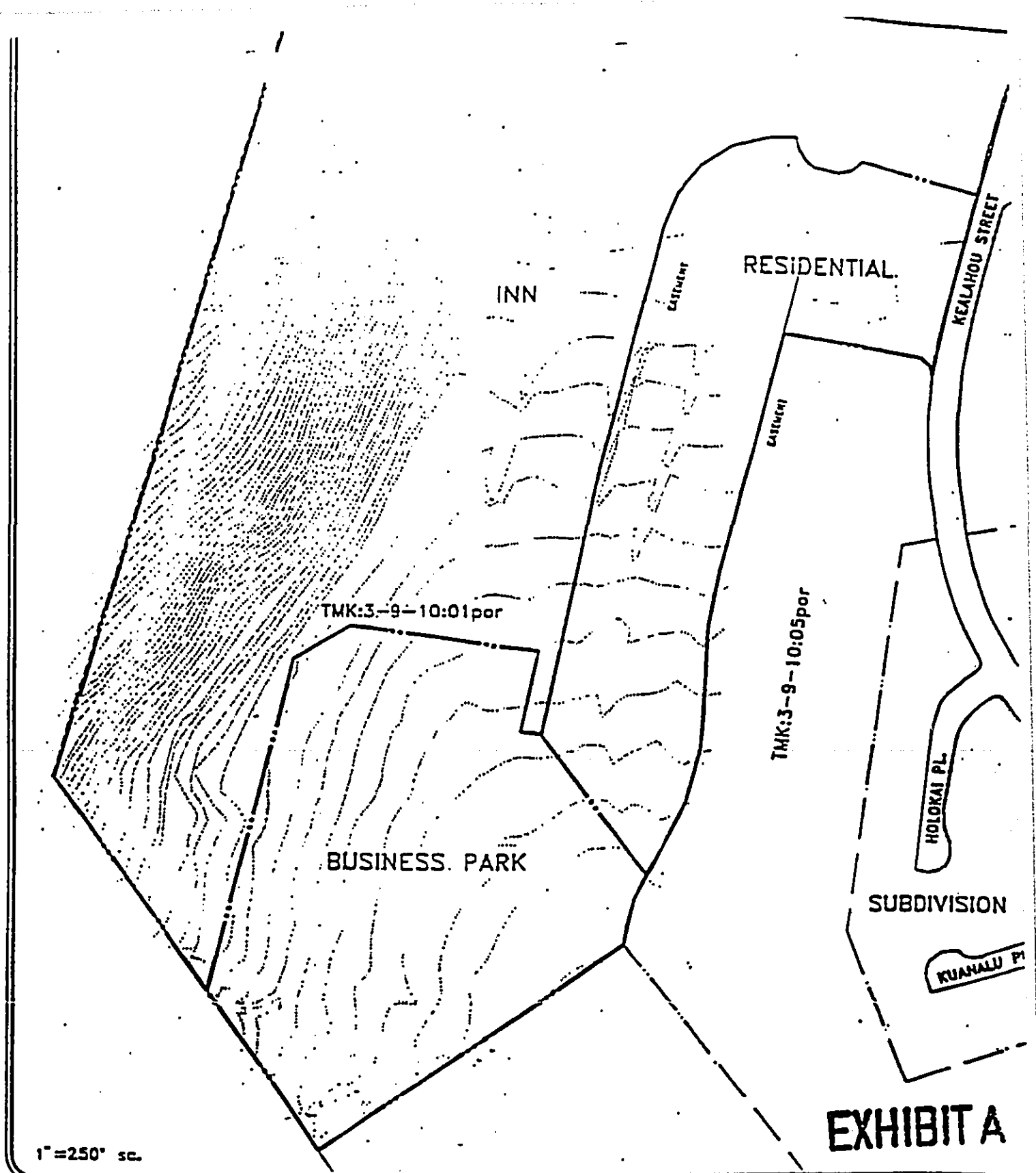


FIGURE 2.2.1  
HAWAII KAI EIR PREP NOTICE  
GOLF COURSE 2/1A



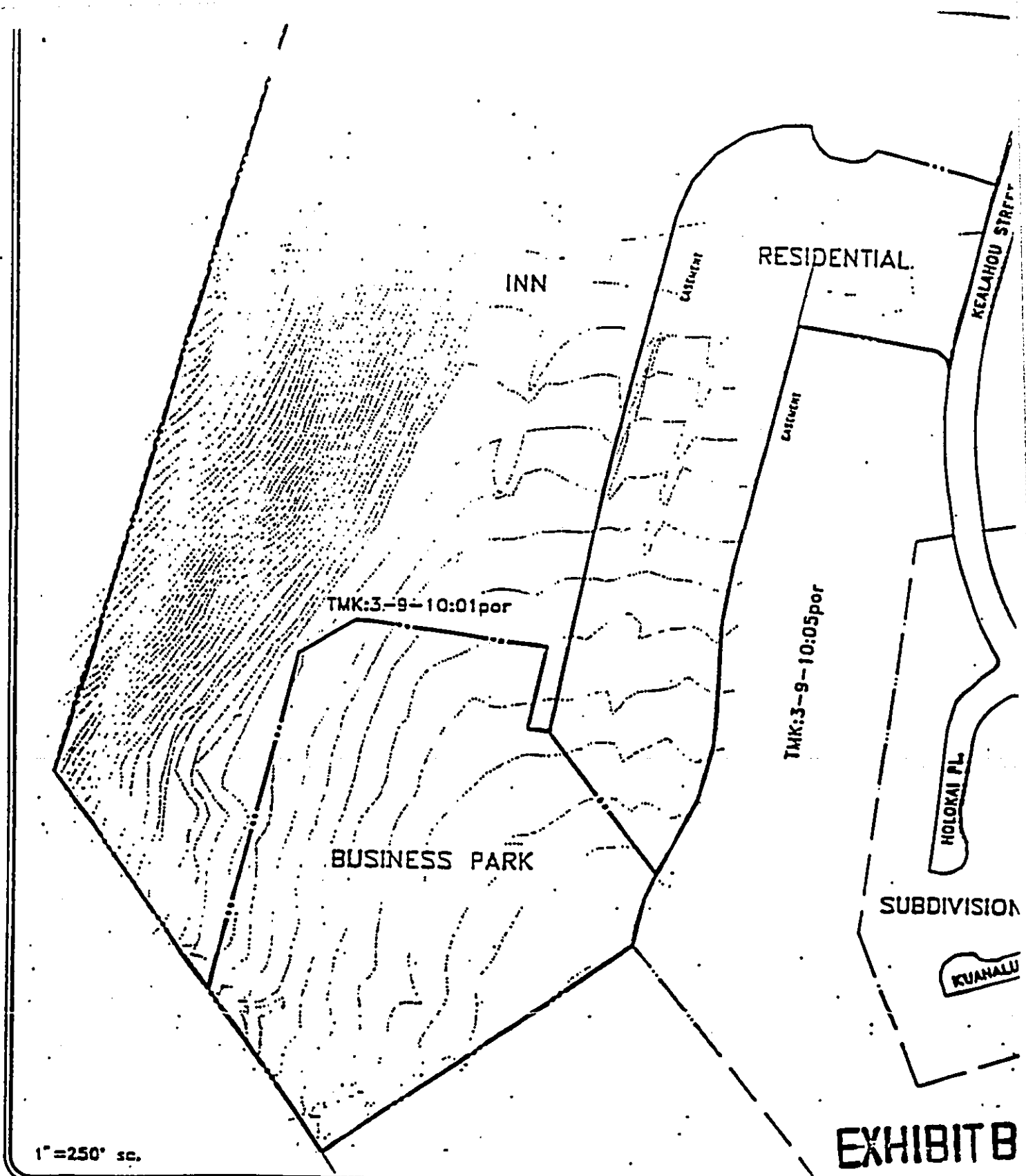
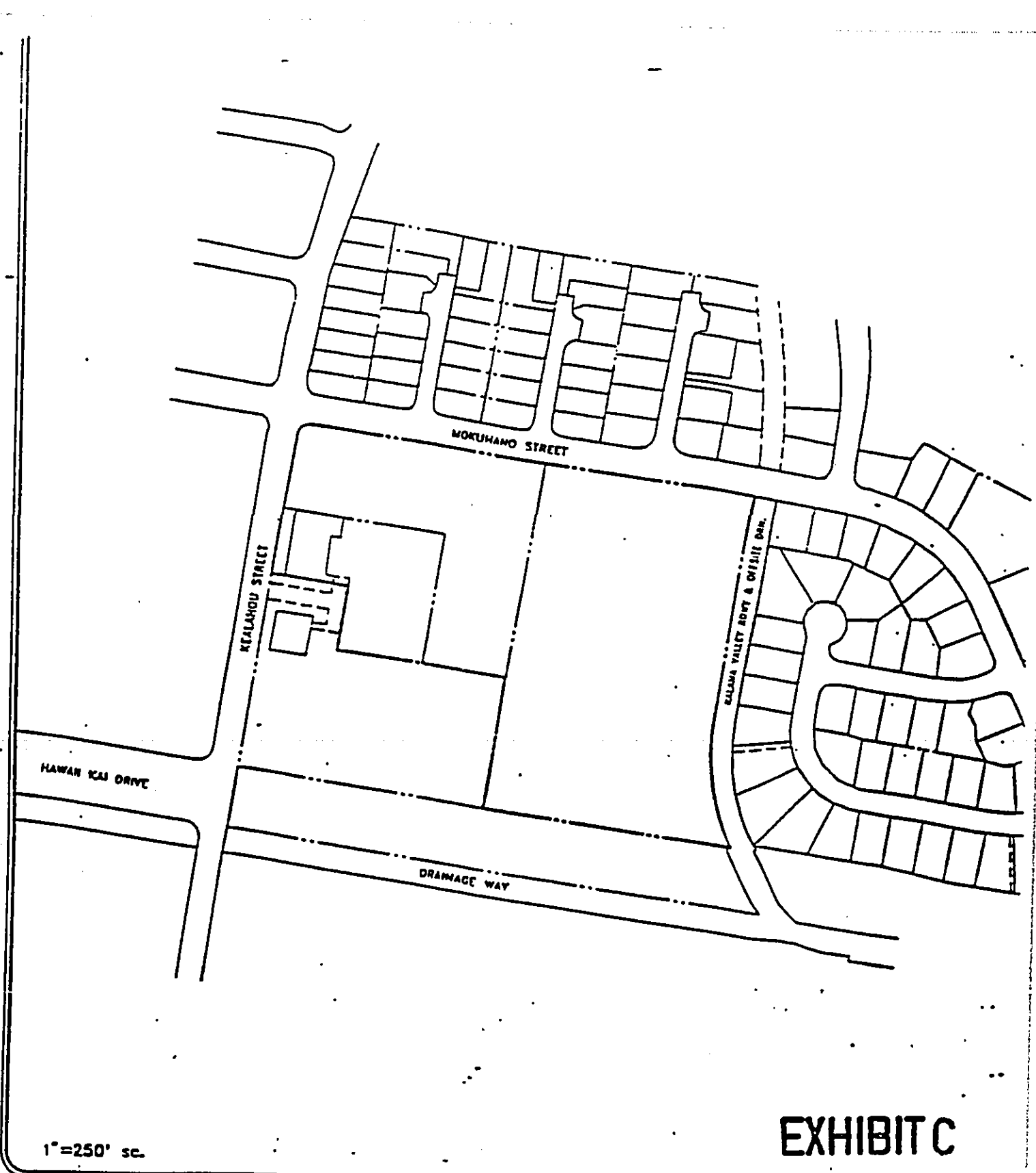


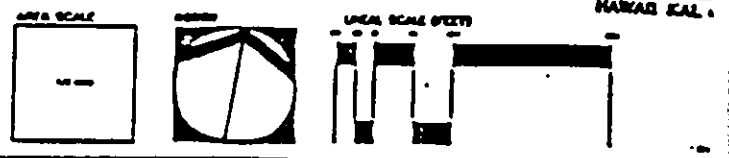
FIGURE 2.2.1  
HAWAII KAI EIR PREP NOTICE  
GOLF COURSE 2/1A





### EXHIBIT C

FIGURE 2.2.2  
HAWAII KAI EIR PREP NOTICE  
**KALAMA VALLEY**



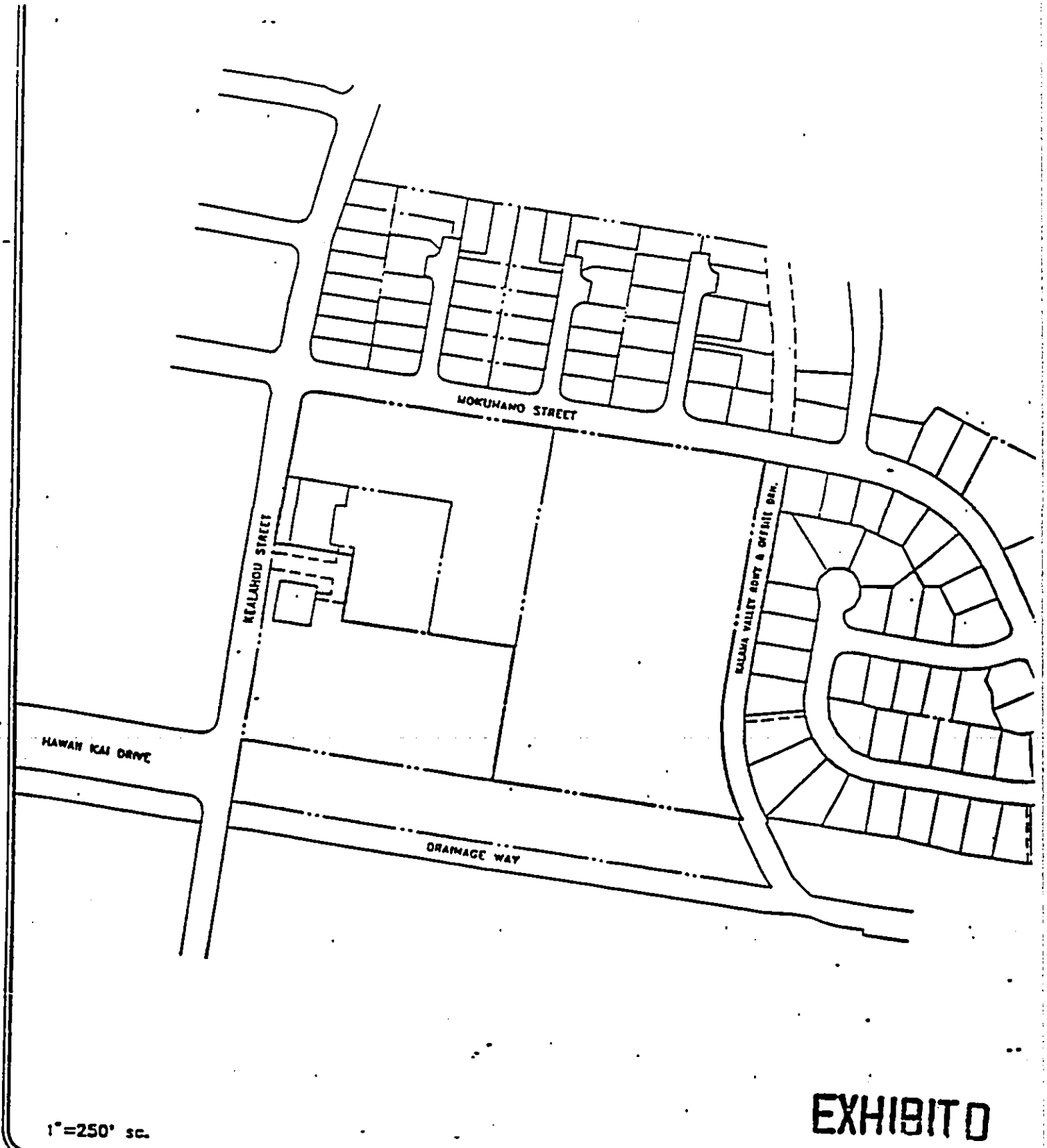
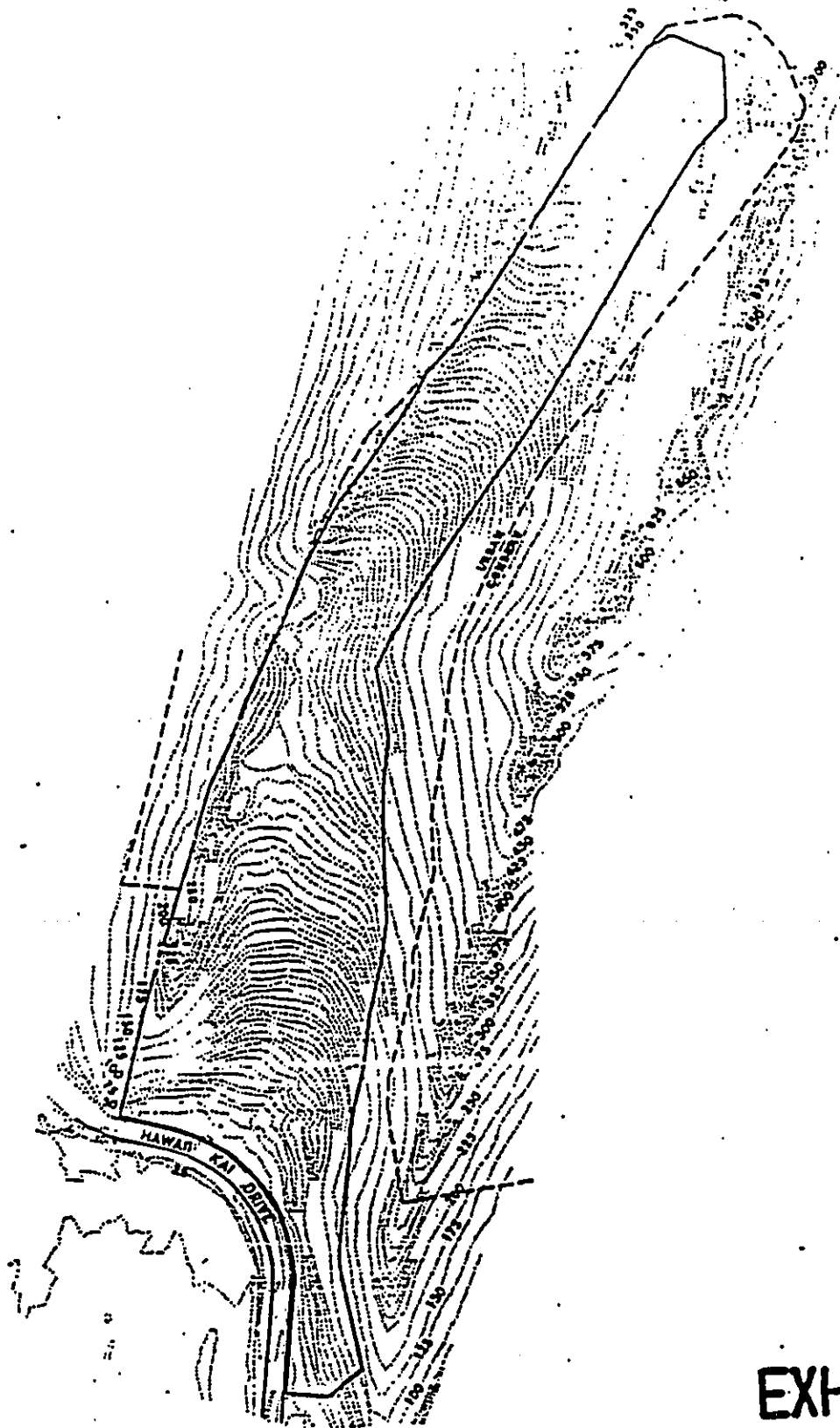


EXHIBIT D

FIGURE 2.2.2  
HAWAII KAI EIR PREP NOTICE  
KALAMA VALLEY





1"=500' sc.

EXHIBIT E

**PROJECT DESCRIPTION**

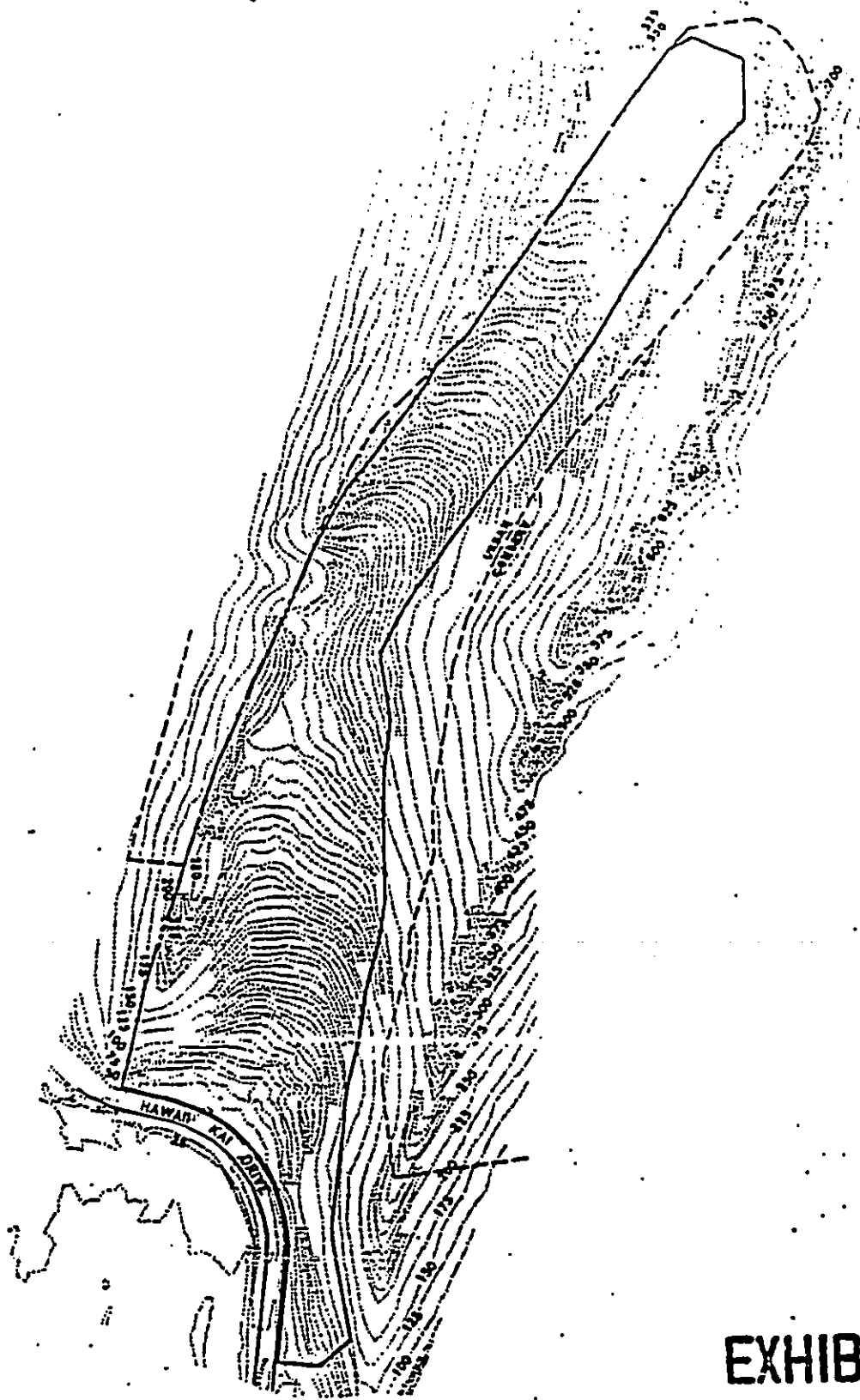
	EXISTING ENTITLEMENT	PROPOSED ENTITLEMENT
• DEV. PLAN	PRES	RES
• ZONING	P-2	R-5
• AREA	365 AC.	
• PROPOSED UNITS	5	

FIGURE 2.2.3A  
HAWAII KAI EIR PREP NOTICE  
**KAMILO RIDGE**



HAWAII KAI C





1" = 500' sc.

EXHIBIT F

**PROJECT DESCRIPTION**

	EXISTING ENTITLEMENTS	PROPOSED ENTITLEMENTS
• DEV. PLAN	PRES	RES
• ZONING	P-2	R-5

• AREA 365 AC.  
• PROPOSED UNITS 5

FIGURE 2.2.3A  
HAWAII KAI EIR PREP NOTICE  
**KAMILO RIDGE**



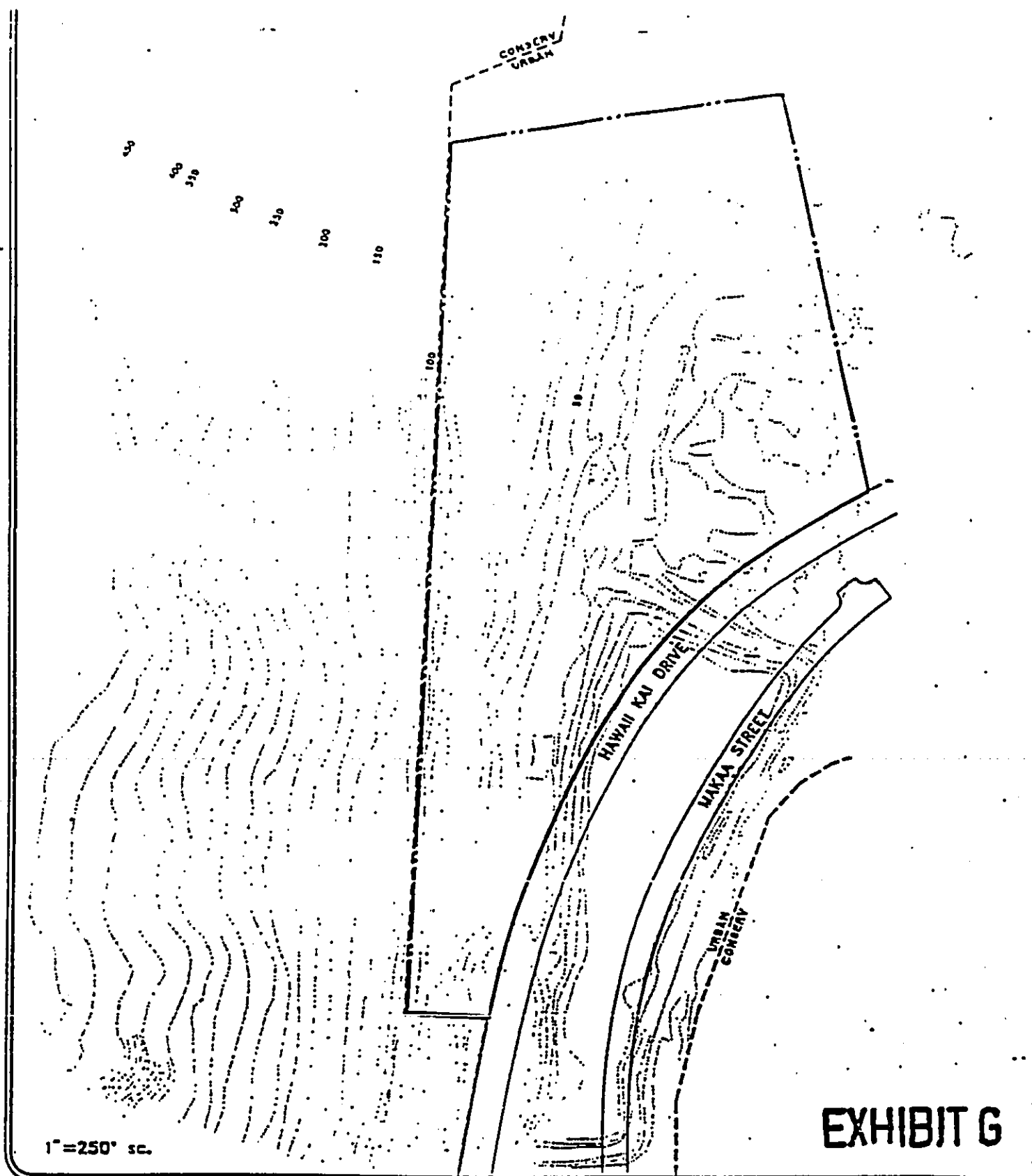


FIGURE 2.2.4  
HAWAII KAI EIR PREP NOTICE  
KAMILONUI 1



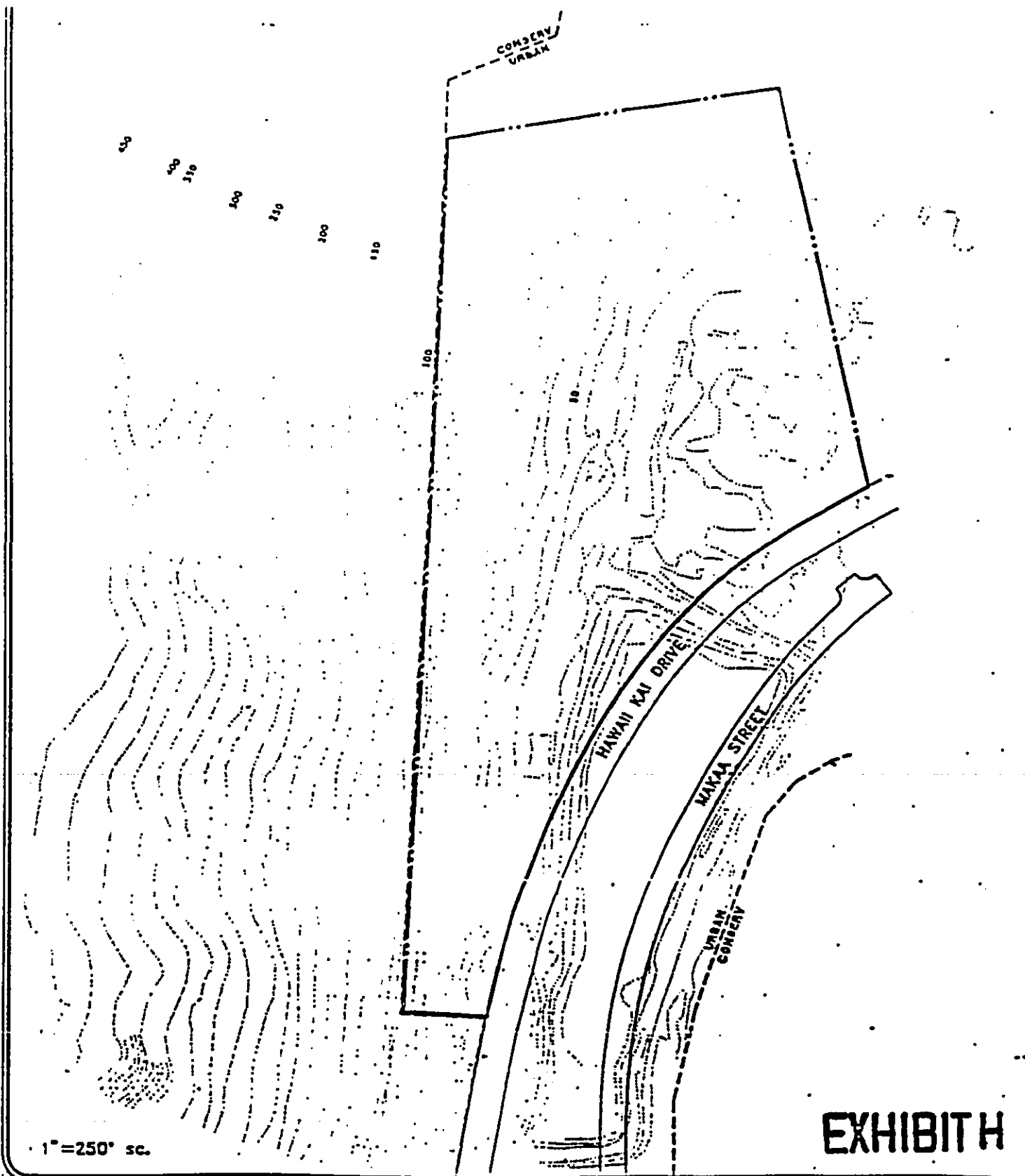
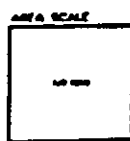
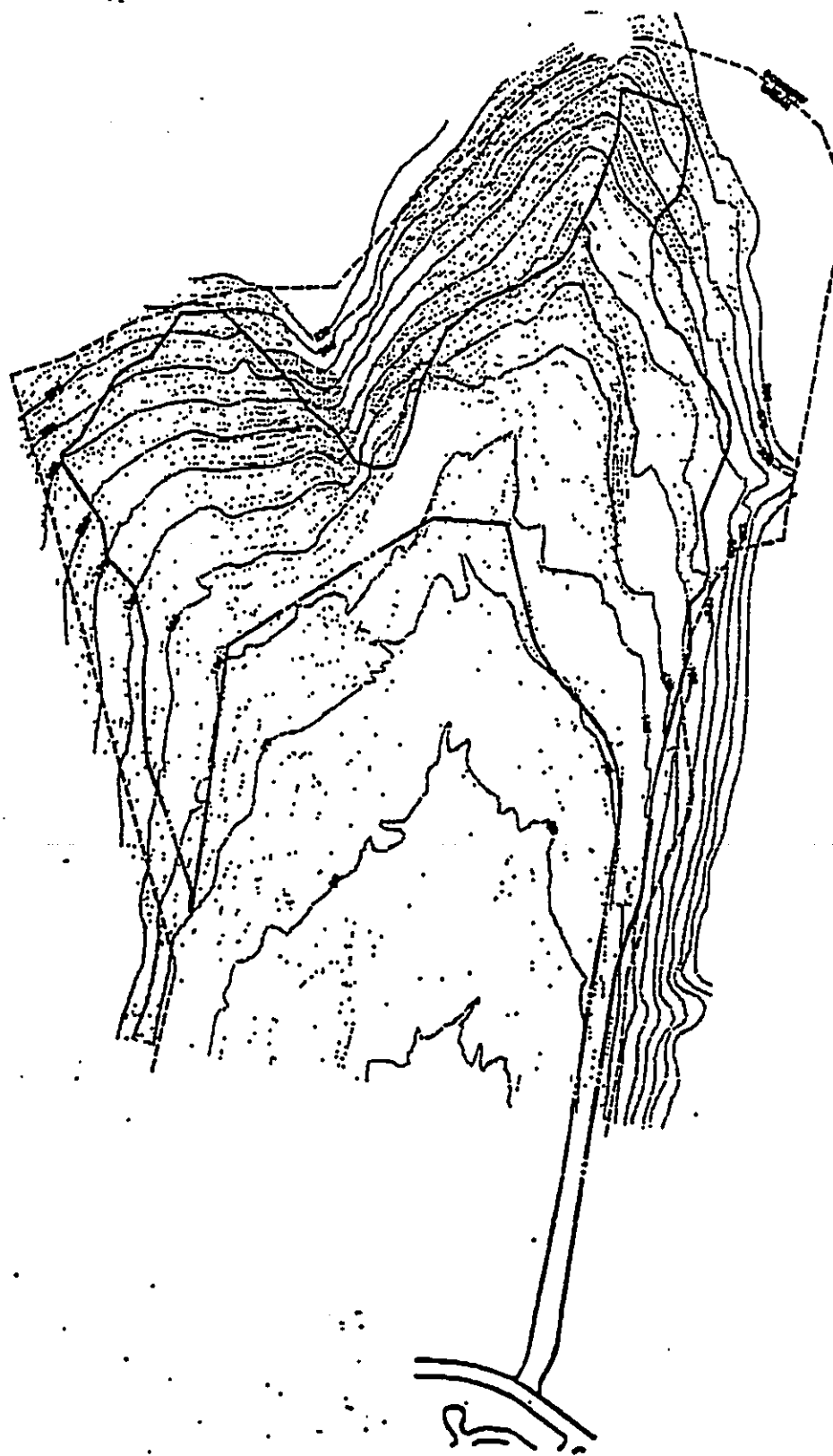


FIGURE 2.2.4  
HAWAII KAI EIR PREP NOTICE  
KAMILONUI 1



HAWAII EA

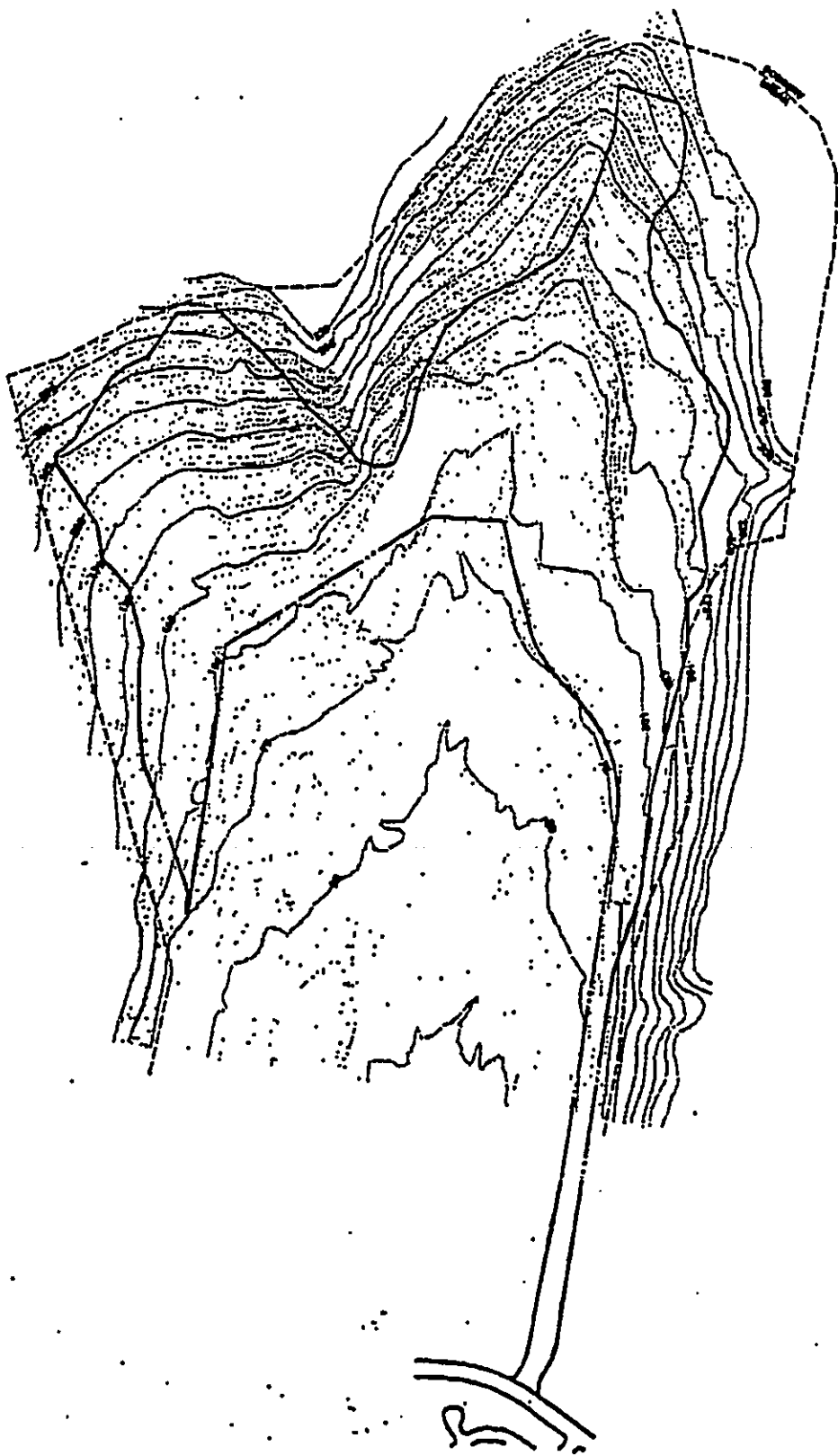
5



**KAMILONUI 2**



**EXHIBIT 1**



**KAMILONUI 2**



**EXHIBIT J**

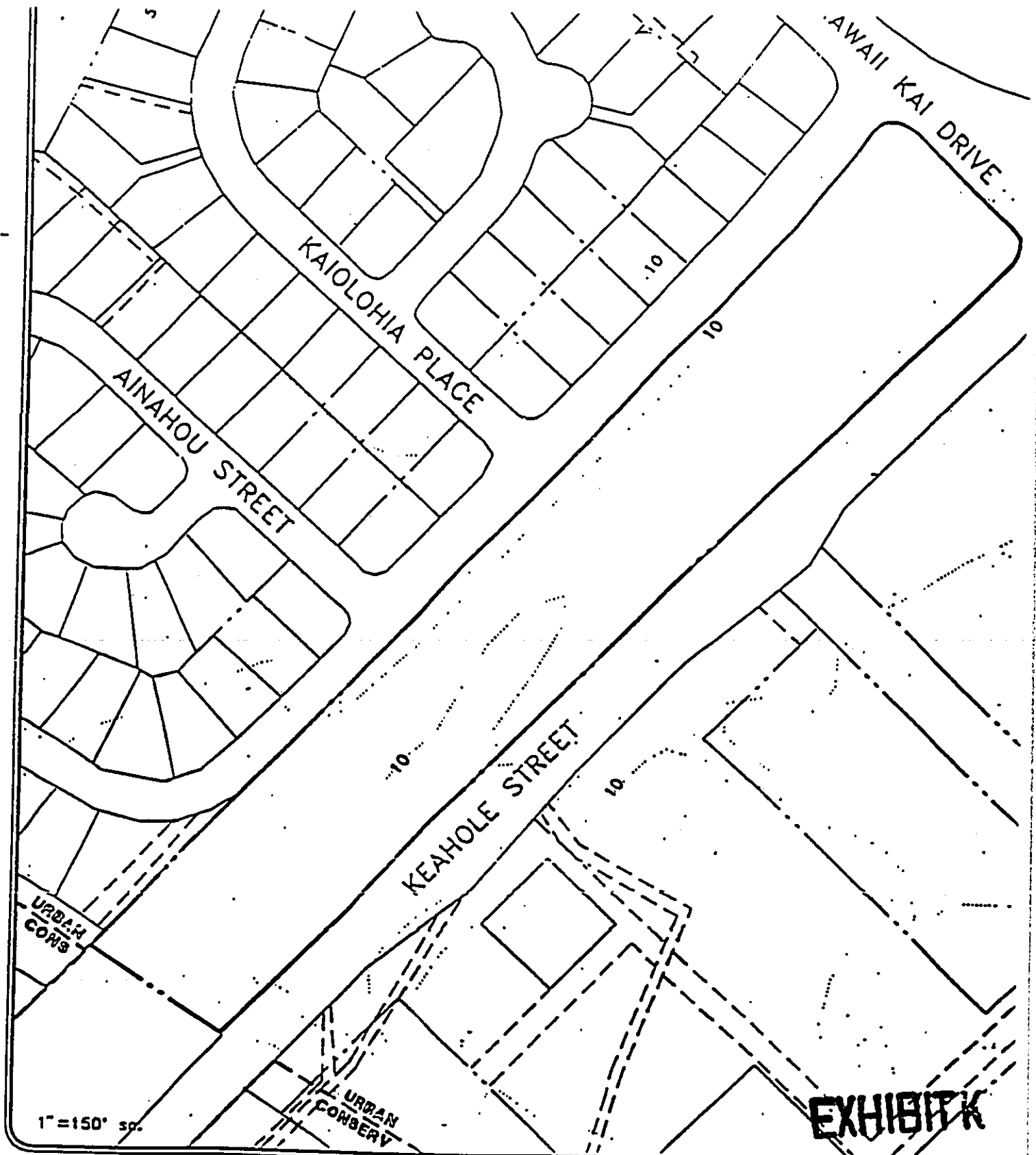
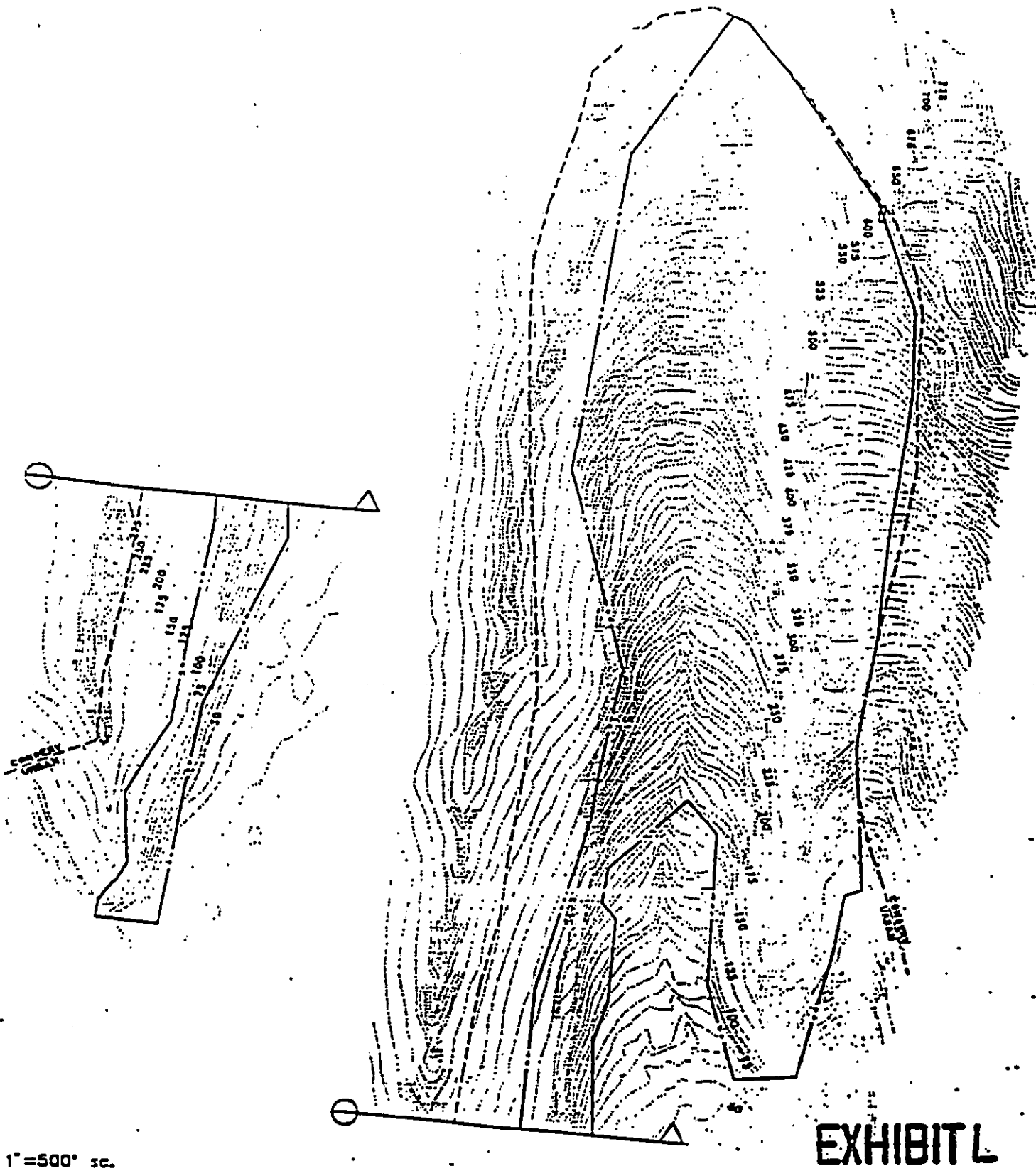


FIGURE 2.2.6  
HAWAII KAI EIR PREP NOTICE  
MARINA 4B





1" = 500' SC.

EXHIBIT L

FIGURE 2.2.7  
HAWAII KAI EIR PREP NOTICE  
MAUWAI



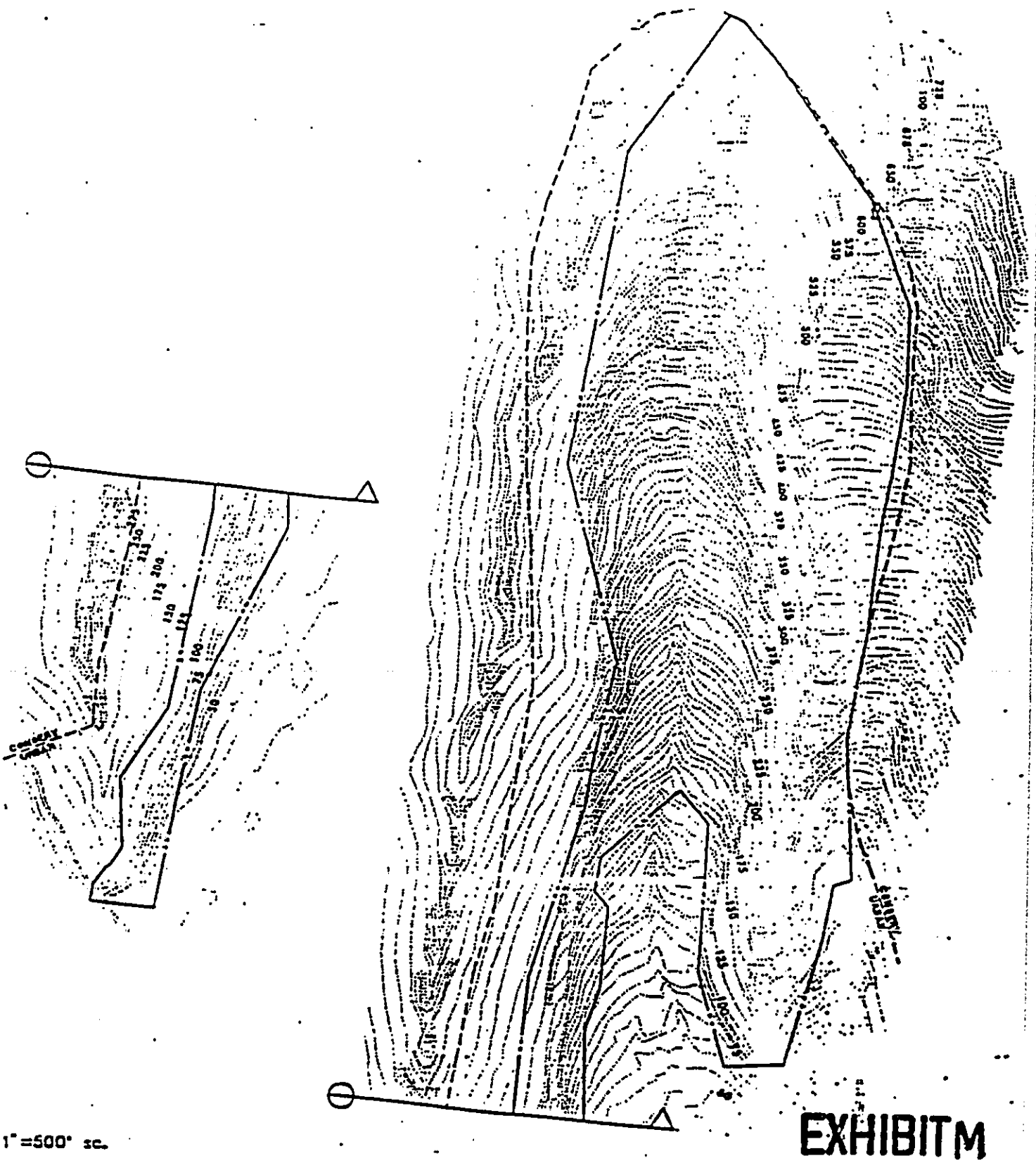
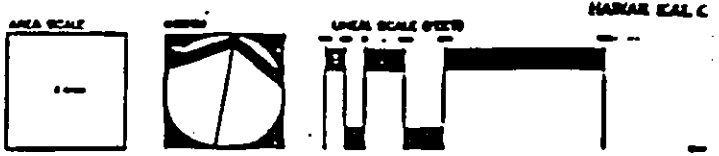
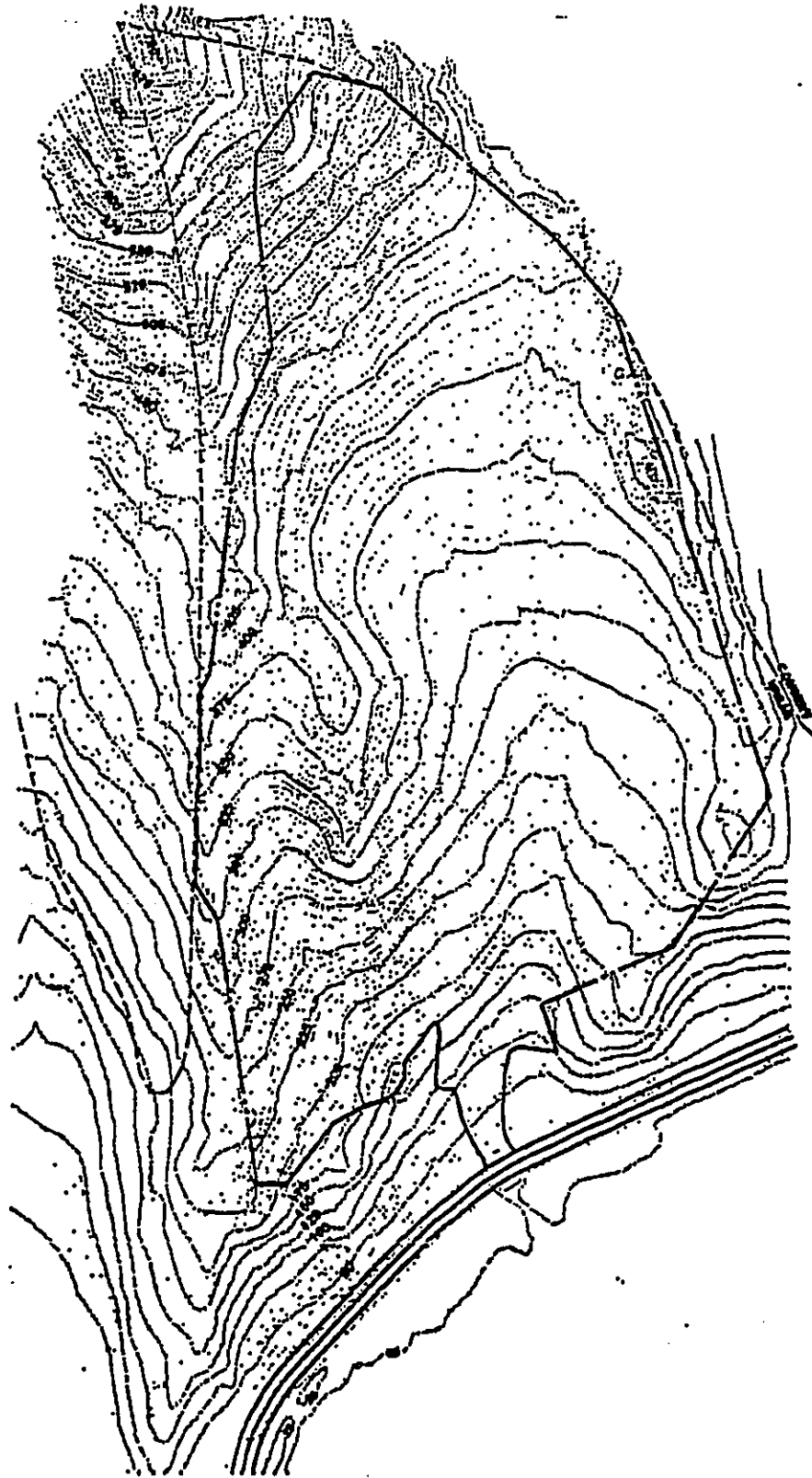


FIGURE 2.2.7  
HAWAII KAI EIR PREP NOTICE  
MAUWAI



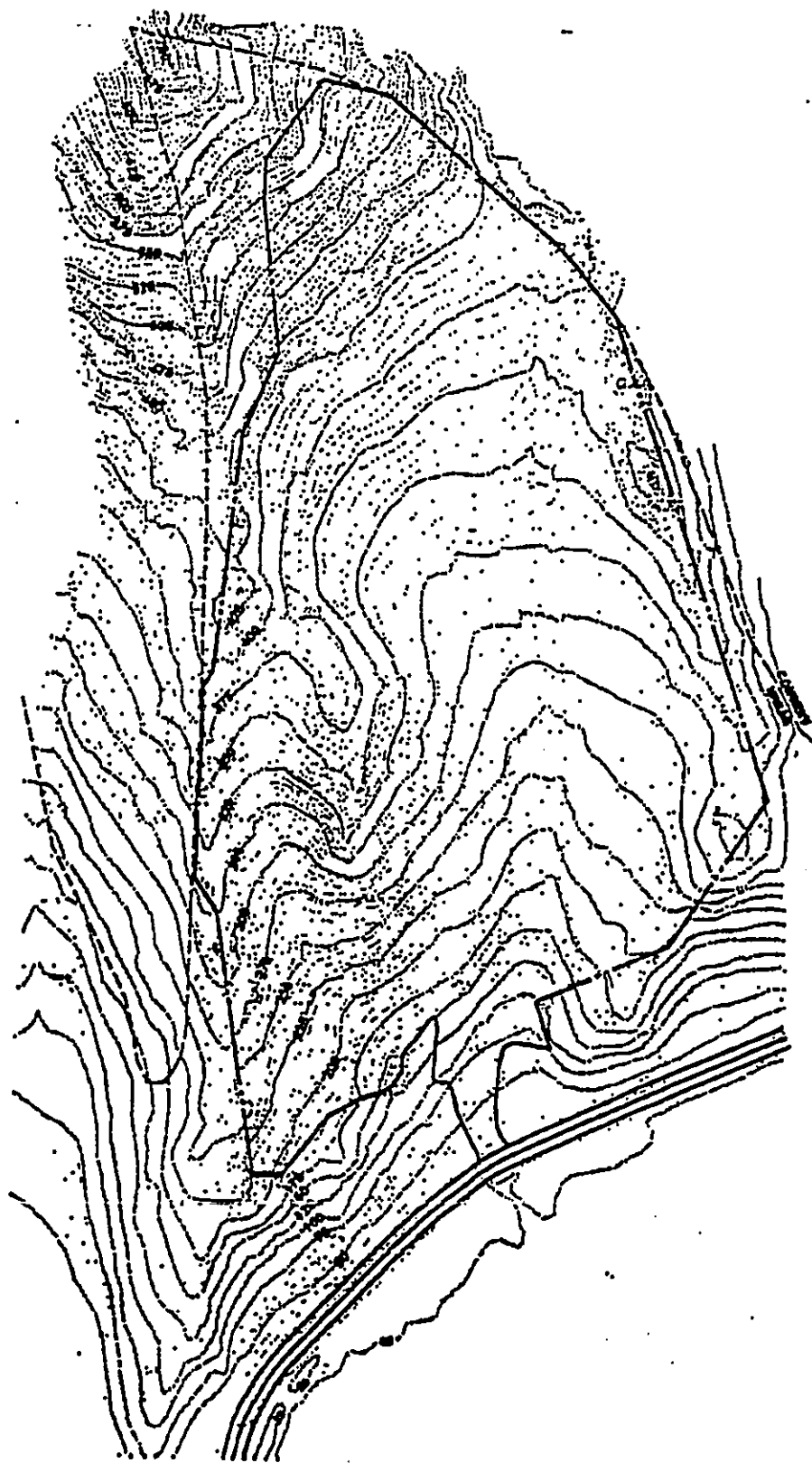




# QUEEN'S RISE



EXHIBIT N



### QUEEN'S RISE



EXHIBIT O

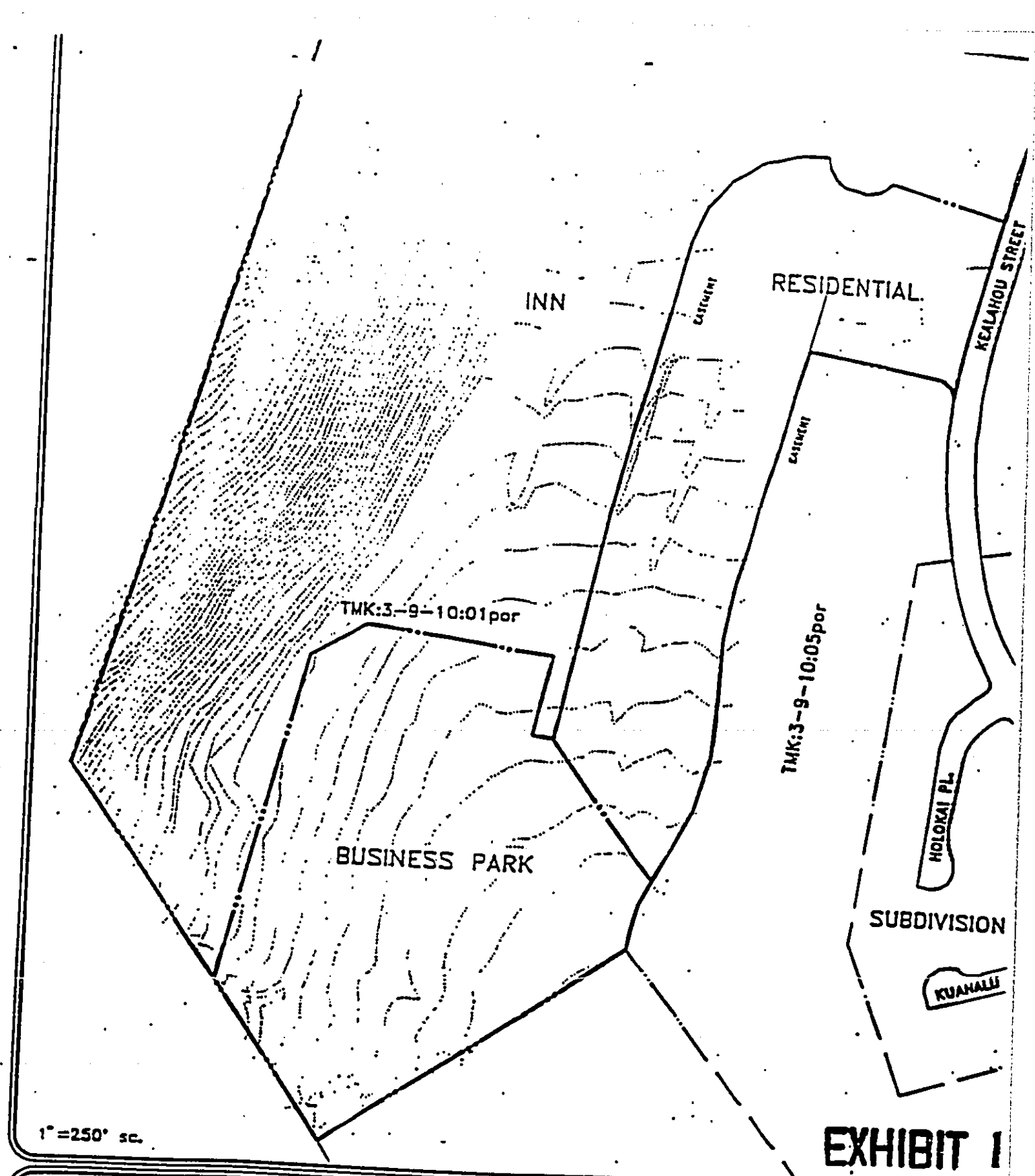


FIGURE 2.2.1  
HAWAII KAI EIR PREP NOTICE  
GOLF COURSE 2/1A



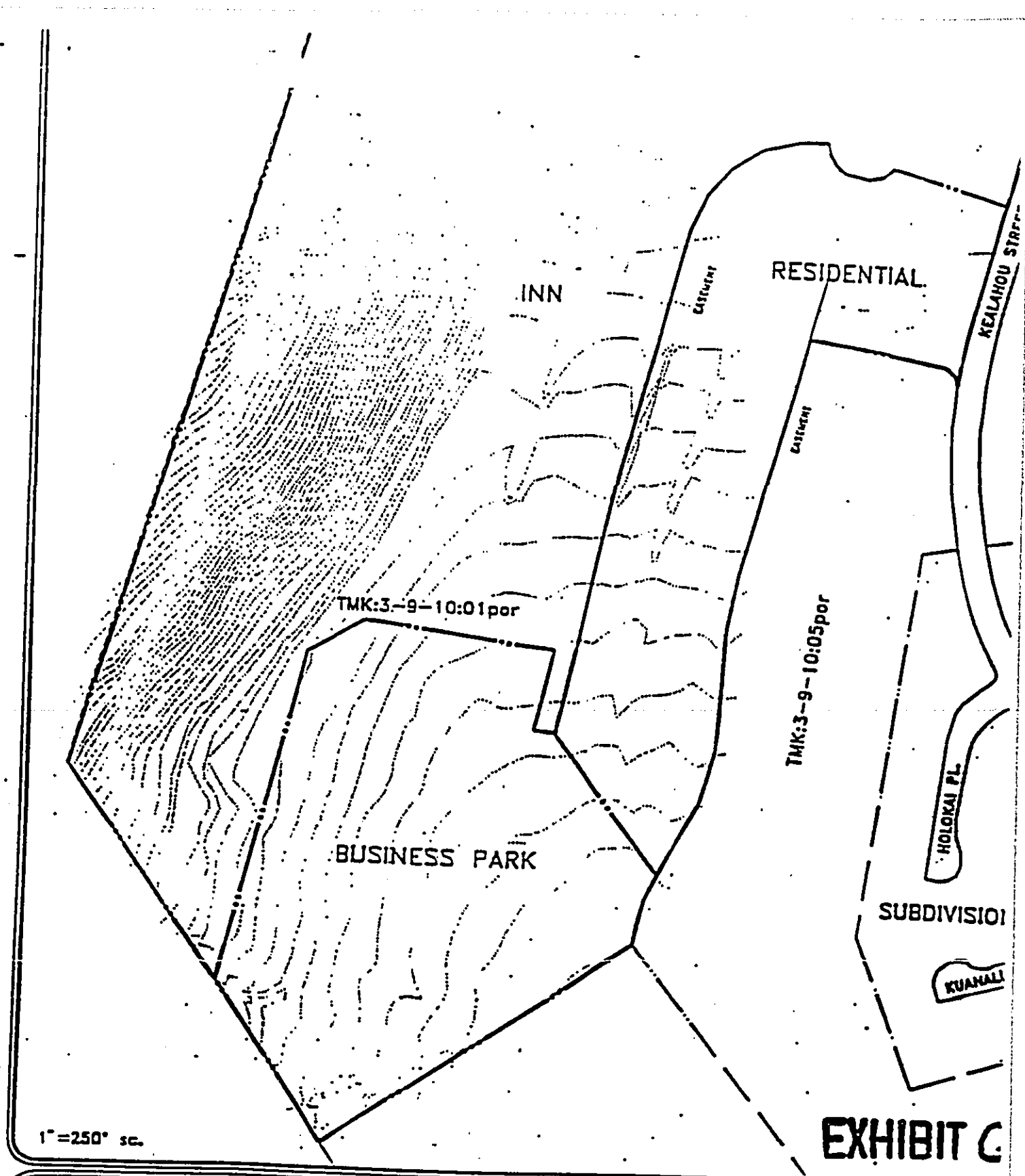


FIGURE 2.2.1  
HAWAII KAI EIR PREP NOTICE  
**GOLF COURSE 2/1A**



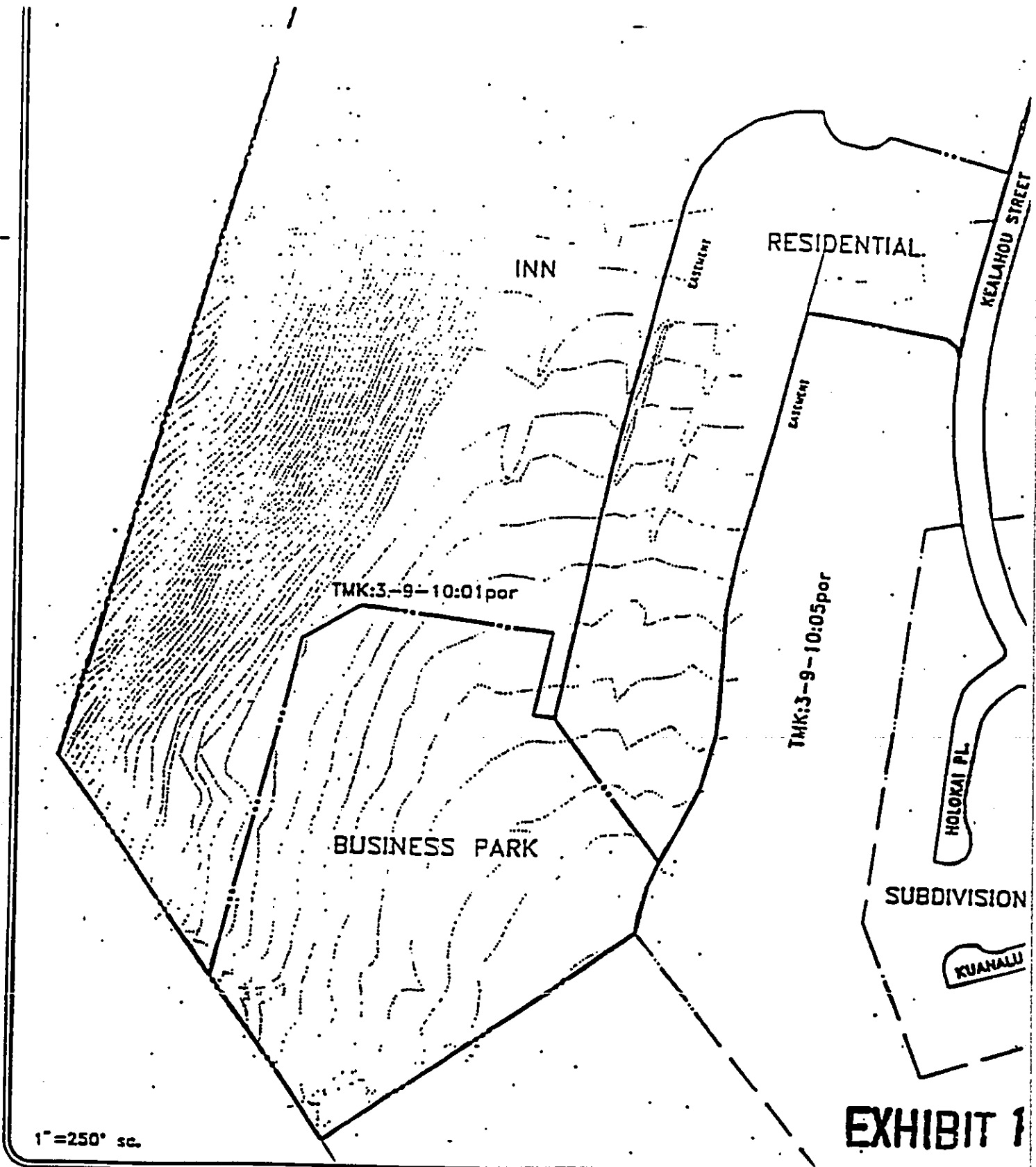
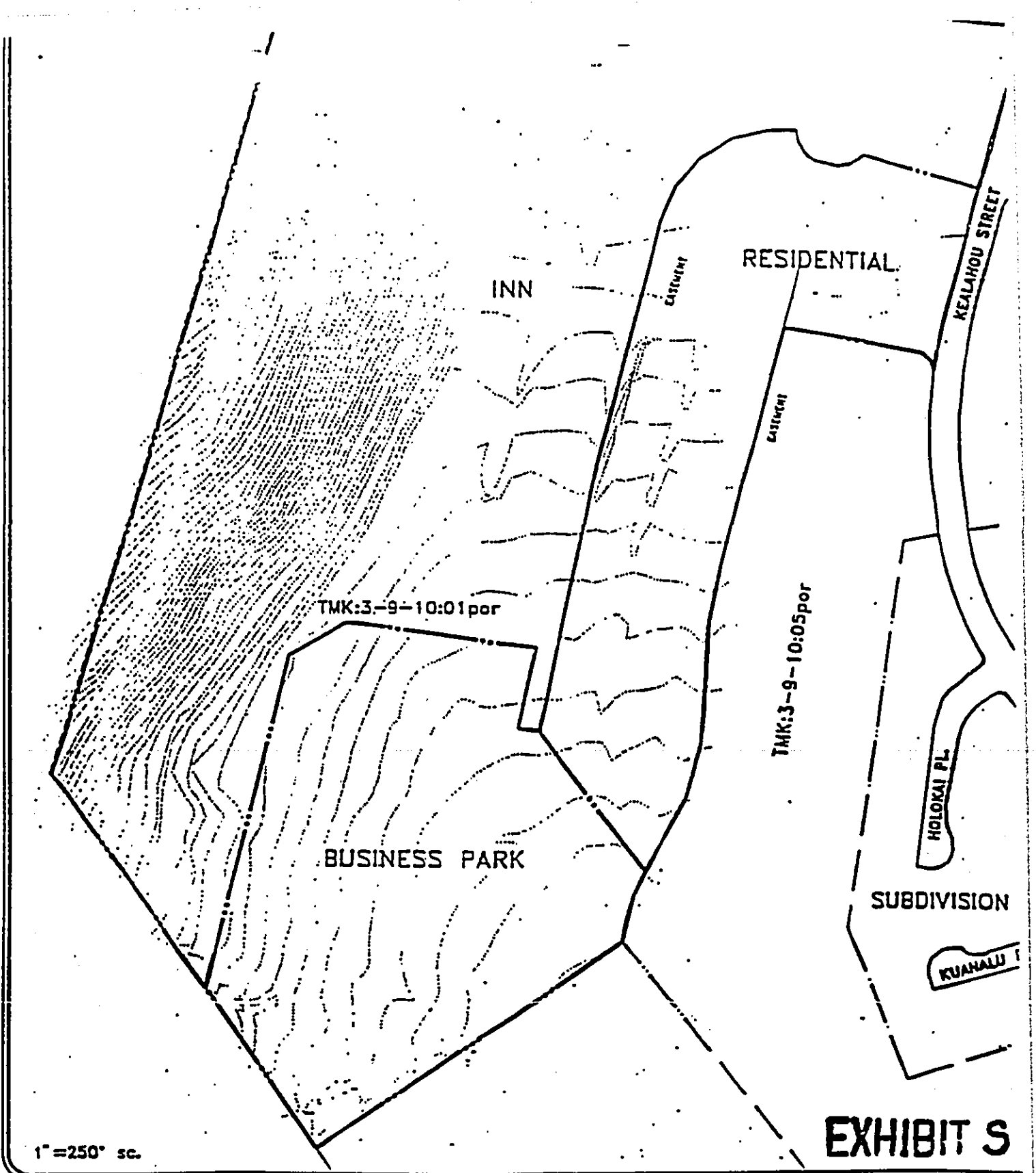


FIGURE 2.2.1  
HAWAII KAI EIR PREP NOTICE  
GOLF COURSE 2/1A





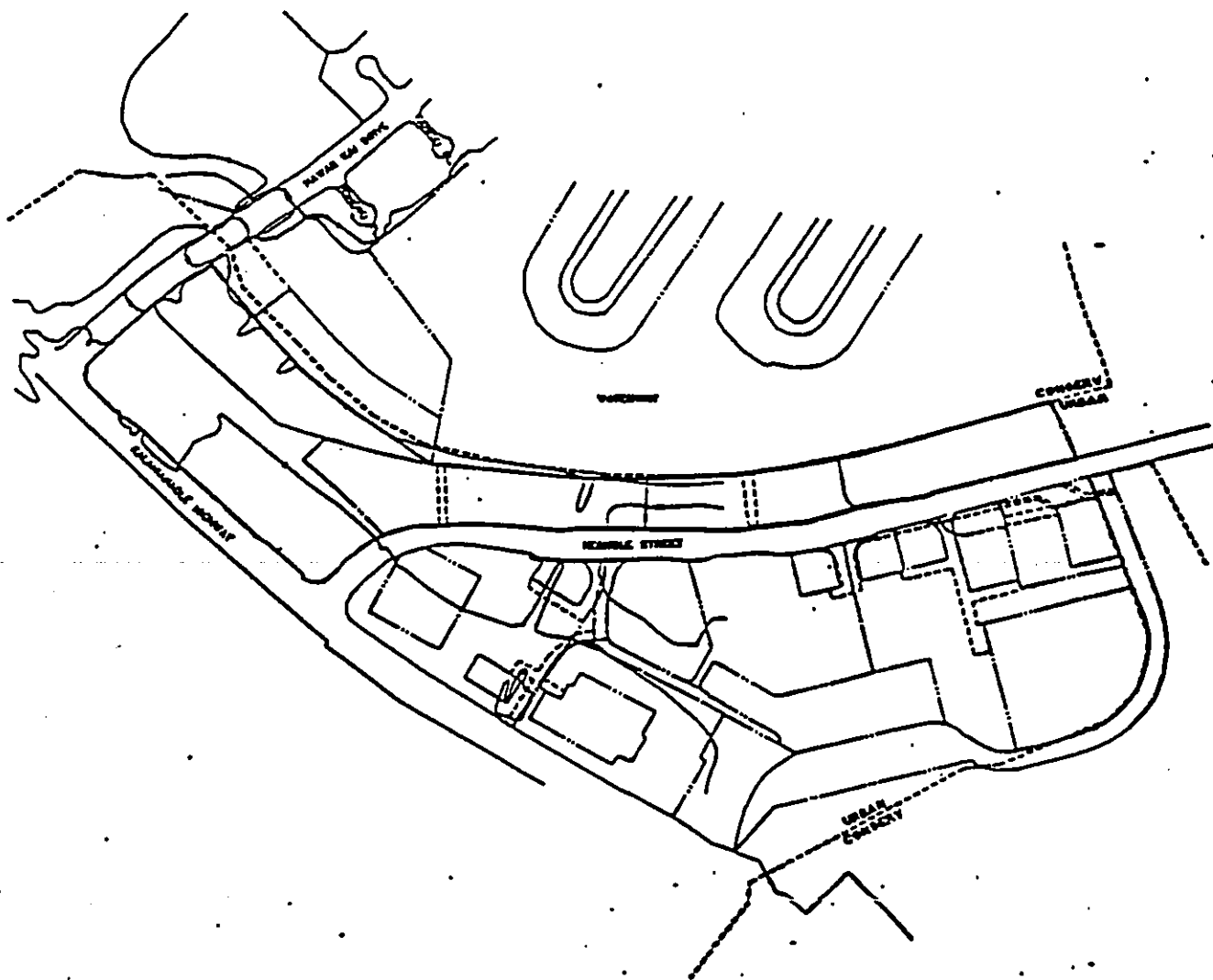
**EXHIBIT S**

FIGURE 2.2.1  
HAWAII KAI EIR PREP NOTICE  
**GOLF COURSE 2/1A**



HAWAII KAI, C

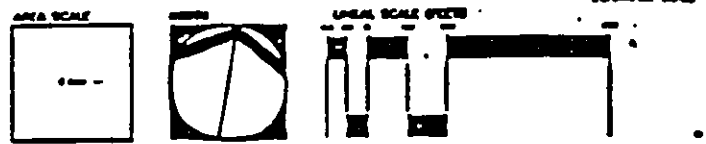




1" = 500' SC.

**EXHIBIT U**

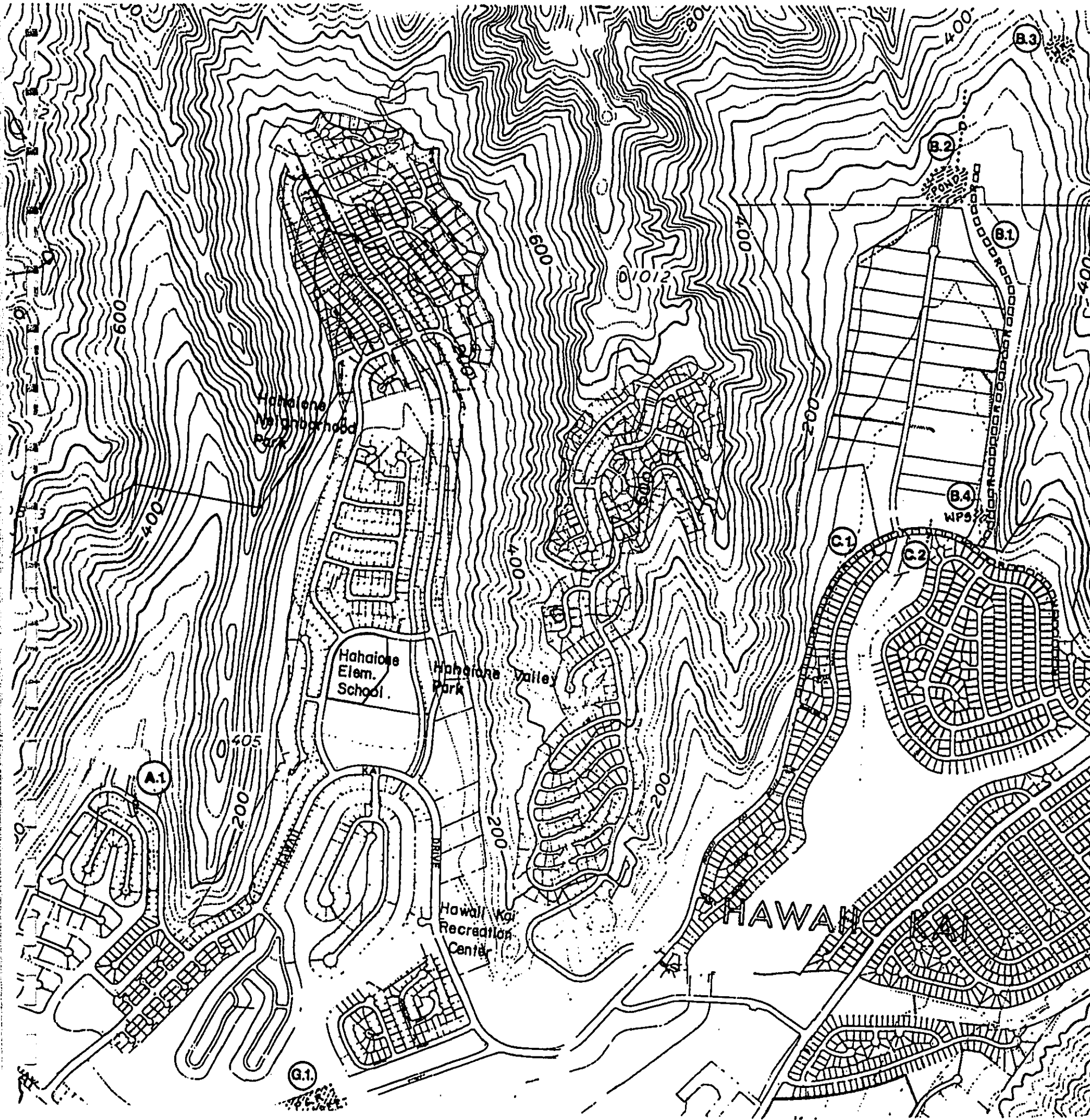
FIGURE 2.3.2  
HAWAII KAI EIR PREP NOTICE  
**MARINA 1/STRIP 1**



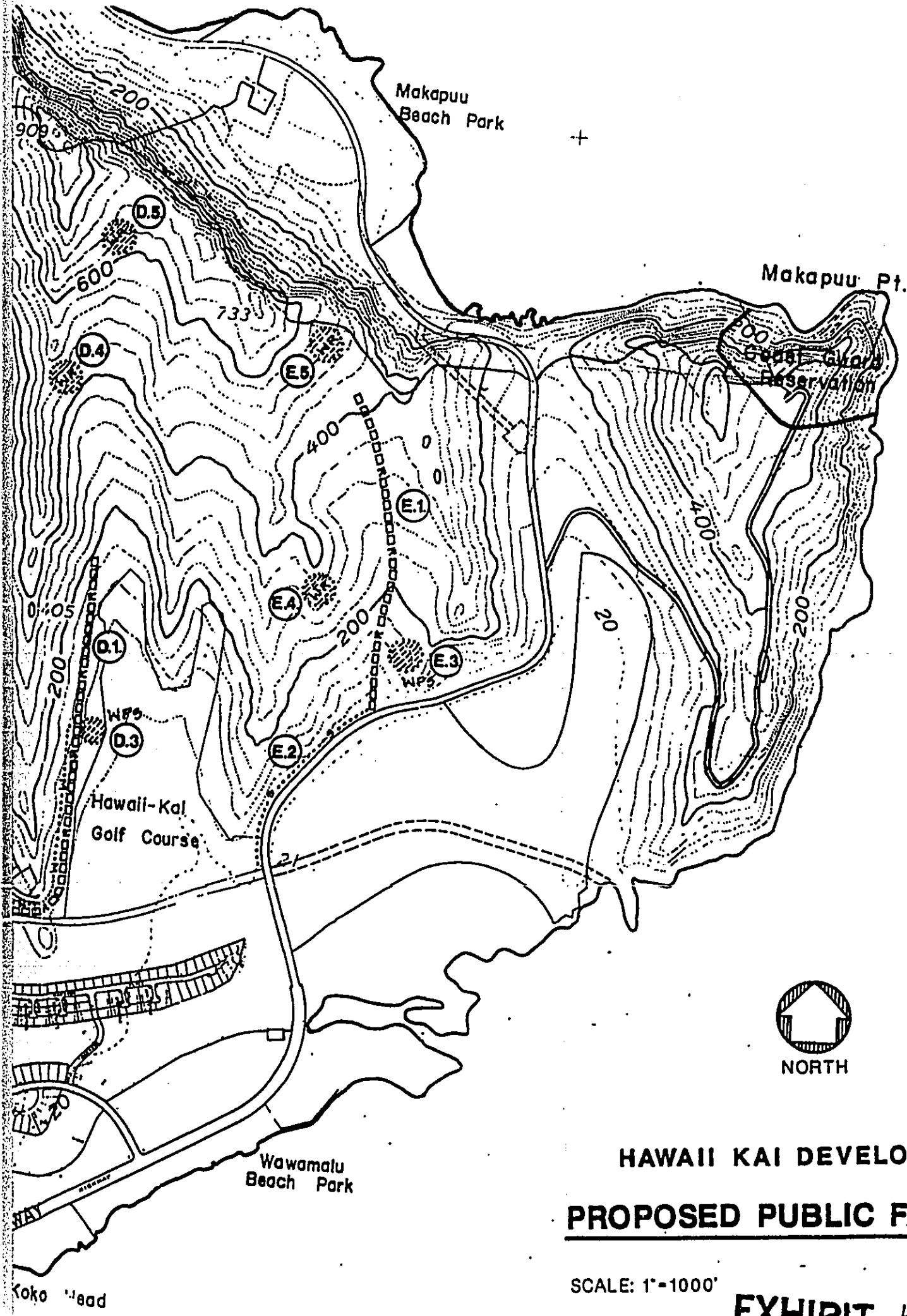


Letter from Board of Water Supply  
as Described in  
Sections V.1.j and XI

EXHIBIT GG







**HAWAII KAI DEVELOPMENT**  
**PROPOSED PUBLIC FACILITIES**

SCALE: 1"=1000'      JANUARY 1998  
**EXHIBIT HH-1**

**HAWAII KAI DEVELOPMENT**  
**PRIVATE FUNDED IMPROVEMENTS**  
**TO BE DESIGNATED ON D.P. PUBLIC FACILITIES MAP**  
**FOR EAST HONOLULU**

All improvements to be completed as and if appropriate prior to the issuance of occupancy permits for the stated project.

**B A. KAMILONUI 2**

1. 56' R/W Roadway (2 lanes)  
3700' ± long
2. 20' x 10' Drain Channel w/Detention Pond  
750' ± long
3. 0.3 MG Water Reservoir & Site Work
4. Water Booster Pump Station

**C B. HAWAII KAI DRIVE EXTENSION**

1. 56' R/2 Roadway (2 lanes)  
4500' ± long
2. 30' x 8' Drain Box Culvert Crossing  
60' ± long

**D C. MAUUWAI**

1. 56' R/W Roadway (2 lanes)  
5,000' ± long
2. 16" Waterline

January 22, 1996

**EXHIBIT HH-2**

3,700' ± long

3. Water Booster Pump Station
4. 0.1 MG Water Reservoir & Pump Station
5. 0.1 MG Water Reservoir & Site Work

**E** **β.** QUEEN'S RISE

1. 56' R/W Roadway (2 lanes)  
2,800' ± long
2. 15" Sewer Trunk Main  
2,000' ± long
3. Water Booster Pump Station
4. 0.1 MG Water Reservoir & Pump Station
5. 0.1 MG Water Reservoir & Site Work

**F** **β.** GOLF COURSE 2/1A

1. Detention Pond
2. 56' R/W Roadway (2 lanes)  
1,800' ± long

**G** **β.** MARINA 1/STRIP 1

1. Park and Ride

**H** **β.** KOKOHEAD

1. 170' Water Reservoir Addition (1 mil. gal.)

January 22, 1996

2.

61

Pretrial Settlement Procedure Order  
(without exhibits)

EXHIBIT II



Settlement Order and Consent Decree

EXHIBIT JJ

**EXHIBIT B**

EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

(Caption)

SETTLEMENT ORDER AND CONSENT DECREE

This cause came on for hearing on \_\_\_\_\_,  
1996, and the parties hereto having settled, compromised and  
agreed to all matters in controversy between them, and the  
Court being fully advised in the premises enters this  
Settlement Order and Consent Decree.

THE COURT FINDS AS FACTS AND CONCLUDES IN LAW:

1. Plaintiffs in the lawsuits, defined below, are Trustees of the Kamehameha Schools Bishop Estate ("KSBE"), Maunalua Associates, Inc., the successor to Hawaii Kai Development Company ("Maunalua"), and Kaiser Aluminum & Chemical Corporation ("KACC"), Maunalua and KACC being successors in interest in varying degrees to Bedford and Kaiser entities.
2. The defendant in the lawsuits is the City and County of Honolulu, a municipal corporation of the State of Hawaii ("City").
3. KSBE, Maunalua and KACC (collectively "Owners") are the legal or equitable fee owners or lessee of several parcels of land located in Hawaii Kai, East Honolulu, Oahu, as more fully described in Exhibit \_\_\_\_\_, as shown on Map \_\_\_\_\_ (the "Properties").

4. Since the early 1980s East Honolulu has been the site of numerous land use controversies between the parties. Two of these have reached the Hawaii Supreme Court and one the United States Supreme Court. In its efforts to cope with these complex and interwoven controversies, City has often had to seek assistance from independent specialty consultants, with national reputations in land use controversies and various land valuation consultants. The cost to the taxpayer has been enormous, already exceeding \$1,500,000.00 (One Million Five Hundred Thousand Dollars), not including the time-consuming and disruptive effect of these controversies on key City personnel. The almost constant need to devote significant City attention to legal dispute resolution, by its nature a backward looking process; has diverted and diluted City attention from ongoing and future public needs.

5. Presently eight active litigation matters are pending in state and federal courts ("Lawsuits") regarding United States Constitution land use disputes in East Honolulu. They are:

- a. Richard Lyman, Jr., et al. v. City and County of Honolulu, Civil No. 84-0448, U.S. District Court for the District of Hawaii;
- b. Kaiser Development Company aka Kacor Development Company, et al. v. City and County of Honolulu, Civil No. 84-0388, U.S. District Court for the District of Hawaii;

- c. Richard Lyman, Jr., et al. v. City and County of Honolulu, Civil No. 84-0449, U.S. District Court for the District of Hawaii;
- d. Matsuo Takabuki, et al. v. City and County of Honolulu, Civil No. 89-0357-02, First Circuit Court, State of Hawaii;
- e. Kaiser Development Company, et al. v. City and County of Honolulu, Civil No. 84-0389, U.S. District Court for the District of Hawaii;
- f. Kaiser Development Company aka Kacor Development Company, et al. v. City and County of Honolulu, Civil No. 88-3767-12, First Circuit Court, State of Hawaii;
- g. Matsuo Takabuki, et al. v. City and County of Honolulu, Civil No. 89-3540-11, First Circuit Court, State of Hawaii; and
- h. Bedford Development Company fka Kaiser Development Company, et al. v. City and County of Honolulu, Civil No. 89-3539-11, First Circuit Court, State of Hawaii.

The above cases shall be referred to collectively as "Lawsuits". Pursuant to the consent of all parties, Civil Nos. 84-0388, 84-0389, 84-0448 and 84-0449 ("Federal Cases") have been referred to the undersigned Magistrate Judge for settlement purposes pursuant to 28 U.S.C. 636(c) and Federal Rule of Civil Procedure 73. The Federal Cases have been consolidated for these purposes pursuant to that certain Consent to Exercise of Jurisdiction by a United States Magistrate Judge and Order of Reference, filed October 19, 1995, and that certain Pretrial Settlement Procedure Order, dated \_\_\_\_\_, 1996 ("Pretrial Order"). Further, pursuant

to the consent of all parties, Civil Nos. 88-3767-12, 89-0357-02, 89-3539-11 and 89-3540-11 ("State Cases") have likewise been consolidated for settlement purposes and stayed by the Honorable Colleen K. Hirai, Judge of the Twentieth Division, First Circuit Court, State of Hawaii, by Stipulation Regarding Pretrial Settlement Procedure and Order dated \_\_\_\_\_, 1996. This Court has consulted and coordinated these matters with Judge Hirai during the course of settlement negotiations.

6. The KSBE, Maunaloa, and KACC have additional claims against City with respect to the Properties which could have been claimed in the Lawsuits ("Claims").

7. The Lawsuits involve, inter alia, colorable claims by KSBE, Maunaloa, and KACC against City for violations of the Fifth and Fourteenth Amendments to the United States constitution.

8. KSBE, Maunaloa, KACC, and City desire to settle all the above-described Lawsuits and Claims with respect to the Properties. KSBE, KACC, and Maunaloa believe it is in their respective best interests to reach a full and final compromise and settlement of all matters and all causes of action arising out of the facts and claims concerning the Properties. City wishes to settle the Lawsuits and Claims, strengthen the public planning process, reduce the economic risk of litigation, and promote the health, safety, and general welfare of the City and County of Honolulu.

9. Since the summer of 1989, by mutual agreement and at the request of the City Council, the parties to these cases have been actively seeking alternative methods of resolving not only these disputes but also potential future Hawaii Kai land use controversies. (As used in this Settlement Order and Consent Decree, "Hawaii Kai" shall encompass the area from Kuliouou to Makapuu point on the Island of Oahu.) After approximately six years of extensive joint effort, with significant oversight by and cooperation from the state and federal courts, a comprehensive settlement procedural order was entered in hopes of resolving the existing and as many of the potential controversies as were mutually deemed practicable.

10. Through the use of a special focused comprehensive land use review process involving the joint development of information together with widespread public notice and extensive public review, the parties sought twenty years of planning certainty for the portions of Hawaii Kai covered by the settlement. The end result was to be policed by both a court consent decree and a City ordinance.

11. In settlement of these Lawsuits and Claims, the parties have taken the following further actions pursuant to this Court's Pretrial Order:

a. City has proposed, processed, and after notice and numerous public meetings and hearings, adopted an Ordinance ("Ordinance") approving the settlement, including the

land uses set forth therein ("Land Uses"). The Ordinance is attached hereto as Appendix A.

b. In aid of City's proposal and processing, William E. Wanket, Inc. ("Compiler") coordinated the compilation of the information, with the assistance of over twenty consultants of various planning, engineering, scientific, economic, and social disciplines, set forth in Appendix A of Exhibit C of the Pretrial Order ("Information") at the expense of Owners. All parties cooperated in assisting the compiler in the preparation of the Information. Pursuant to the Pretrial Order a voluntary Environmental Impact Report ("EIR") preparation notice was disseminated on \_\_\_\_\_, 1996. More than thirty days (a) after the dissemination of the EIR preparation notice, (b) a Honolulu City Council ("City Council") procedural workshop, and (c) ongoing consideration of public governmental agency comments, a draft EIR ("DEIR") was filed on \_\_\_\_\_, 199\_ with the City's Planning Department ("PD"). More than sixty days after the filing of the DEIR and a City Council substantive workshop, a final EIR, including public comment and appropriate responses ("FEIR") was filed on \_\_\_\_\_, 199\_ with the PD. Following the opportunity for additional public comment, the EIR was accepted by the PD on \_\_\_\_\_, 1996.



c. Pursuant to this Court's Pretrial Order, inter alia, the following procedures were followed in adopting the Ordinance:

(i) On \_\_\_\_\_, 1996, City provided notice, substantially in a form previously approved by this Court, of the procedures to those persons, agencies, and entities set forth in Exhibit C of the Pretrial Order and from time to time thereafter such other general public notices as are required by law. A list of such other notices is attached hereto as Appendix B.

(ii) On \_\_\_\_\_, 1996, (\_\_\_\_ days after Compiler's submission of the DEIR to City), all governmental agencies completed their review of the Land Uses and Information.

(iii) On or before \_\_\_\_\_, 1996, the Directors of PD and DLU, submitted their comments regarding the Land Uses to PC, and City Council following their respective procedures, which, to the extent consistent herewith, provided the public with additional opportunities to comment.

(iv) On or before \_\_\_\_\_, 1996 those neighborhood boards so desiring were provided an opportunity to submit their comments regarding the proposed settlement to the PC and City Council.

(v) On \_\_\_\_\_, 1996, the PC held a public hearing. This public hearing provided another opportunity for comment and written comments were also permitted and received up until seven (7) days after conclusion of the public hearing.

(vi) On or before \_\_\_\_\_, 1996 (\_\_\_ days after the conclusion of its Public Hearing), PC submitted its comments regarding the proposed settlement to the City Council following its procedures, which, to the extent consistent herewith, provided the public with additional opportunities to comment.

(vii) On \_\_\_\_\_, 1996, City Council considered on first reading a bill for an ordinance approving settlement of the Lawsuits in the form of Exhibit A to the Pretrial Order, or such other form as the parties may, from time to time, approve ("Bill"). After the opportunity for public comment in accordance with the City Council's normal practice, said Bill passed on first reading on \_\_\_\_\_, 1996 and was referred to the City Council's Zoning Committee ("Committee").

(viii) On \_\_\_\_\_, 1996, the Committee considered the Bill, following its normal practice for public input. On \_\_\_\_\_, 1996, the Committee reported to the City Council regarding the proposed settlement.

(ix) On \_\_\_\_\_, 1996, City Council held a public hearing on the Bill. At the close of the public hearing, City Council considered on second reading the Bill approving settlement of the consolidated cases. Said Bill passed on second reading on \_\_\_\_\_, 1996.

(x) On \_\_\_\_\_, 1996, the Committee again considered the Bill, following its normal practice for public input. On \_\_\_\_\_, 1996, the Committee again reported to the City Council regarding the proposed settlement.

(xi) On \_\_\_\_\_, 1996, the City Council considered the Bill on third reading following its practice for public input. Said Bill passed on third reading on \_\_\_\_\_, 1996.

(xii) The Bill, which includes the last discretionary permit for the development of the land subject thereto, was submitted to the Mayor for action in the ordinary course. On \_\_\_\_\_, 1996, the Bill became effective as Ordinance No. \_\_\_\_\_ of the City and County of Honolulu ("Ordinance") subject to the entry of this Order.

12. This Court held a hearing on \_\_\_\_\_, 1996, to allow parties in the Lawsuits to comment upon, and, if necessary, offer evidence regarding the proposed settlement.

13. For and in consideration of the mutual promises of the parties and conditioned upon the undertakings set forth herein, all parties have agreed to settle all of the Lawsuits

and Claims in accordance with this Settlement Order and Consent Decree.

14. This Court, having considered the position of the parties, the evidence submitted to it, finds the settlement to be fair. Particularly supportive of this finding are the following:

- a. City will become the fee owner of approximately 30+ acres of ocean view property (parcels 5 and 6) for public park or non-commercial open space purposes;
- b. The parties agree to a mutual twenty year covenant of no change in density from that contained in the Ordinance for the designated parcels;
- c. Hawaii Kai Drive will be linked at Kamilonui at the expense of the owner(s) of Kamilonui 1 and 2;
- d. These benefits will accrue to the City at no cost or risk to the taxpayers;
- e. KSBE, Maunalua, and KACC will receive vested assurances that they will have an opportunity to achieve a return on their investment backed expectations, including the above contributions made in reliance upon the settlement during a twenty-year period. (For purposes of settlement, the parties have, over a period of seven years, examined and designated certain uses, as set forth in the Ordinance, intended to be developed in Hawaii Kai during this twenty-year period. The proposed settlement uses represent neither party's optimal

development program, but rather the result of extensive negotiations and numerous studies, with appropriate compromises on each side.);

f. The downside risks of this complex litigation for all parties -- millions of dollars in fees and costs and untold hours of disruption time on each side, as well as the specter to City of a resort at Queen's Beach, houses at parcels 5 and 6, or the payment by the City of anywhere from \$20 million to \$500+ million in dollars -- have been avoided;

g. While City attorneys were fairly confident that the City will prevail with respect to retaining Queen's Beach in a P-2 zone, this hope was to a significant degree predicated upon a golf course being permitted to be built, essentially along the lines proposed. If a golf course were not allowed, there was a significant risk that the landowners' claims of resort use dating back to the early 1980s would be revived;

h. Parcels 5 and 6 present quite a different risk for City. In this case the last discretionary permits not only were obtained but also had been tested through the appeal process raising a significant probability of vesting as well as inverse condemnation. Based upon brisk home sales at the time in Queensgate, a somewhat less desirable location, up to a \$100 million judgment against City became a worrisome probability; and

i. Under the settlement concept, City avoids these downside risks and essentially achieves what it sought: P-2 zoning for both Queen's Beach and parcels 5 and 6, plus parcels 5 and 6 are to be conveyed to the City in fee at no cost for public park or non-commercial open space purposes; Hawaii Kai Drive in Kamilonui will be connected, and a mutual twenty year covenant of no further density changes for the affected parcels. On the other hand the Owners are provided an opportunity to achieve a return on what they believe to be their investment backed expectations through the designated densities on other parcels without further risk of exactions, conditions or community benefit requirements to the extent not explicitly stated in this Settlement Order and Consent Decree. As the existence of a market and land values are difficult to determine over a twenty-year window, the process was predicated upon compromise, uncertainty, and opportunity. It ends, however, the disputes on a little or no cost basis to City and provides comfort to the Hawaii Kai community as to where it will be in twenty years.

15. As this has been a court mandated settlement process, normal planning procedures may be altered, *Metropolitan Housing Development Corporation v. Village of Arlington Heights*, 373 F. Supp. 208 (N.D. Ill. 1974), rev'd, 517 F.2d 409 (7th Cir. 1975), rev'd and remanded, 429 U.S. 252 (1977), on remand, 558 F.2d 1283 (7th Cir. 1977), cert. denied,

434 U.S. 1025 (1978), on remand, 469 F. Supp. 836 (N.D. Ill. 1979), and aff'd, 616 F.2d 1006 (7th Cir. 1980); and *Mesalic v. Slayton*, 689 F. Supp. 416 (D.N.J. 1988). (See, also, The Use of Consent Decrees in Settling Land Use and Environmental Disputes, D. L. Callies, 21 Stetson Law Review 871 (1992)).

Although of all of the proposed uses only a golf course at Queen's Beach and certain development plan changes might have triggered an HRS Chapter 343 environmental review process, as this settlement is being driven in material part by City's desire to preserve the P-2 zoning at Queen's Beach and to avoid further costly litigation and risks, City is pursuing these changes, which exempts the review process. In return, the Pretrial Order directed the Compiler, with the aid of over twenty planning, engineering, scientific, social, and economic consultants, to develop substantially the same information that would be required for a Chapter 343 review, not just for Queen's Beach and the Development Plan changes but also for the overall settlement uses as set forth in the Pretrial Order. A voluntary mirroring of ROH Chapter 25, incorporating the HRS Chapter 343 review process was incorporated into the Pretrial Order so as to utilize a substantially equivalent review process.

IT IS THEREFORE ORDERED THAT:

1. This is a Consent Decree entered pursuant to the remedial powers of the federal court and the Supremacy Clause of the United States Constitution.

2. The compliance by City with this Court's Pretrial Order and this Settlement Order and Consent Decree shall constitute compliance with the legal requirements relating to the processing and adoption of ordinances related to zoning, planning, and coastal zone management.

3. Notwithstanding any provisions of the Land Use Ordinance or other ordinances of the City and County of Honolulu now in effect or subsequently enacted, KSBE, Maunalua, and KACC shall retain the vested right to the Land Uses specified in the Ordinance, without any conditions, exactions, impact fees, public improvements, facilities or services, affordable housing, park dedication, offsite infrastructure enlargement, other community benefit requirements or any other land development condition except as explicitly set forth in the Ordinance. Such Land Uses and classifications as adopted in the Ordinance shall not be altered, amended, or changed without the consent of KSBE, Maunalua, KACC or their successors in interest for a period of twenty (20) years from the effective date of the Ordinance, without the payment of just compensation based upon the uses therein designated.



4. The entry of this Settlement Order and Consent Decree is solely for the purpose of terminating the Lawsuits and, by the approval hereof, City does not admit any violation of the Fifth or Fourteenth Amendment to the United States Constitution, or any other State or Federal law. The defendants and plaintiffs herein are hereby each to the other released from all claims or indemnification, damages, attorneys' fees or costs which could be levied against them on behalf of the plaintiffs or defendants respectively with respect to the Lawsuits or Claims. Each party shall bear its own fees and costs.

5. This Settlement Order and Consent Decree may not be altered, amended, or changed without the approval of this Court and the plaintiffs and defendants herein or their respective successors in interest. Should any portion of this Settlement Order and Consent Decree be declared invalid and such declaration be upheld on appeal then any party shall have the right to seek dissolution hereof and to pursue all legal claims, including the Lawsuits and Claims.

6. All Federal Cases are deemed settled and each Federal Case is hereby dismissed with prejudice, but this Court shall retain jurisdiction of those matters for the purpose of enforcing the provisions of this Settlement Order and Consent Decree, including without limitation the following:

- a. Causing the parties to enter the concurrent dismissal with prejudice of the State Cases;
- b. Conveyance to the City of the fee interest in parcels 5 and 6, as described in the Ordinance;
- c. Extension of stock pile permits as contemplated;
- d. Linking of Hawaii Kai Drive at Kamilonui;
- e. Reservation and exchange of title with respect to a public funded realignment of Wailua Street;
- f. The issuance of the contemplated Special Management Area Use, Plan Review Use, and cluster permits; and
- g. Enforcement of the Owners' vested rights in the land uses.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Judge of the above-entitled Court

**EXHIBIT C**

**Note:**

**Exhibit C of this Settlement Procedural Order refers to the Environmental Impact Report Preparation Notice of which this Procedural Order is included as Appendix B.**

**HAWAII KAI  
ENVIRONMENTAL IMPACT REPORT  
PREPARATION NOTICE**

**Hawaii Kai, Oahu, Hawaii**

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**January 1996**

**Prepared For: Department of Corporation Counsel  
City and County of Honolulu**

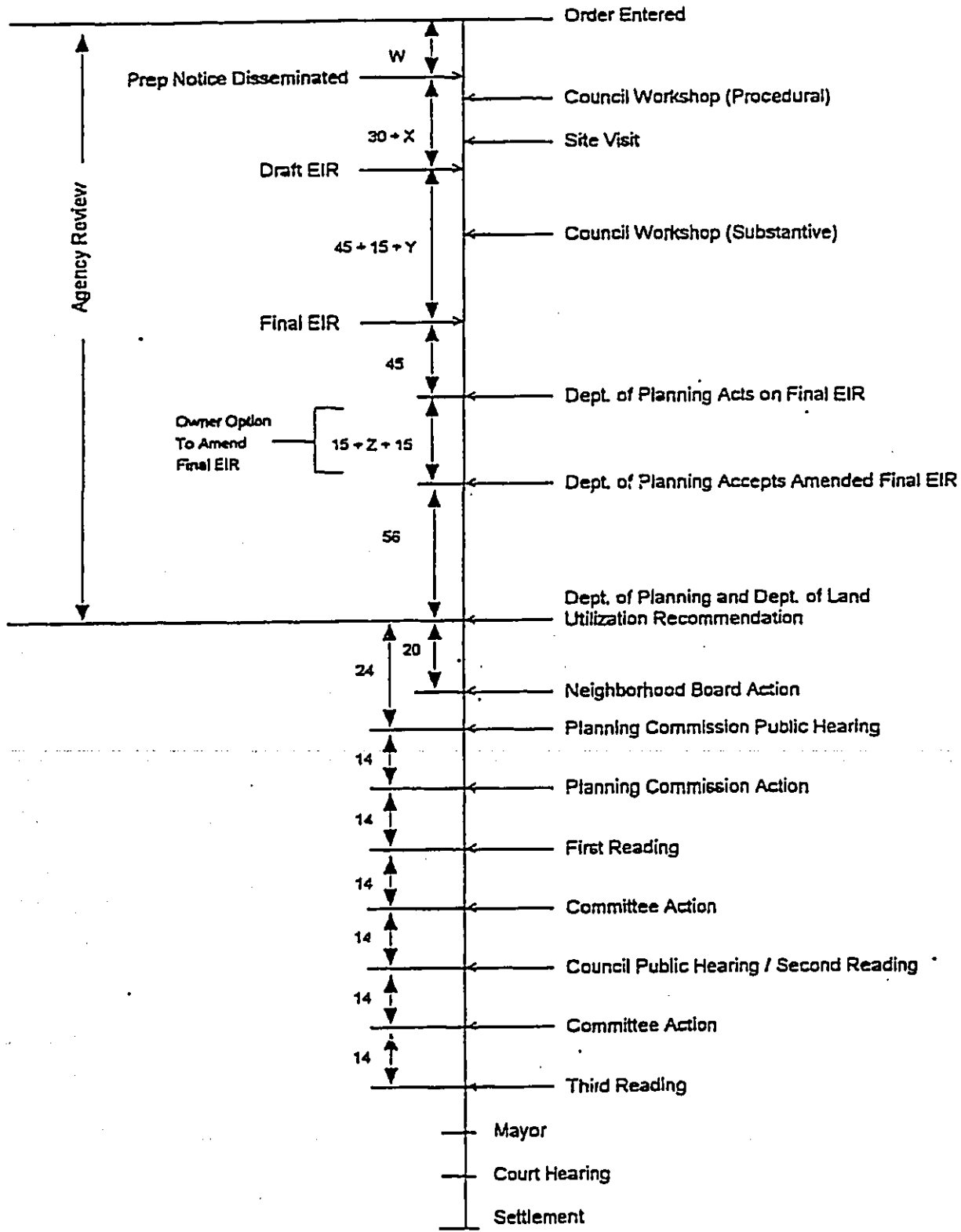
**In Accordance With: Federal Court Pre-Trial Settlement  
Order, Dated January 26, 1996**

**EXHIBIT "C"**

**EXHIBIT D**

**EXHIBIT "D"**

**SETTLEMENT PROCEDURE ORDER TIMELINE**



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01/18/96