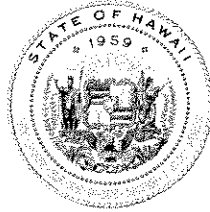
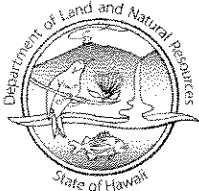


LINDA LINGLE  
GOVERNOR OF HAWAII



LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

REF:OCCL:DH

FILE NO: CDUA KA3509

Acceptance Date: June 1, 2009  
180-Day Exp. Date: November 28, 2009

**MEMORANDUM**

TO: Katherine Kealoha, Director  
Office of Environmental Quality Control

FROM: Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

SUBJECT: Conservation District Use Application (CDUA) KA-3509  
Malerich Proposed Single Family Residence (SFR), Subject Parcel TMK: (4) 5-9-005:025, Haena, Island of Kauai

The Department has reviewed CDUA KA-3509, and the Final Environmental Assessment (FEA) for the Malerich Single Family Residence (SFR), located in Haena District, Island of Kauai, Subject Parcel TMK: (4) 5-9-005:025. The FEA was published in OEQC's June 23, 2009 Environmental Notice for the subject project. The FEA is being submitted to OEQC. We have determined that this project will not have significant environmental effects, and have therefore issued a FONSI. Please publish this notice in OEQC's upcoming October 8, 2009 Environmental Notice. However, the Department notes there is one outstanding issue regarding the proposed design of the SFR.

We have enclosed four copies of the FEA for the project. The OEQC Bulletin Publication Form is attached. Comments on the draft EA were sought from relevant agencies and the public, and were included in the FEA.

Please contact Dawn Hegger of our Office of Conservation and Coastal Lands staff at 587-0380 if you have any questions on this matter.

Enclosures

**FINAL**  
**ENVIRONMENTAL ASSESSMENT**

**Proposed Malerich Residence**  
**TMK (4) 5-9-5: 025**  
**Ha`ena, Kaua`i, Hawai`i**

Prepared in Pursuant to the Requirements of Chapter 343 HRS and  
Chapter 200 of Title II, Administrative Rules  
Department of Health, State of Hawai`i

By:

Matthew M. Malerich  
P.O. Box 1649  
Hanalei, HI 96714

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## EXHIBITS

Exhibit 1	Vicinity Map – Island of Kauai
Exhibit 2	Location Map – Ha`ena
Exhibit 3	Tax Map of Subject Parcel
Exhibit 4	Conservation District Subzone Map
Exhibit 5	County Zoning Map
Exhibit 6	Plot Plan
Exhibit 7	Flood Zone Map
Exhibit 8	Existing Ground Elevation Cert.
Exhibit 9	Proposed Site Plan
Exhibit 10	Proposed Shoreline Certification Map
Exhibit 11	Average Lot Depth Calculation
Exhibit 12	Upper Level Floor Plans
Exhibit 13	Lower Level Garage & Storage Area
Exhibit 14	North & South Elevations
Exhibit 15	East & West Elevations
Exhibit 16	Inquiry Ltr to County re SMA Exemption
Exhibit 17	Site Photos
Exhibit 18	Photos Documenting 3/20/09 Swell Event
Exhibit 19	Proposed Landscape Area
Exhibit 20	OEOC Environmental Notice for Draft EA
Exhibit 21	Princeville Library Reserve Deposit

## APPENDICES

Appendix 1	Archaeological Assessment Survey Rechtman Consulting, LLC
Appendix 2	Cultural Impact Assessment of TMK (4) 5-9-05: 027 Scientific Consultant Services
Appendix 3	Shoreline Certification Survey & Application Wagner Engineering Services
Appendix 4	Documentation of Draft Environmental Assessment (DEA) Early Consultation Comments
Appendix 5	Documentation Relating to Sandbag Revetment & SMA Use Permit (E) 97-03
Appendix 6	Moragne/Bartmess CDUA KA-3460 Approval & Shoreline Certification
Appendix 7	Documentation of Public & Agency Comments received after publication of Draft EA

**SECTION I**  
**PROJECT DESCRIPTION**

**A. OWNER / APPLICANT**

Matthew M. Malerich & Judith E. Malerich Family Trust  
Matthew & Judith Malerich, Trustees  
P.O. Box 1649  
Hanalei, HI 96714

**B. APPROVING AGENCY**

State of Hawaii  
DLNR, Office of Conservation & Coastal Land (OCCL)  
P.O. Box 621  
Honolulu, HI 96813

**C. PROPOSED ACTION**

The Applicants, Matthew & Judith Malerich propose to construct a three (3) bedroom, two (2) bath Single-Family Residence (SFR) of approximately 3,268 square feet, on the subject 14,513 square foot parcel. The structure will be constructed on piers, elevated above existing grade. The lowest horizontal structural member of the residence will have a minimum elevation of thirty four (34) feet above Mean Sea Level (MSL) to comply with applicable County and Federal flood standards. The 3,268 square foot structure will be comprised of approximately 1,864 square feet of interior living space, 452 square feet of exterior lanais and stairwells, and an enclosed single-car garage and storage area of approximately 952 square feet. The Applicant also wishes to construct a rock wall to a maximum height of 6-feet along the roadway boundary of the property, together with a vehicular gate. Fencing to a maximum height of 6-feet will be erected along the lateral (side) property boundaries to within 40-feet of the certified shoreline. Refer to Exhibits 9, 12, 13, 14 & 15 for a Site Plan, Floor Plans, and Exterior Elevation perspectives of the proposed residence.

The architecture of the building is of a tropical Balinese style, which takes advantage of the beautiful mountain and ocean views that the parcel has to offer. The exterior colors will be in earth tones. The Applicant's

intent in designing the home was to develop a residence which would be compatible with the surrounding environment and existing development on nearby parcels. Minimal site grading will occur, primarily for the driveway, and for the lower level garage and storage area. The maximum height of the proposed structure, measured to the highest peak of the roof from the lowest adjacent grade, will be approximately 29 feet.

Landscaping will be used to soften the visual impact of the proposed structure from adjoining property owners and from the street. Landscaping will consist of groundcovers, ornamental shrubs, and various trees, which are known to be compatible with the soils and climate of the area. Native plants and non-native ornamental plants, which are well adapted to the coastal environment, will be used in landscaping. Refer to Exhibit 19, which indicates the proposed landscape area of approximately 2,440 sqft.

**D. ANTICIPATED DETERMINATION**

EIS REQUIRED \_\_\_\_\_ NOT REQUIRED   X  

**E. PROJECT SITE LOCATION**

The subject parcel is located in Haena, approximately 7.2 miles west of Hanalei town on the northern coastal plain of Kauai. Refer to Exhibits and photo(s) for a graphic representation of the site location and characteristics.

TMK:	(4) 5-9-05: 025
Island:	Kauai
District:	Hanalei
Zoning:	Conservation
State Land Use:	Conservation (Limited Subzone)
County General Plan:	Conservation; Open
Current Land Use:	Vacant Undeveloped Land
Proposed Land Use:	Single-Family Residence
Adjacent Land Use:	Residential Development

**F. NECESSARY PERMITS AND ENVIRONMENTAL REQUIREMENTS**

1. **State Conservation District Use Permit (CDUP)**  
Department of Land and Natural Resources, Planning Branch
2. **Environmental Assessment**  
State Office of Environmental Quality Control  
Department of Health
3. **County of Kauai Building Permit**  
Department of Public Works
4. **Special Management Area (SMA)**  
Determination of Exempt Status for SFR  
County of Kauai Planning Department
5. **Individual Wastewater System (IWS) Permit**  
State Department of Health, Wastewater Division

**G. AGENCIES CONSULTED IN PREPARING ENVIRONMENTAL ASSESSMENT**

The following agencies and affected parties were consulted and provided with an opportunity to comment upon the proposed project prior to the preparation of the Draft and Final Environmental Assessment:

- DLNR, Land Division
- DLNR, Office of Conservation & Coastal Lands
- DLNR, Chairperson's Office
- DLNR, State Historic Preservation Division
- DLNR, Division of Aquatic Resources
- DLNR, Division of Forestry and Wildlife
- DLNR, Division of State Parks
- State Department of Health, Environmental Health Division
- State Department of Health, Environmental Planning Office
- Office of Environmental Quality Control
- DBEDT, Coastal Zone Management Program
- Office of Hawaiian Affairs
- County of Kauai, Planning Department
- County of Kauai, Department of Water
- County of Kauai, Department of Public Works
- County of Kauai, Department of Public Works, Building Division
- U.S. Fish & Wildlife Service
- U.S. Department of the Army, Regulatory Branch
- The Sierra Club, Kauai Chapter
- The Hanalei-Ha`ena Community Association
- The Nature Conservancy

- 1,000 Friends of Kauai
- University of Hawaii, Sea Grant Program
- Kauai Community College
- Editor, Garden Island Newspaper
- Rechtman Consulting, LLC
- Dexter Chung – Neighboring Property Owner
- Carol Koplin – Neighboring Property Owner
- Troy Eckert – Neighboring Property Owner
- William Kellie – Neighboring Property Owner
- Neal Norman – Neighboring Property Owner
- Catherine Bartmess – Neighboring Property Owner
- Anthony Degrazia – Neighboring Property Owner
- Harold Downs – Neighboring Property Owner

Agency and public comments received prior to the preparation of the Draft EA and responses thereto are included in Appendix 4. Agency and public comments received AFTER the publication of the Draft EA are included in Appendix 7.

Substantive comments on the Draft EA are summarized below for each respondent. Most of the agency and public comments regarding the proposed project raise concerns about the existing sandbag revetment which fronts the subject parcel along the shoreline. The revetment was authorized and constructed pursuant to Special Management Area Emergency Permit SMA (E) 97-03.

In 1997, before Applicants purchased subject property, a temporary sandbag revetment was approved and constructed under SMA (E)-97-03, issued by the County of Kauai. The permit was issued to protect two older residences on the adjacent parcels to the east and west TMKs (4) 5-9-05: 26 & 24 respectively, which were threatened by a severe winter storm in November of 1996.

The sandbag revetment remains in place today, spanning a distance of approximately 400 linear feet and encompassing the shoreline boundaries of five (5) contiguous parcels; TMKs (4) 5-09-05: 23, 24, 25, 26 & 27. The Malerich parcel (#25) is in the center of these properties. Even though there are no structures on the Malerich parcel, it was apparently reasoned that in order to protect the residences on TMK (4) 5-9-05: 24 & 26, it was necessary to stabilize the shoreline fronting the Malerich property as well.

Input received from the Sierra Club suggests that Applicants should be required to remove the sandbag revetment along the shoreline frontage of subject parcel prior to a determination being made on the CDUA for the proposed construction of a Single Family Residence.



Applicants have been provided with copies of the approved Shoreline Certification dated September 29, 2008 and a CDUP dated August 8, 2008 authorizing development of a Single Family Residence on the Bartmess property; TMK (4) 5-9-05: 027 (see Appendix 6). The Bartmess property, which is one of the five parcels bordered by the revetment, is located two lots east of subject property. Applicants understand that the issue of the sandbag revetment came up in both the shoreline certification and CDUP processes relative to the Bartmess parcel and that the relevant agencies (both the DLNR and the County of Kauai) decided to allow the Bartmess SFR CDUA application and the revetment permitting issues to proceed on separate tracks. Applicants request that this CDUA application be treated in a manner consistent with the Bartmess review and approval.

Applicants feel strongly that the long-term permitting concerns surrounding the existing SMA permit (E) 97-3 and the sandbag revetment can and should be treated under a separate permitting process, which should continue to involve all of the impacted parcel owners. Permits for the sandbag were issued comprehensively for the five contiguous parcels and the revetment was engineered, approved and constructed as a single structure.

On February 3<sup>rd</sup>, 2009 the five (5) parcel owners bordering the revetment initiated a cooperative effort to survey beach profiles in the vicinity and thereby obtain scientific data to better inform appropriate decisions relative to the revetment. The five (5) owners retained coastal engineer Elaine Tamaye of EKNA Services, Inc., and Ron Wagner, Wagner Engineering Services, Inc., to monitor and assess beach changes occurring over time. Using this data, the consultants will attempt to quantify what effects (if any) the sandbags are having on the beach resources. Once sufficient data is gathered, long-term mitigation & management measures will be proposed and implemented.

So far two (2) beach profile data sets have been gathered in the vicinity of the sandbag revetment, the first on February 5, 2009 and a second set on June 9 & 11, 2009 (see additional letter report from EKNA Services, Inc., dated June 18, 2009 in Appendix 5). See also, letter extension for SMA Permit (E) 97-03 from the County of Kauai Planning Department dated July 7, 2009 in Appendix 5. Additional relevant correspondences from Robert Downs and Sharon Carroll, owners of Parcel 24, dated November 13, 2008, March 10, 2009 and March 11, 2009, are included in Appendix 5.

Applicants are not seeking a permit for the retention of the sandbag revetment. Rather, Applicants' CDUA and

associated Environmental Assessment cover the construction of a new residence on the subject parcel. The Final EA proposes a 50-foot shoreline setback, which is in compliance with the recently adopted County of Kauai, Ordinance 863 *Relating to Shoreline Setback and Coastal Protection*. Whether or not the sandbag revetment, some other manner of shoreline protection, or, for that matter, no shoreline protection is allowed to remain in place, Applicants feel that the proposed residence will be setback from the certified shoreline a reasonable distance so that it is adequately buffered from the long-term threat of shoreline erosion.

It is noteworthy that on March 20, 2009, one of the largest northeast swells in many years impacted Kauai (photographs of the waves on the North Shore of Kauai and the sandbags following the March 20, 2009, swell are attached in Exhibit 18). The photos provided in Exhibit 18, which were taken following the March 20th surf event, demonstrate that the revetment does not appear to have had a detrimental impact upon the beach during that swell event.

The sandbag revetment was approved by the County of Kauai in Special Management Area Emergency Permit SMA (E) 97-03 and Shoreline Setback Variance and by the State of Hawaii through a right of entry to perform the work. The permits anticipated that the permittees would, through appropriate experts, study the beach environment and propose a more permanent solution (which could include removal of the sandbags).

In 2007 the issue of the sandbags came up in a shoreline certification and then the CDUA process relative to TMK (4) 5-9-005: 027, owned by the Catherine M. Bartmess Trust. Caren Diamond and Beau Blair appealed the proposed shoreline certification raising the sandbags as an issue. The shoreline of the Bartmess parcel, surveyed by Ron Wagner, P.E., was located along the top of the beach dune, which is bounded by the revetment. In the context of the shoreline certification appeal, Morris M. Atta, Administrator of the Land Division of DLNR, wrote to Ian Costa, Planning Director, County of Kauai, inquiring about the legal status of the sandbag revetment. Mr. Costa replied stating that the permits were in effect and the sand bags were legal (see referenced correspondences in Appendix 5). The Bartmess shoreline was certified on September 29, 2008 (See Certified Shoreline Map for the Bartmess parcel attached in Appendix 6).

In the Bartmess CDUA, the Hanalei-Ha`ena Community Association commented, stating that the CDUA should be

denied until the sandbag issue was resolved. Bartmess represented to the Board that they would work with other owners to resolve the issue but that their CDUA and the joint issues relative to the sandbags were separate processes. Bartmess met the requirements of the County setback ordinance and the Board, after consideration, approved their CDUP (See Bartmess CDUP Approval Letter dated August 13, 2008 in Appendix 6).

Applicants' CDUA and the accompanying Environmental Assessment do not address, study, or propose mitigation measures for the sandbag revetment. Neither does the permit application attempt to justify the retention (or removal) of the sandbag revetment. The CDUA application in question is for the development of a SFR on the subject parcel set as far mauka on the parcel as is reasonably practical given the size constraints of the property.

#### **SUMMARY OF PUBLIC AND AGENCY INPUT ON DRAFT EA**

##### **1) Hanalei-Ha`ena Community Association (HHCA)**

###### Recommendations and Comments:

- a) Shoreline should not be located and certified until such time that the existing sandbag revetment is removed.
- b) A more complete description of the existing sandbag revetment is needed in the EA.
- c) Primary concerns are: 1) the loss of public access during high tides and seasonal high surf events and, 2) the eventual narrowing, steepening and loss of the beach altogether as a result of the sandbag revetment/shoreline hardening.
- d) Urge BLNR to resolve the status of the "temporary" SMA permit (E) 97-03 for the sandbag revetment before giving any consideration to a CDUA approval for the Malerich residence.
- e) Advocate the use of an annual erosion rate to determine an erosion-based shoreline setback as opposed to a setback calculated by applying the "average lot depth" criteria which is set forth in the County of Kauai Shoreline Setback Ordinance No. 863. An erosion-based setback in the project vicinity would result in a setback of more than 100 feet.
- f) No shoreline hardening for the life of the proposed structure.

- g) Advocate for the creation of a public easement for lateral beach access, the boundary of which would move mauka as the shoreline migrates inland.
- h) No Fencing to w/in 40 ft of shoreline.
- i) Removal of all artificially induced plants located makai of the certified shoreline.
- j) No commercial uses/no transient vacation rentals.

**2) Sierra Club - - Kaua`i Group of the Hawai`i Chapter**

Recommendations and Comments:

- a) Advocate for access "to and along" the beach.
- b) Erosion Rate for vicinity is > 1ft. per year according to published shoreline erosion data:  
(ftp://soest.hawaii.edu/coastal/webftp/Kauai/posters/Haena\_ST72dpi.jpg)
- c) Advocate for removal of revetment - statement that retention of the revetment will virtually guarantee beach loss and loss of shoreline access.
- d) Concerns for loss of monk seal habitat due to revetment.
- e) Final EA should address impacts of revetment.
- f) Impose Mitigation Measures (prior to construction):
  - i. Removal of revetment
  - ii. Allow natural processes sufficient time to re-establish the location of the shoreline.
  - iii. Certify the location of the shoreline only after revetment is removed and natural shoreline reestablishes itself.
  - iv. Provide perpetual dynamic shoreline easement.
  - v. No shoreline hardening during the life of the structure to artificially fix the location of the shoreline.
- g) Removal of artificially induced vegetation located makai of certified shoreline.
- h) Opposed to additional sand pushing to cover sandbags.
- i) Concern for Cultural Impacts - -Ha`ena as a Hawaiian Community Subsistence Fishing Area. Assertion that the proposed project negatively affects fishing and fishing access.
- j) Proposed residential structure and the existing revetment are inextricably connected and should not be analyzed separately.
- k) Portions of the revetment (individual sandbags) have broken free during high winter surf and have become lodged in nearby reef/rocks.

### 3) State Department of Health, Wastewater Branch

Recommendations and Comments:

- a) Project is located in a Critical Wastewater Disposal Area (CWDA).
- b) No municipal sewer service to the subject parcel.
- c) All wastewater plans must conform to applicable provisions of the Department of Health's Administrative Rules, Chapter 11-62, "Wastewater Systems".
- d) Subject property is within 1,000 feet of a public potable well.

### 4) State Office of Hawaiian Affairs

Recommendations and Comments:

- a) Removal of revetment should occur before shoreline is certified.
- b) Recommend that no further extensions be granted on temporary SMA Permit (E) 97-03 for sandbag revetment.
- c) Question the justification for the height and side-yard set back variances requested in the CDUA.
- d) Question the rationale for an SMA exemption.
- e) Subject property is located in a coastal high hazard area, the Special Management Area, and a flood zone.
- f) Opinion that the CDUA and sandbag issues should not be treated independently.
- g) OHA Points out that the Ha`ena area has been established as a community-based subsistence area on June 26, 2006 by Act 421 which amended HRS Chapter 188-22.9. Act 241 reads *"The ahupua`a of Ha`ena and its offshore waters, since time immemorial, have been an important subsistence fisher resource for native Hawaiians and local families of the ahupua`a."*
- h) Call for SHPD protocols to be followed in the event of inadvertent discovery of burials or significant archaeological features.

## H. PUBLIC POLICIES

### 1. STATE LAND USE LAW

The project site is situated within a Limited Subzone of the State Conservation District. The proposed action is therefore subject to the land use regulations and

permit application review process of Chapter 13-5, Hawaii Administrative Rules, as administered by the Department of Land and Natural Resources.

The Applicant is proposing an identified use within the Limited Subzone. A Board Permit is requested.

## **2. COUNTY GENERAL PLAN**

The Kauai County's General Plan designates the project area as Conservation /Open Space. This represents the County's desire to manage large development within the vicinity and to promote open space, recreational use, and natural landscapes wherever possible.

The Applicant is proposing to develop within a footprint of approximately 2,438 square feet, which is equivalent to approximately 16.8% of the total deeded title area of the parcel. The remaining 83.2% of the parcel will be kept in open space, in a naturally landscaped setting consistent with the intent of the County's General Plan.

## **3. COUNTY ZONING**

Conservation / Open

## **4. SPECIAL MANAGEMENT AREA**

The project site is located within the Coastal Zone Special Management Area (SMA); as administered by the SMA Rules and Regulations of the County of Kauai. However, the construction of a Single-Family Residence is typically exempted from obtaining an SMA permit. By letter dated March 24, 2009, the County of Kauai, by Planning Director Ian Costa, acknowledged receipt of the request for a determination that the proposed residence was exempt from the SMA permitting process and stated that upon submission of a plot plan and floor plans, "the Department would be able to confirm your request for exemption" (see referenced correspondence in Appendix 4).

The proposed action shall not have a long-term or detrimental impact upon the coastal ecosystems, marine resources, beaches, the shoreline, or flora and fauna of the area. Nor shall it impact scenic or open space resources in a significant manner. The proposed construction of a new residence will not create any additional coastal hazards such as heightened erosion,

subsidence, and/or pollution. The proposed residence is not part of a larger development planned for the area.

**I. PROJECT CHARACTERISTICS**

**1. GENERAL CHARACTERISTICS**

Refer to Section III – “Proposed Action” for a general description of the proposal.

**2. TECHNICAL CHARACTERISTICS**

Technically this action will authorize the Applicant to:

- Construct a Single-Family Residence and appurtenant infrastructure on the subject parcel.
- Perform the necessary grading and grubbing work in preparing the parcel for construction, pursuant to the issuance of all additionally required permits.

**3. ECONOMIC CHARACTERISTICS**

Significant long-term economic impacts are not anticipated as a result of the proposed action. Should the proposal meet the approval of the Board, there would be a short-term benefit upon the local construction industry, and an increase in real-property tax values. Money paid into the construction industry would most likely generate income in other sectors of the local economy.

**4. SOCIAL CHARACTERISTICS**

There are no significant negative social impacts that are anticipated as a result of the proposed action. The Applicant will apply Best Management Practices (BMP) during the development of the parcel. Landscaping will be used to screen the proposed structure from the adjoining property owners and the adjacent roadway. The proposed use will not displace any exiting residences. The project site is currently vacant. A single new household in the area will not overburden existing public services or facilities. The social benefit of the project is that a landowner is able to use his/her land in a manner consistent with legal entitlement and permitting requirements.

## **5. ENVIRONMENTAL CHARACTERISTICS**

The proposed action is not anticipated to have any significant long-term negative or beneficial impacts upon the environment. The proposed residence will not displace any existing agricultural or recreational land uses. No prime or unique lands of the State of Hawaii or its residents will be adversely affected by the proposed action. Section II of this Final EA, reviews in greater detail the potential environmental impacts of the proposed action, and where applicable suggests measures for the mitigation of negative outcomes.

## **6. TIME FRAME OF PROJECT**

The completion of project design and permitting is anticipated for the fourth quarter of 2009. Construction of the residence is expected to commence shortly thereafter, most likely during the first or second quarter of 2010. Construction activities are expected to have a duration of approximately 8 to 12 months, with the completion of the residence projected toward the beginning of 2011.

## **7. FUNDING AND SOURCE**

Development of the residence and appurtenant infrastructure is estimated to cost approximately \$800,000. The Applicant will privately fund the development of the project.



## SECTION II

### Summary Description of the Affected Environment & Identification of Potential Impacts and Proposed Mitigation

#### A. PHYSICAL SITE DESCRIPTION

The subject parcel is located in Haena, in the district of Hanalei, on the northern coastal plain of the Island of Kauai, Hawaii. The parcel is designated by Kauai Tax Map Key No. (4) 5-9-05: 025. The deeded title area of the parcel is approximately 14,513 square feet. The area mauka (landward) of the proposed shoreline (pending certification) is roughly 8,855 square feet. The location of the parcel is graphically depicted in the Exhibits attached hereto.

Access to the parcel is provided directly off of Kuhio Highway, which shares a common boundary with the property along its southern border. To the north, the property is bounded by the shoreline and the sandbag revetment that was authorized under SMA (E) 97-03. The subject property is bounded on either side by developed residential properties, to the east is TMK (4) 5-9-05: 026 and to the west is TMK (4) 5-9-05: 024. Numerous parcels within close proximity to the subject property have been developed with single-family residences of a comparable size and architectural style to that which is being proposed by the Applicant.

#### B. EXISTING LAND USE

The project parcel is currently vacant and undeveloped.

#### C. TOPOGRAPHY

The topography of the subject parcel rises fairly abruptly along its seaward edge from the toe of the sandbag revetment to the top of what appears to be an old sand dune formation. The proposed shoreline, which was located on January 27, 2009 by Wagner Engineering Services (Exhibit 10), is situated near the top of the sandbag revetment and dune formation, a conservative distance back from the

leading edge of vegetation. The top of the dune is approximately 28 feet above Mean Sea Level (MSL). From this high point, moving further inland, the property is fairly level for about 50 feet from which point it slopes gradually downward to its lowest elevation of approximately 18 feet above MSL near the southeast corner of the property directly adjacent to Kuhio Highway. The existing grade within the footprint of the proposed residence (which is proposed 50 feet back from the certified shoreline) ranges from approximately 20 to 28 feet above MSL, with the higher elevations being closer to the ocean.

#### **D. FLORA AND FAUNA**

There are no rare or endangered native plants and/or animals present within the proposed development area of the parcel, which would suffer substantial negative impacts as a result of the proposed development. The parcel is characterized by a large open lawn with a few coco palms (*cocos nucifera*) along its seaward edge, other existing vegetation include:

- Introduced sea-grape trees (*Coccoloba uvifera*)
- A low ironwood hedge (*Casuarina equisetifolia*) along the roadway boundary
- Beach Naupaka (*Scaevola sericea*) a native species that is commonplace along the shoreline

The extent of existing vegetation is readily apparent in Site Photos (Exhibit 16).

#### **E. SOILS**

According to the Soil Survey of the Island of Kauai, State of Hawaii, prepared by the U.S. Soil Conservation Service, Department of Agriculture, the project parcel is located on land characterized by *Mr - Mokuleia fine sandy loam* type soils. *Mr* soils have a moderately rapid permeability in the surface layer and rapid permeability in the subsoil. Runoff is very slow, and the erosion hazard is slight.

## **F. CLIMATE**

Rainfall is estimated to be between approximately 70 and 100 inches per year. The proposed action should not affect the local or macro climates in any manner.

## **G. AIR QUALITY**

The air quality in the project area is excellent. The rural character of the site, the prevailing tradewinds, and a close proximity to the ocean all combine to buffer the area against significant airborne pollutants.

During construction, minimal short-term impacts on air quality will result from dust-generated grading activities. The impacts will be temporary and relatively insignificant. Best Management Practices (BMP), including the sprinkling of exposed soils, will be employed to further minimize the impact of airborne dust. The inconvenience of dust associated with the proposed action is therefore anticipated to be negligible.

## **H. NOISE IMPACT**

The project parcel and adjoining properties are currently impacted by vehicular traffic noise along the frontage of Kuhio Highway. Other predominant sources of noise within the vicinity of the project include that associated with overhead tour helicopters, and the more pleasant sounds generated by the wind and sea. By and large, the project area has a very low and pleasant noise level, as one would expect of such a rural site.

Noise levels are anticipated to temporarily increase with the onset of construction. Increased noise will be associated with the use of heavy machinery during grading, as well as with the use of power tools and hammers during construction of the residence. Once the house is completed, the construction-related noise will cease. Mitigative measures will be implemented to lessen the impact of the short-term noise generated by construction. This shall include the use of muffling devices on all gasoline or diesel-powered equipment. Furthermore, construction activities shall be restricted to the working hours between 7:30 AM and 5:30 PM.

Long-term noise resulting from the proposed action will be similar to that which is generated by other Single-Family Residences within the surrounding area. The

proposed activities will not violate any State regulations regarding noise levels.

#### **I. ARCHAEOLOGICAL AND HISTORICAL SITES**

As required by the State Historic Preservation Division (SHPD), an Archaeological Assessment Survey was conducted by Rechtman Consulting, LLC to determine the presence or absence of archaeological features on the subject property and to assess their significance. Investigative subsurface trenches were excavated during the survey. Rechtman reports that *"during the current survey there were no archaeological resources observed on the surface nor were there any encountered during the subsurface testing."* Based upon its findings, Rechtman Consulting, LLC recommended that no further archaeological work need be conducted prior to development.

Following review of Rechtman's Survey Report, the SHPD in its letter dated February 25, 2009, acknowledged that no historic properties were recorded during the survey. SHPD further confirmed that the Rechtman report met the minimum requirements, and was therefore accepted in compliance with 6E-10 and HAR) 13§13-276 *Rules Governing Standards for Archaeological Inventory Surveys and Studies*. A complete copy of the Rechtman Archaeological Assessment Survey Report and the accompanying SHPD approval letter are included in Appendix 1.

In the event that human burials are inadvertently discovered during construction activities, the owner/Applicant understands that all work must immediately stop within the vicinity of the burials, and the SHPD shall be contacted to determine the jurisdiction and proper mitigation protocol for the burials. The State Office of Hawaiian Affairs (OHA) and the Kauai-Ni`ihau Island Burial Council will also be notified in such event.

#### **J. CULTURAL IMPACTS**

See attached Cultural Impact Assessment (CIA) – Appendix 2 prepared by *Scientific Consultant Services, Inc. (SCS)*. for the nearby Moragne/Bartmess parcel (TMK (4) 5-9-05: 027). The Applicant submits for consideration and approval that the finding of no-significance for the Moragne/Bartmess CIA is applicable to the proposed development on their lot.

## **K. VISUAL IMPACTS**

The proposed residence will be situated in a partially developed residential neighborhood. Homes in the area are a mix of both old and new. The construction of the new residence will blend in with the existing residential development and the surrounding environment. Earth tone colors will be used on all exterior surfaces. Landscaping will be used to soften the visual impact of the new residence as it is viewed from the adjoining roadway and nearby parcels. The proposed residence will be setback approximately 50 feet from the certified shoreline; therefore it will not be readily visible from the beach. The residence will not obstruct any views toward significant landmarks or vistas, either from the beach or other public vantage points.

## **L. NATURAL HAZARDS**

The area of proposed impact is situated within Flood Zone VE 34 as designated on the Federal Flood Insurance Rate Map (FIRM) - - per FIRM Map #1500020030 E Dated Sept. 6<sup>th</sup>, 2005 (Exhibit 7). Zone VE is defined as a coastal flood area with a velocity hazard due to its potential susceptibility to 100-year inundation by tsunami. Federal & County of Kaua'i regulations regarding structures located within this coastal high-hazard area require a "base flood elevation" for the lowest horizontal structural member of the proposed residence to be 34 ft. above mean sea level. The design of the proposed residence is in compliance with the Federal and County flood regulations.

As with all coastal development, the impact of cumulative shoreline erosion can pose a significant long-term threat to structures which are constructed too near to the shoreline. The solution to avoid this threat is quite simple - - site structures far enough back from the shoreline so that they are buffered from the erosion zone. To arrive at an appropriate shoreline setback distance for the proposed residence, the Applicant applied the guidelines of the recently adopted County of Kauai, Ordinance No. 863 *Relating to Shoreline Setback and Coastal Protection*. For lots with a defined "Average Lot Depth" of less than 160 feet, Ordinance No. 863 prescribes preset minimum shoreline setback distances. "Average Lot Depth" is defined by Ordinance No 863 as "the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline, or the seaward

boundary of the lot that runs roughly parallel to the shoreline if the property is not abutting the shoreline, to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three." Applying this formula, the average lot depth for the Malerich parcel is approximately 115.21 feet (see Exhibit 11).

The corresponding preset shoreline setback distance derived from Table 1 of Ordinance No. 863 (for lots with an average lot depth between 101 and 120 feet) is **50 feet**. The Applicant proposes to set their home back 50 feet from the certified shoreline.

Comments received from the Hanalei-Ha`ena Community Association (HHCA) and from Caren Diamond on behalf of the Kaua`i Chapter of the Sierra Club suggest that the proposed 50-foot setback is inadequate for protection of the coastal resources (see correspondence in Appendix 7). Applicants submit that their home is set back as far as is practical given the shallow depth of the lot. In two locations, the proposed structure is near the minimum street-side setback of 15-feet.

Kauai is the oldest of the major Hawaiian Islands; therefore, there are no active or dormant volcanoes which pose a threat to the parcel.

#### **M. LAND USE CLASSIFICATIONS & COMPATIBILITY WITH SURROUNDING ENVIRONMENT**

The State Land Use Commission designates the subject property as Conservation. The County General Plan classifies the property and surrounding areas as Conservation/Open.

No land use or zoning changes are required as a result of the proposed action. The construction of a single-family residence is consistent with, and supportive of both the State's and the County's intended land uses and the intent of the Haena Hui Petition.

#### **N. PUBLIC SERVICES AND FACILITIES**

The construction of the proposed Single-Family Residence on the parcel shall not place an unreasonable additional burden upon public agencies or public utility providers servicing the area.

**1. ACCESS**

The parcel is provided with vehicular access via Kuhio Highway.

**2. WATER**

County water is available to the parcel. No additional source or storage facilities are required for the proposed action.

**3. WASTEWATER**

Residential and public wastewater within the project vicinity are treated through the use of individual septic systems. There are no municipal treatment plant facilities or public sewer pipelines associated with the project area, nor are any planned for the future. Prior to the construction of the proposed SFR, the Applicant will be required to apply for a building permit from the County of Kauai. A component of the building permit application is a State Department of Health approved Individual Wastewater System (IWS) plan in accordance with the Department of Health's Administrative Rules, Chapter 11-62, "Wastewater Systems".

Applicants have been informed by the Department of Health that the subject property is within 1,000 feet of a public potable well and that an aerobic treatment unit and absorption field may be required.

**4. SOLID WASTE**

Residential solid waste is collected at curbside along Kuhio Highway on a weekly basis. Collected waste is compacted and transported to the Kekaha landfill for disposal. A recycling area will be designated on the subject property for the collection of aluminum, glass, cardboard and junk mail, as well as any other recyclable materials that are processed on Kauai. Green waste will be composted on site.

**5. FIRE PROTECTION**

Fire protection is provided by the County of Kauai. The nearest fire station is in Princeville with an estimated response time of approximately 15 minutes to the subject parcel. Under extreme emergency conditions, both the Kapaa and Lihue fire stations respond to calls within the project area.

**6. EMERGENCY MEDICAL SERVICE**

Emergency medical service is provided by the Princeville fire station in conjunction with American Medical Response (AMR) a private medic firm, which is contracted with the State Department of Health. Response time is approximately 15 minutes to the subject property.

**7. POLICE PROTECTION**

Police protection is provided by the Kauai Police Department. The closest substation is located in Princeville, approximately 15 minutes from the project parcel.

**8. PUBLIC SCHOOLS**

Public schools servicing the Haena area are Hanalei School (Grades K-6), Kapaa Middle School (Grades 7 & 8), and Kapaa High School (Grades 9 - 12).

**9. UTILITIES**

Electrical power is provided by the Kauai Island Utility Cooperative (KIUC) and telephone service is provided by GTE Hawaiian Telephone. Utilities are supplied via overhead distribution lines along Kuhio Highway. All utility easements are in place.

**O. AQUATIC RESOURCES**

The subject parcel is contiguous with the shoreline. The proposed residence will be set back 50 feet from the shoreline once the shoreline is certified by the State.

The proposed development of a Single Family Residence on the subject parcel will not result in the discharge (placement) of dredged and/or fill material into waters of the U.S pursuant to Section 404 of the Clean Water Act (CWA). Nor will the project result in the placement or construction of structures within navigable waters of the U.S. as defined under Section 10 of the Rivers and Harbor Act (RHA) of 1899. There are no perennial, intermittent or ephemeral streams or wetlands on, in, or adjacent to the subject property. Therefore, it is assumed that the proposed actions are exempt from Department of the Army permitting requirements.

1. **Waterbody Type and Class** - - As defined by Hawaii Administrative Rules, Chapter 11-54-2, the waters adjacent to the subject parcel are classified as Class AA



Open Coastal Marine Waters with bottom subtypes being a mixture of Sand Beaches and Reef Flats.

2. **National Pollutant Discharge Elimination System (NPDES)**

**General Permit** - - the proposed actions do not trigger the criteria for a NPDES general permit. Specifically:

- i. Construction activities, including clearing, grading, and excavation will not result in the disturbance of equal to or greater than one (1) acre of total land area. The subject parcel is approximately 14,513 square feet in size (equivalent to approximately 0.33 acres) and the proposed action is for the construction of a residence of approximately 3,268 square feet. Ground disturbance outside of the immediate footprint of the proposed residence will be minimal and shall be limited primarily to the excavation needed for an Individual Wastewater System. No grading, grubbing, or excavation shall occur within close proximity to the shoreline.
- ii. As a component of the proposed action, the Applicant does not intend nor do they anticipate the need to undertake any hydro testing or any discharge associated therewith.
- iii. No discharge of construction dewatering effluent into the adjacent oceanic waters shall occur.

3. **NPDES Individual Permit** - once again, based upon the proposed project characteristics an Individual NPDES permit will not be necessary. It is anticipated that there will be no wastewater discharged into the State waters as a result of the proposed actions.

4. **Impaired Waters in the State of Hawaii** - The proposed actions will not affect any bodies of water that appear on the current *List of Impaired Waters in Hawaii*.

5. **Best Management Practices (BMPs)** - BMPs shall be implemented to contain fugitive dust and runoff on the project site. Construction activities shall be restricted to areas of least impact. Job site clean-up shall occur regularly to contain and properly dispose of dust and debris generated by construction activities. Furthermore, measures will be taken during development to ensure that no construction materials, debris, petroleum products, chemicals or other potential contaminants enter the aquatic environment.

**SECTION III**  
**SUMMARY OF MAJOR IMPACTS &**  
**ALTERNATIVES CONSIDERED TO THE PROPOSED ACTION**

**A. SUMMARY OF MAJOR IMPACTS**

The subject parcel is currently characterized by undeveloped land. The proposed action will result in the construction of a Single-Family Residence, which will occupy a footprint of approximately 16.8% of the total title area of the parcel. The remainder of the lot (approximately 83.2%) will be landscaped and kept in open space. Site grading will be minimal in the vicinity of the footprint of the home, for the lower level garage and storage area and for the access driveway. The residential design and construction materials shall be compatible with the natural environment and the existing development of the area.

Long-term impacts of the proposed action shall include a marginal increase in traffic along Kuhio Highway and the perpetual increase in demand for associated public utilities. Short-term impacts associated with the development of the proposed residence will include construction noise, minor dust, and construction related traffic along Kuhio Highway. Cumulative shoreline erosion poses the most significant long-term potential impact, however the proposed residence is set conservatively back from the shoreline to adequately mitigate this concern. Other erosion impacts are negligible due to the permeability of the sandy soil characteristic of the area and the absence of any major natural drainage ways in the vicinity of the subject property.

**B. ALERNATIVES CONSIDERED**

**1. NO ACTION**

A "No Action" alternative would result in no construction of a residence on the subject parcel. There would be no construction activity and related employment prospects. There would be no increase in the land value or associated government revenues from higher property taxes. Moreover, the owners will not be able to use the property for their personal and preferred use. For these reasons, a no-action alternative is not favorable.

## **2. ALTERNATIVE LOCATION**

The location of the proposed structure on the subject parcel, as graphically depicted on the Site Plan (Exhibit 9), is limited by the dimensions and setback requirements of the parcel. The Applicant is already requesting a 5-foot side-yard setback variance in order to maintain the recommended shoreline setback distance of 50-feet. The ability to situate the proposed residence further inland is constrained by the State roadway. The proposed 50-foot shoreline setback is established based upon an application of the County of Kauai Shoreline Setback Ordinance No. 863.

## **3. ALTERNATIVE USE**

The Applicant has not identified any alternative uses for the subject parcel which would satisfy their needs. The construction of a residence has always been the intended land use for the property.

## **C. SUMMARY OF MITIGATIVE MEASURES**

The major impacts of the proposed action will occur during the construction of the proposed residence. As described herein, the primary impacts will be construction related noise and dust, as well as a temporary increase in construction related traffic along Kuhio Highway.

The Applicant will implement all of the mitigative measures described herein to prevent or reduce anticipated construction related impacts. Best Management Practices will be employed during construction to minimize airborne pollutants and dust. The heavy equipment that will be used for site grading will be properly maintained and equipped with exhaust systems and muffling devices to minimize their emissions and noise levels. Construction activities will be limited to the working hours between 7:30 AM and 5:30 PM. Noise levels shall comply with the State of Hawaii, Department of Health noise regulations. Furthermore, the Applicant agrees to adhere to any additional measures that the Board may recommend to insure against environmental degradation.

## SECTION IV

### EXPECTED DETERMINATION & SIGNIFICANCE CRITERIA

**A. DETERMINATION:**

This Final Environmental Assessment concludes that **no significant negative impacts** upon the environment, be they primary, secondary or cumulative, will result due to the implementation of the proposed action to construct a Single Family Residence on the subject parcel. Furthermore, the action does not have any associated hidden long-term environmental or social costs. The proposed construction of a Single-Family Residence is an identified land use within the Limited Subzone of the Conservation District. As such, in compliance with HRS 343 11-200-11, a **Finding of No Significant Impact (FONSI)** is anticipated. Therefore it is the Applicant's opinion that the manageable impacts of the project do not warrant the preparation of an Environmental Impact Statement.

**B. SIGNIFICANCE CRITERIA:**

Chapter 200 of Title 11, Administrative Rules of the department of Health which is entitled "Environmental Impact Statement Rules" establishes significance criteria for evaluating the impacts of a proposed action upon the environment. The relationship of the proposed **Malerich Single-Family Residence** to each of these criteria is reviewed below:

1. **Involves an irrevocable commitment to loss or destruction of any natural or cultural resources.**

The proposed action will not involve a loss or destruction of any natural or cultural resources.

2. **Curtails the range of beneficial uses of the environment.**

The proposed action will not curtail the range of beneficial uses of the environment. Long-term negative environmental impacts are not anticipated as a result of the proposed action.

All development is proposed to occur on private property.

3. **Conflicts with the State's long-term environmental policies or goals and guidelines as expressed in Chapter 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders.**

The project does not conflict with the State's long-term environmental policies, goals and guidelines.

4. **Substantially affects the economic or social welfare of the community or State.**

The project will not have a significant impact upon either the economic or social welfare of the community or State.

5. **Substantially affects public health.**

The proposed action is not anticipated to substantially or negatively impact public health. The air quality and noise impacts that will result during the construction of the proposed residence will be of a short-term and insubstantial nature.

6. **Involves substantial secondary impacts, such as population changes or effects on public facilities.**

The proposed action will not involve substantial secondary impacts. The development of a Single-Family Residence in an area which is already characterized by similar residential development, will not create any additional pressures of a substantial nature.

7. **Involves a substantial degradation of the environmental quality.**

The proposed action is not anticipated to have a negative impact upon the environment.

8. **Is individually limited, but cumulatively has considerable effect upon the environment or involves a commitment for larger actions.**

The proposed project will not create a commitment for any larger action, nor will it contribute to

a cumulative negative effect upon the environment. The proposed action is a stand-alone development project for the construction of a Single-Family Residence.

**9. Substantially affects a rare, threatened, or endangered species or habitat.**

The project area is void of any rare, threatened or endangered species. The project will not place any nearby habitat at risk.

**10. Detrimentially affects air or water quality or ambient noise levels.**

As identified in the text of this Environmental Assessment, air quality and noise levels will be negatively affected throughout the various phases of project construction. Nevertheless, measures are proposed herein which will help to mitigate the extent of such impacts. No long-term negative impacts will result upon the air or water quality or upon ambient noise levels as a result of the proposed action.

**11. Affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters.**

The project is situated in Zone VE 34 as designated on the Federal Flood Insurance Rate Map (FIRM) prepared by the National Flood Insurance Program. Zone VE is defined as a coastal flood area with a velocity hazard (wave action) susceptible to a 100-year tsunami inundation. Federal and County flood regulations regarding structures located within this coastal high hazard area require a base flood elevation for the lowest horizontal structural member of the proposed residence to be 34 ft. above Mean Sea Level (MSL). The design of the proposed residence is entirely compliant with these FIRM guidelines.

**12. Substantially affects scenic vistas and view plains identified in County or State plans or studies.**

The proposed action will not substantially affect scenic vistas and/or public view plains. The proposed residence will not be readily visible from the beach. The Applicant proposes to landscape the parcel with appropriate vegetation to soften the visual impact of the development from nearby property owners and the adjacent roadway.

**13. Requires substantial energy consumption.**

The proposed Single-Family Residence will not consume substantial or undue amounts of energy.

## SECTION V

### PERMITS, VARIANCES, AND APPROVALS

#### A. SPECIAL MANAGEMENT AREA USE PERMIT

Since the project site is located within the Special Management Area (SMA), it is subject to the SMA Rules and Regulations of the County of Kauai; however, because the project is a Single-Family Residence, it is exempt from the SMA requirements. The Applicant has solicited and is awaiting a response from the County of Kauai, Planning Department to confirm SMA Exempt status of the project.

#### B. SHORELINE CERTIFICATION

A shoreline survey, dated January 27, 2009, has been submitted to the State DLNR, Land Division for review and certification. Copies of the proposed shoreline survey & submittal materials are included herewith as Appendix 3.

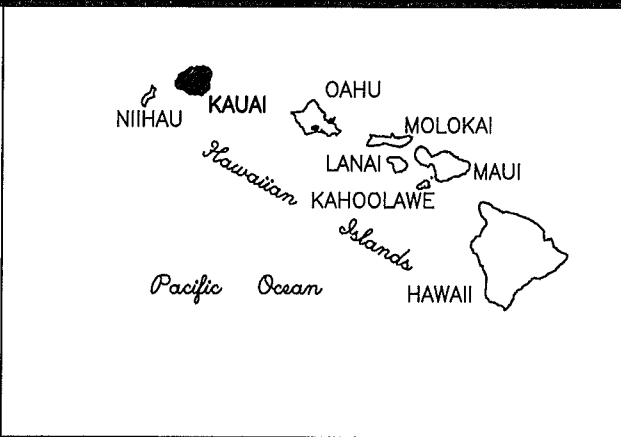
#### C. OTHER DEPARTMENTAL PERMITS

Additional construction related permits shall be obtained from both County and State agencies as are required of the Building Permit process, which is administered by the Department of Public Works, County of Kauai. This shall include among other things a Department of Health approval for an Individual Wastewater System (IWS), and Public Works approval for grading, grubbing and structural design.

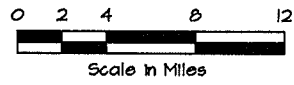
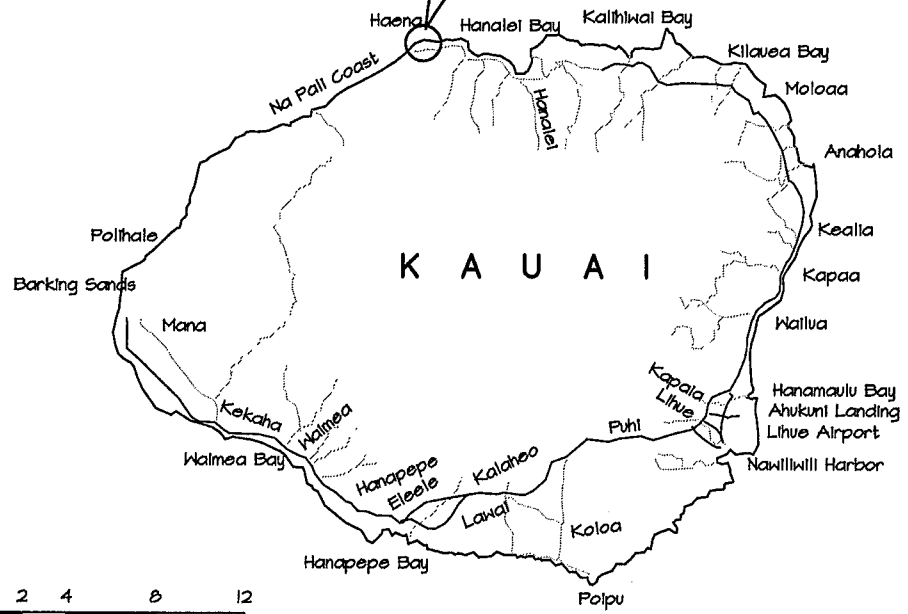


# **EXHIBITS**

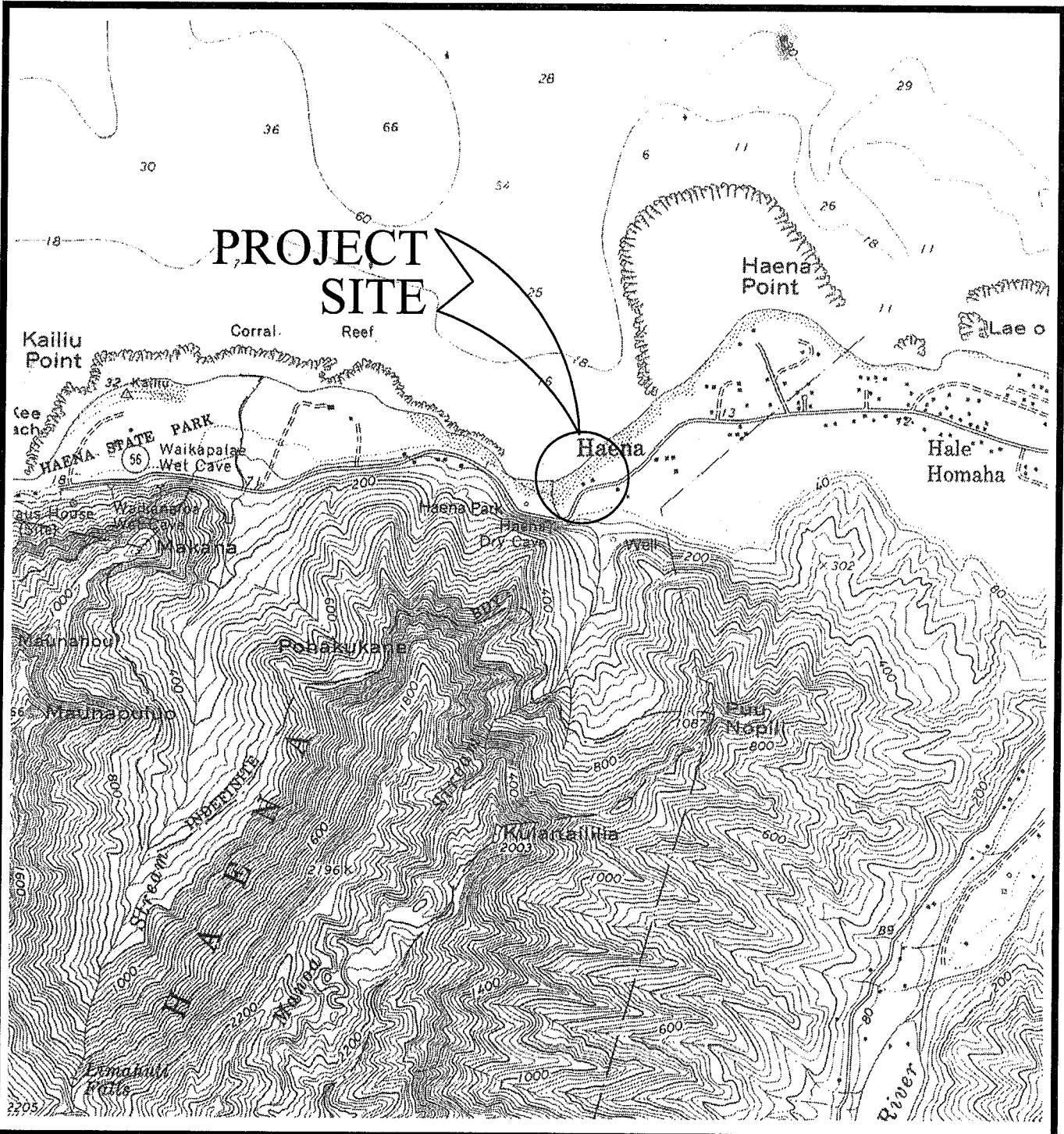
**Malerich Single-Family Residence  
TMK (4) 5-9-05: 025**



**PROJECT SITE**

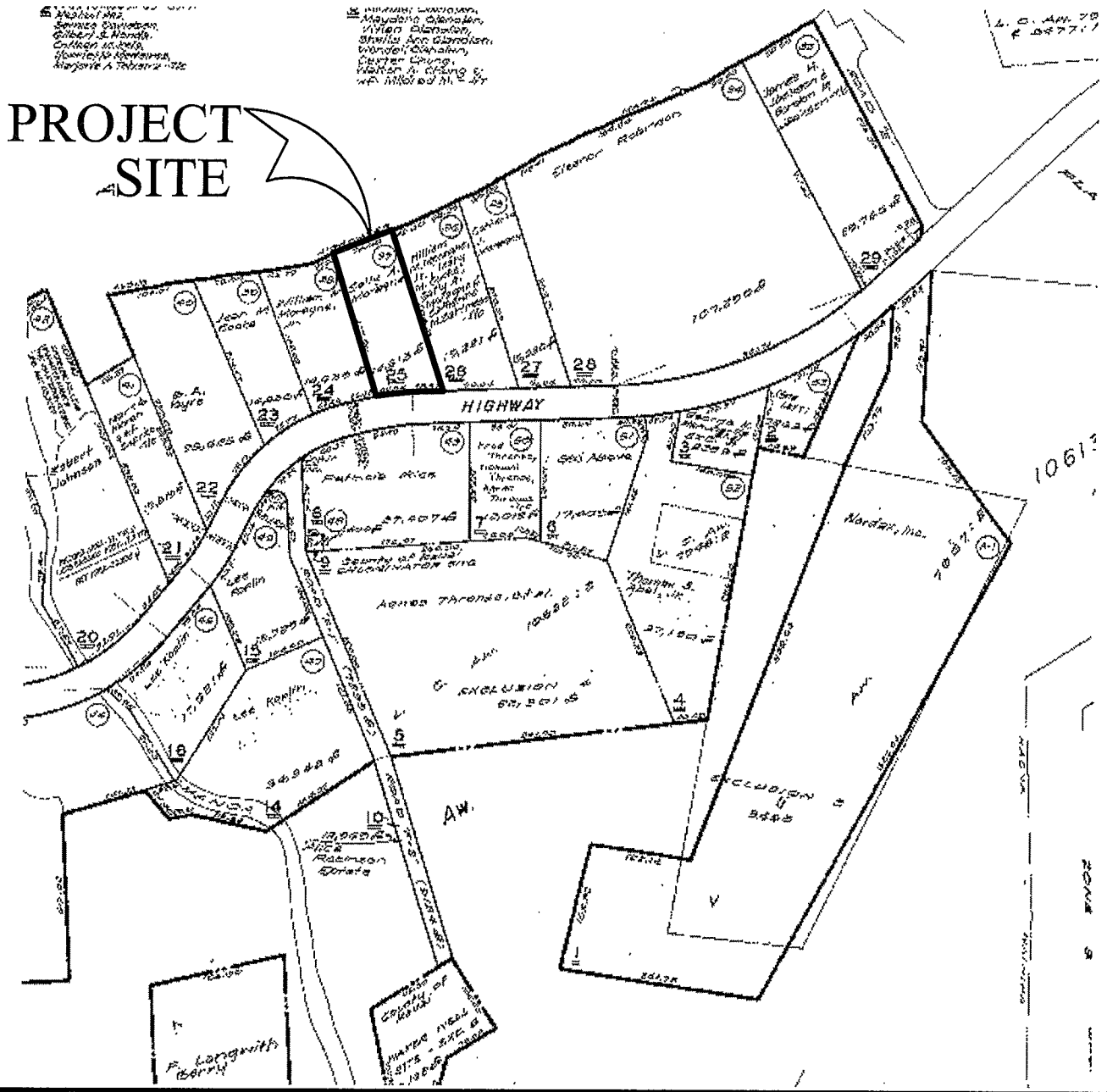


**VICINITY MAP**  
 MALERICH SINGLE-FAMILY RESIDENCE  
 HAENA, KAUA'I, HAWAII  
 T.M.K. (4) 5-9-05:025



**LOCATION MAP**  
 MALERICH SINGLE-FAMILY RESIDENCE  
 HAENA, KAUAI, HAWAII  
 T.M.K. (4) 5-9-05:025





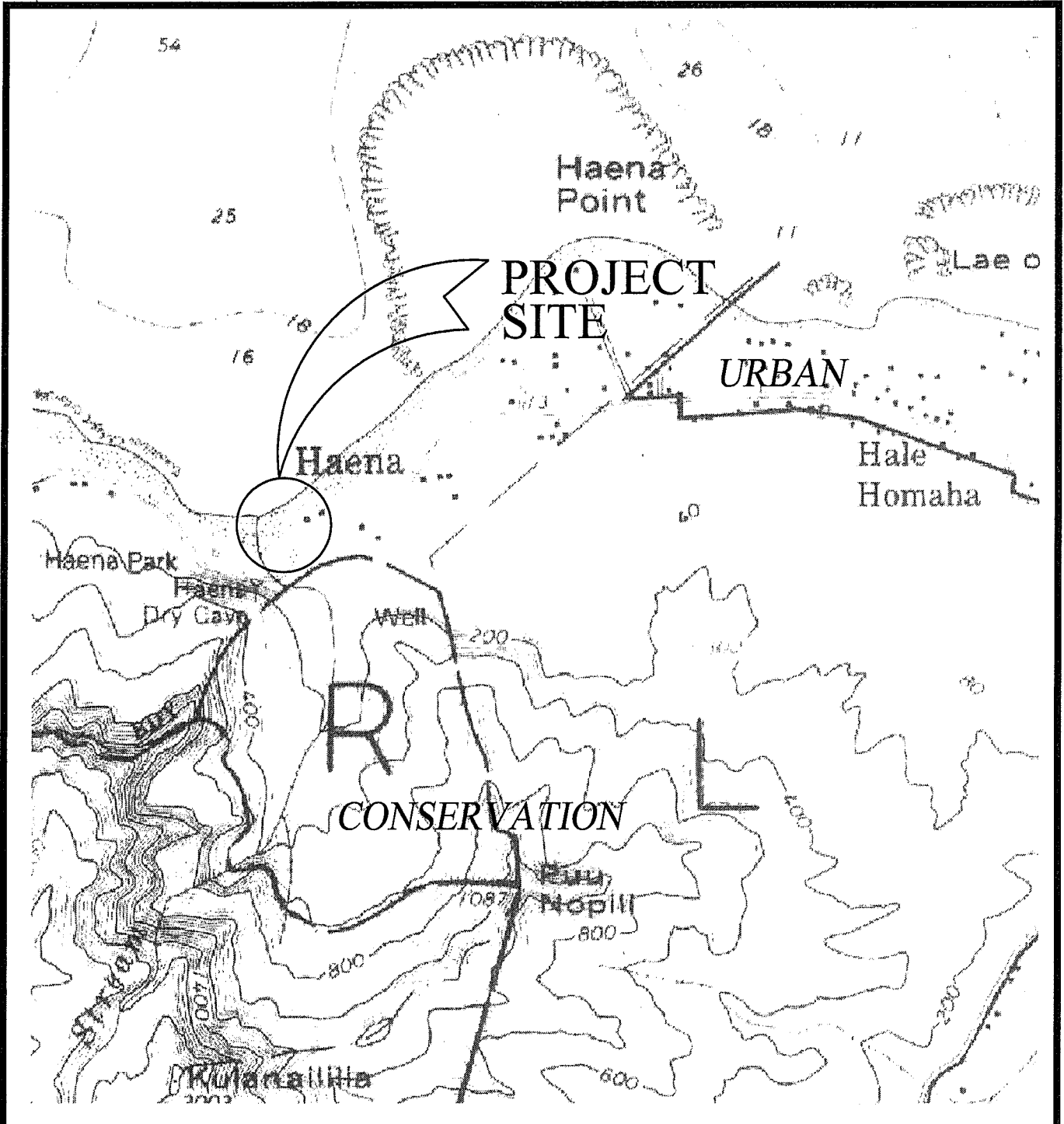
**TAX MAP (4) 5-9-05:025**  
 MALERICH SINGLE-FAMILY RESIDENCE  
 HAENA, KAUAI, HAWAII  
 T.M.K. (4) 5-9-05:025





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# STATE CONSERVATION DISTRICT SUBZONE MAP

MALERICH SINGLE-FAMILY RESIDENCE

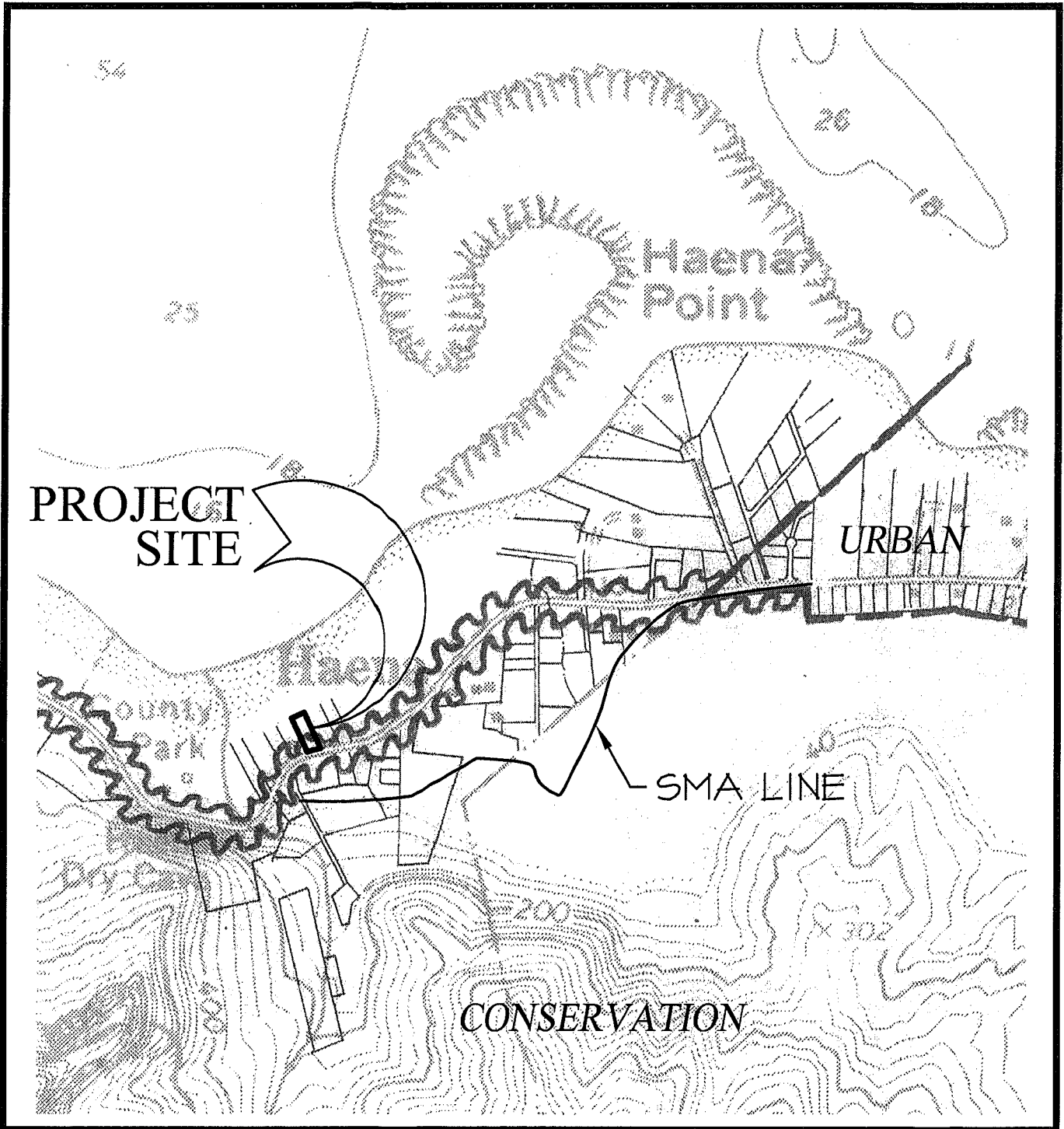
HAENA, KAUAI, HAWAII

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# COUNTY ZONING MAP

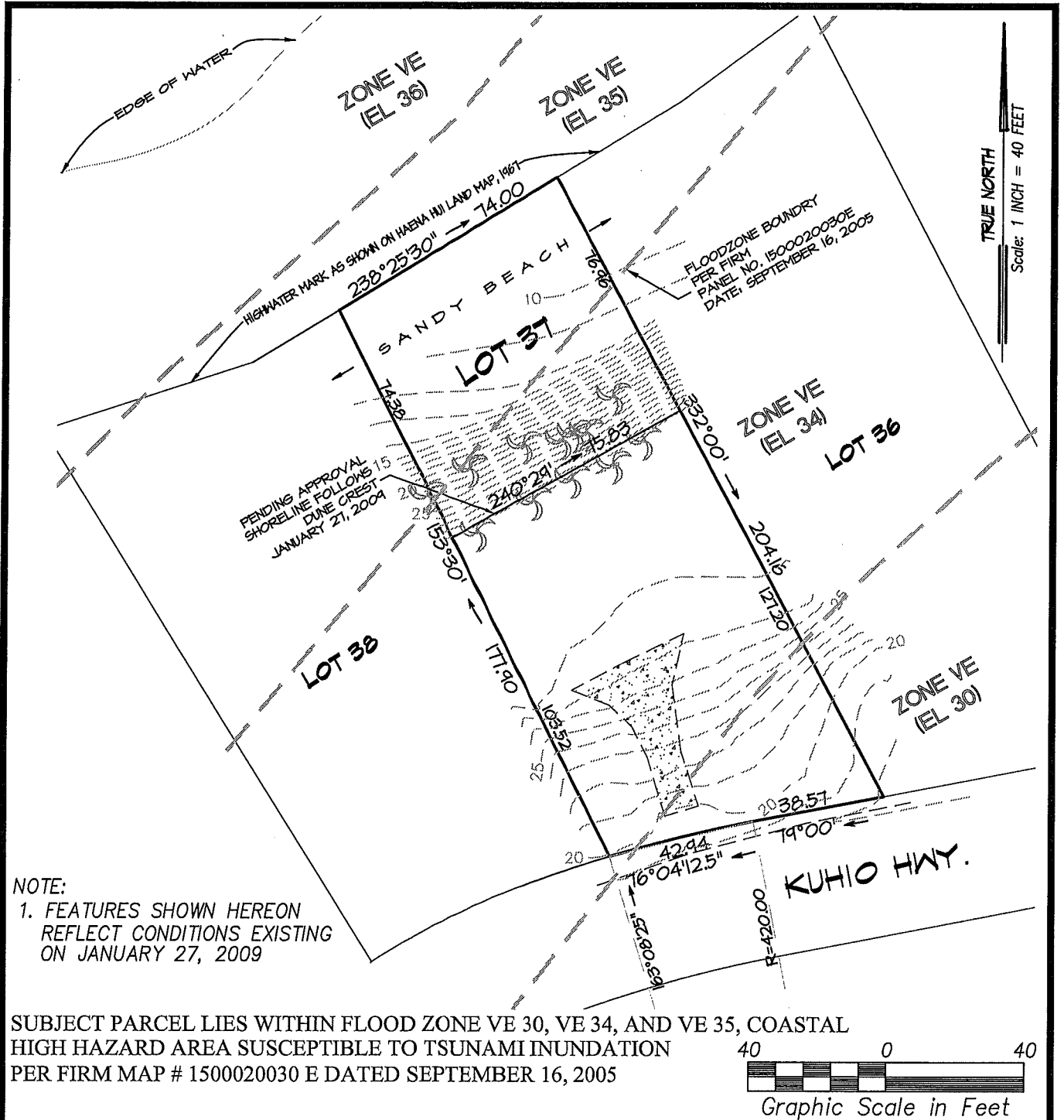
MALERICH SINGLE-FAMILY RESIDENCE  
HAENA, KAUAI, HAWAII  
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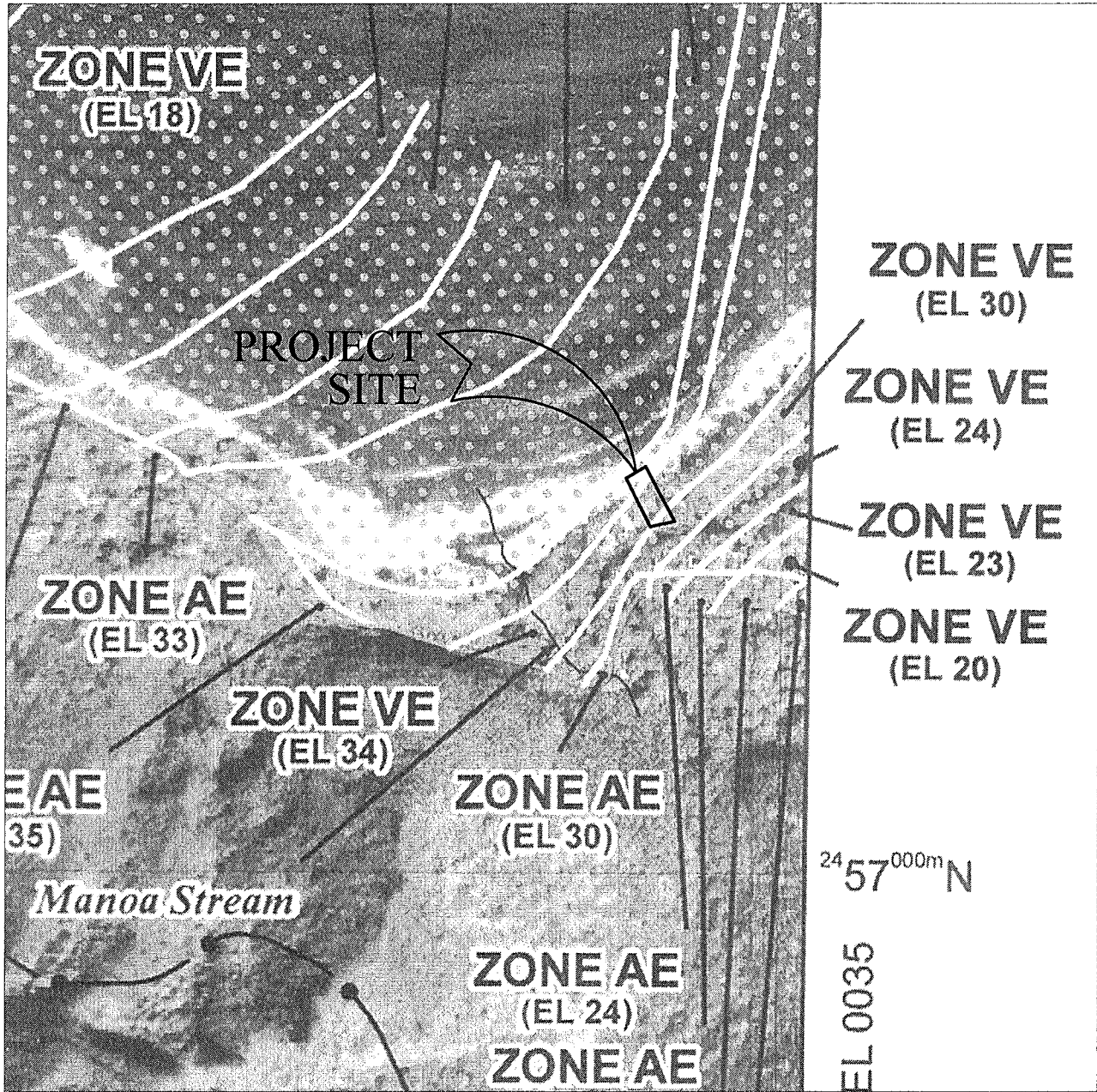
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TRUE NORTH  
Scale: 1 INCH = 40 FEET

# PLOT PLAN

MALERICH SINGLE-FAMILY RESIDENCE  
HAENA, KAUAI, HAWAII  
T.M.K. (4) 5-9-05:025

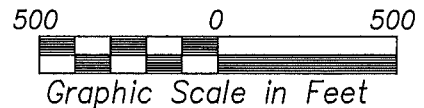


SUBJECT PARCEL LIES WITHIN FLOOD ZONE VE 30, VE 34, AND VE 35, COASTAL HIGH HAZARD AREA SUSCEPTIBLE TO TSUNAMI INUNDATION PER FIRM MAP # 1500020030 E DATED SEPTEMBER 16, 2005



# FLOOD ZONE MAP

MALERICH SINGLE-FAMILY RESIDENCE  
 HAENA, KAUAI, HAWAII  
 T.M.K. (4) 5-9-05:025

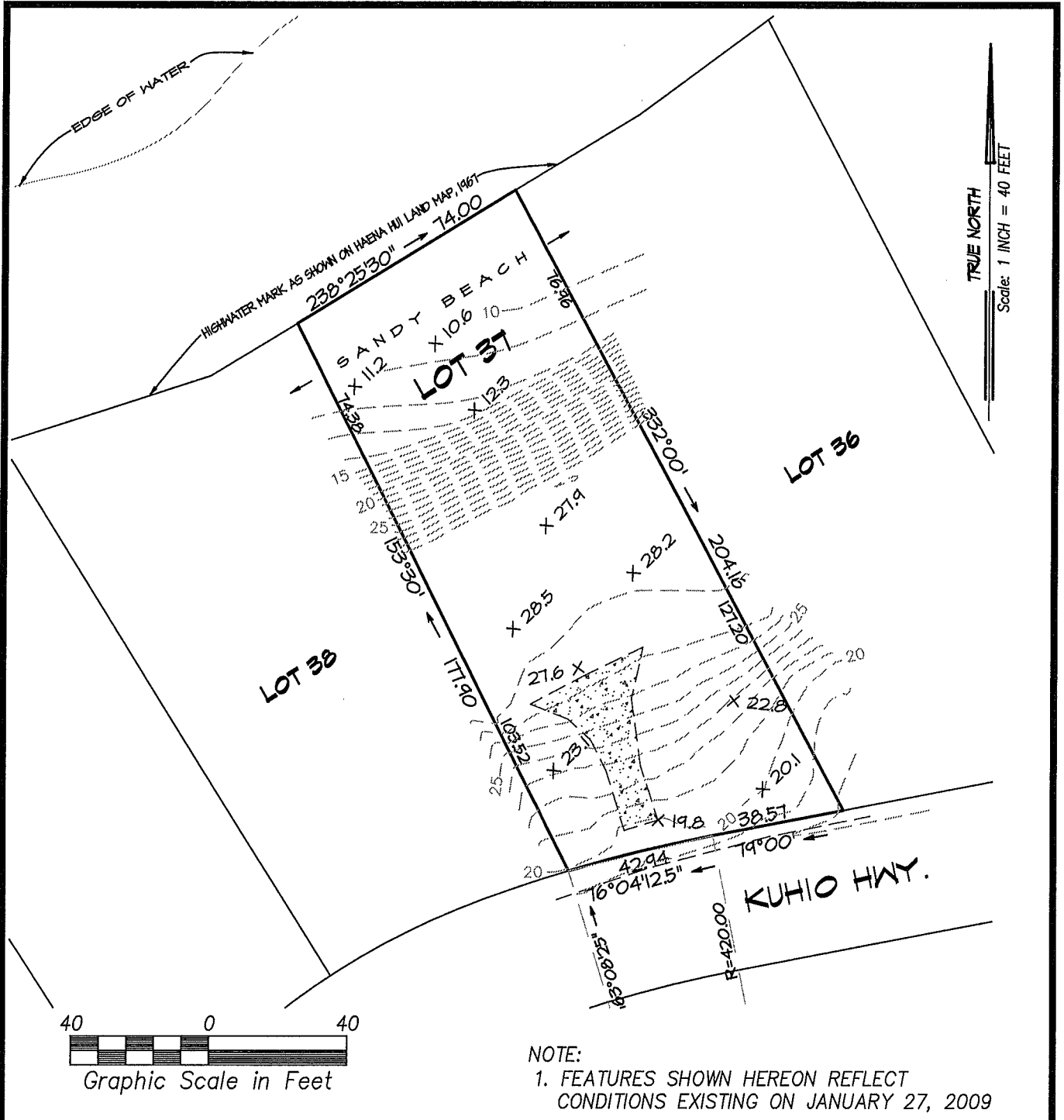






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TRUE NORTH

Scale: 1 INCH = 40 FEET

# EXISTING GROUND ELEVATION CERTIFICATE

MALERICH SINGLE-FAMILY RESIDENCE

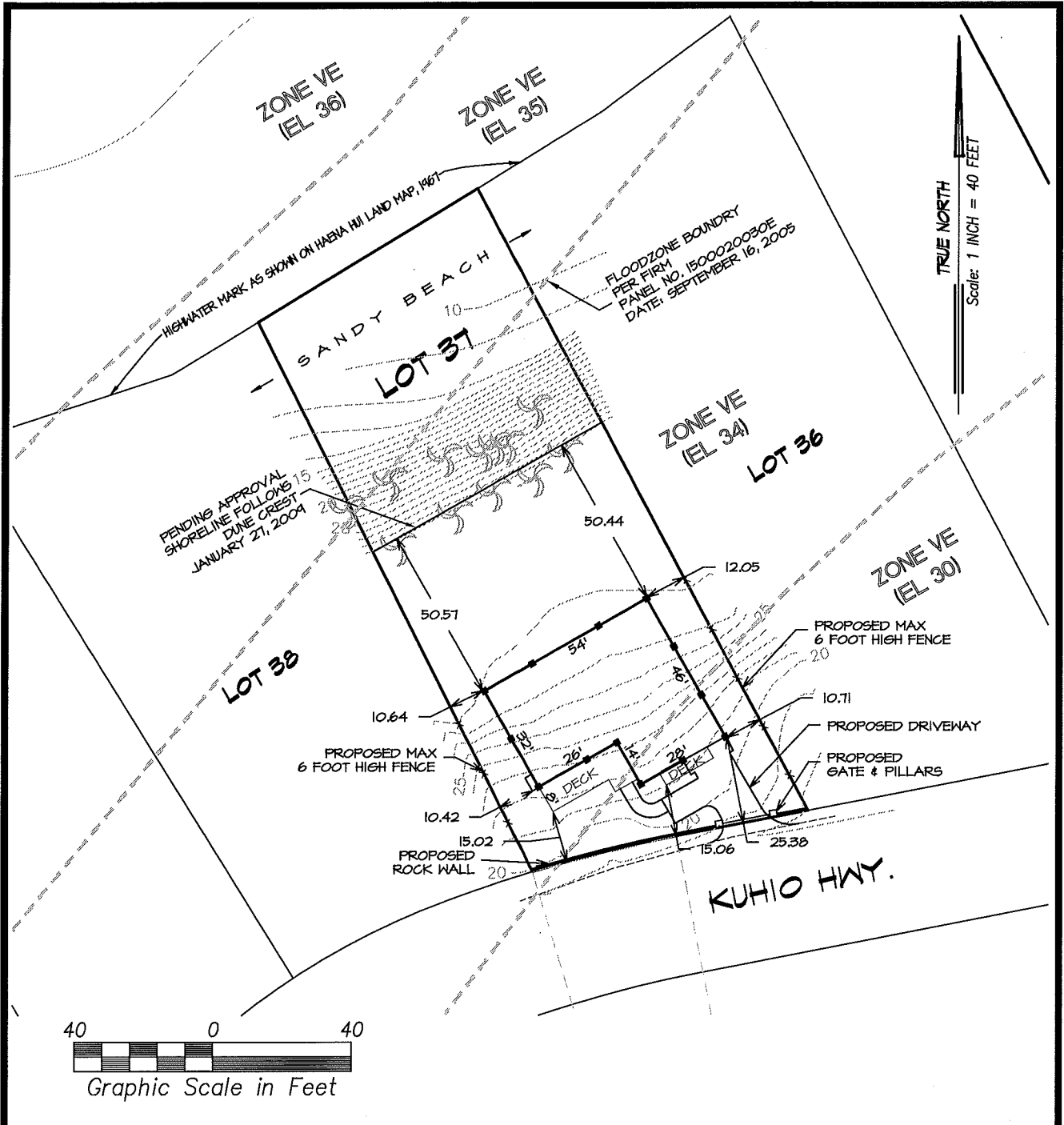
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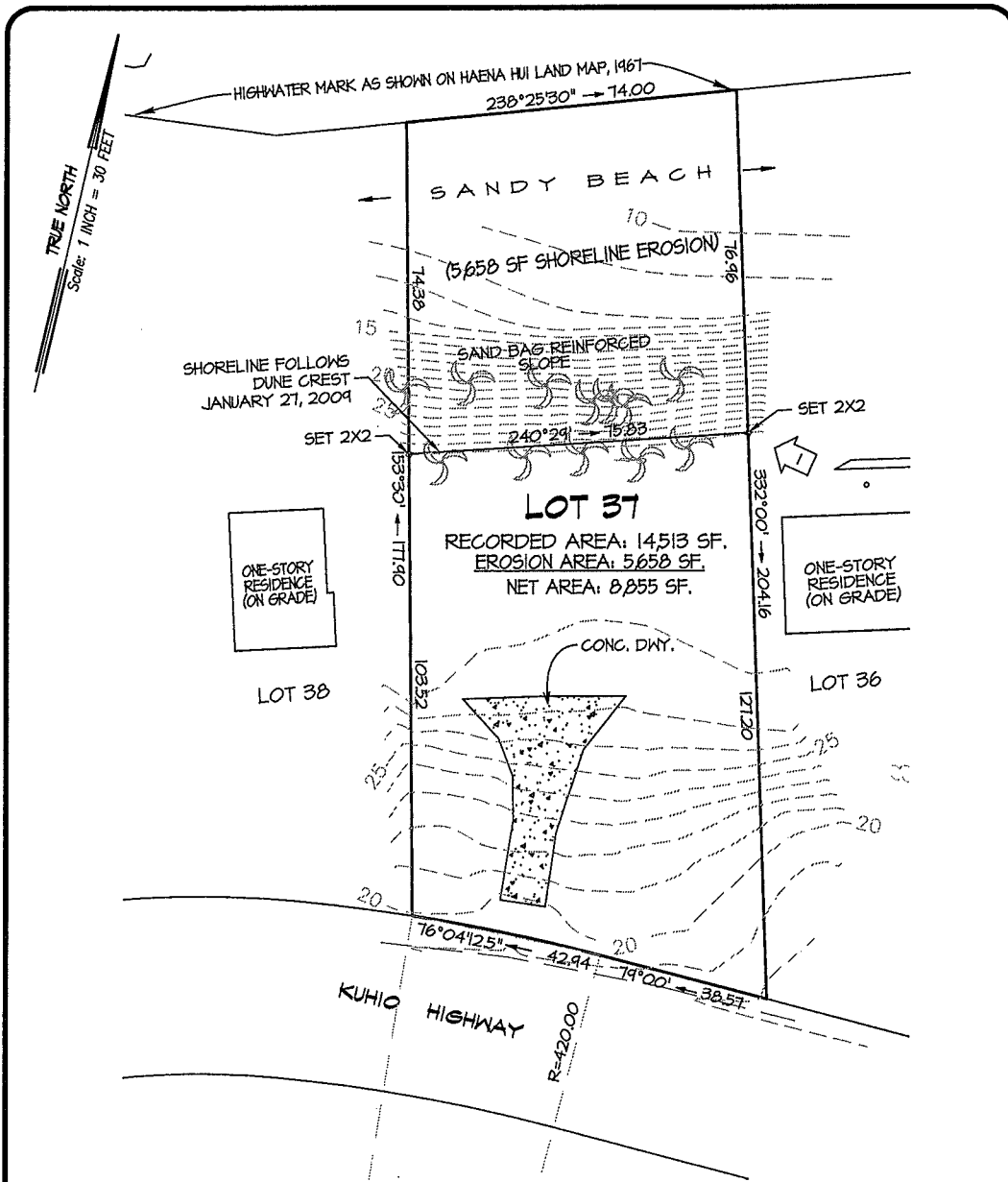
Wagner Engineering Services, Inc.

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# SITE PLAN

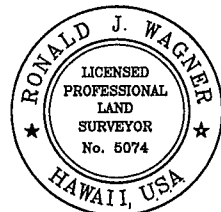
MALERICH SINGLE-FAMILY RESIDENCE  
HAENA, KAUA'I, HAWAII  
T.M.K. (4) 5-9-05:025



NOTE:  
1. FEATURES SHOWN HEREON REFLECT CONDITIONS EXISTING ON JANUARY 27, 2004  
2. ☉ DENOTES COCONUT TREE

JANUARY 30, 2004  
PREPARED FOR:  
MATT MALERICK  
105 FAIRWAY  
BAKERSFIELD, CA 93304

SHORELINE CERTIFICATION  
MAP OF  
**LOT 37**  
HAENA HUI LANDS  
being a portion of  
R.P. 3596, L.C. Aw. 10613, AP 6  
to A. PAKI  
at HAENA, HALELEA, KAUA'I, HAWAII



THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION  
PENDING APPROVAL

RONALD J. WAGNER  
Licensed Professional Land Surveyor  
Certificate No. 5074

Wagner Engineering Services, Inc.  
P.O. Box 851 Hanalei, HI 96714 (808) 826-7256

TMK (4) 5-9-05:25

PROJECT NO. 4685

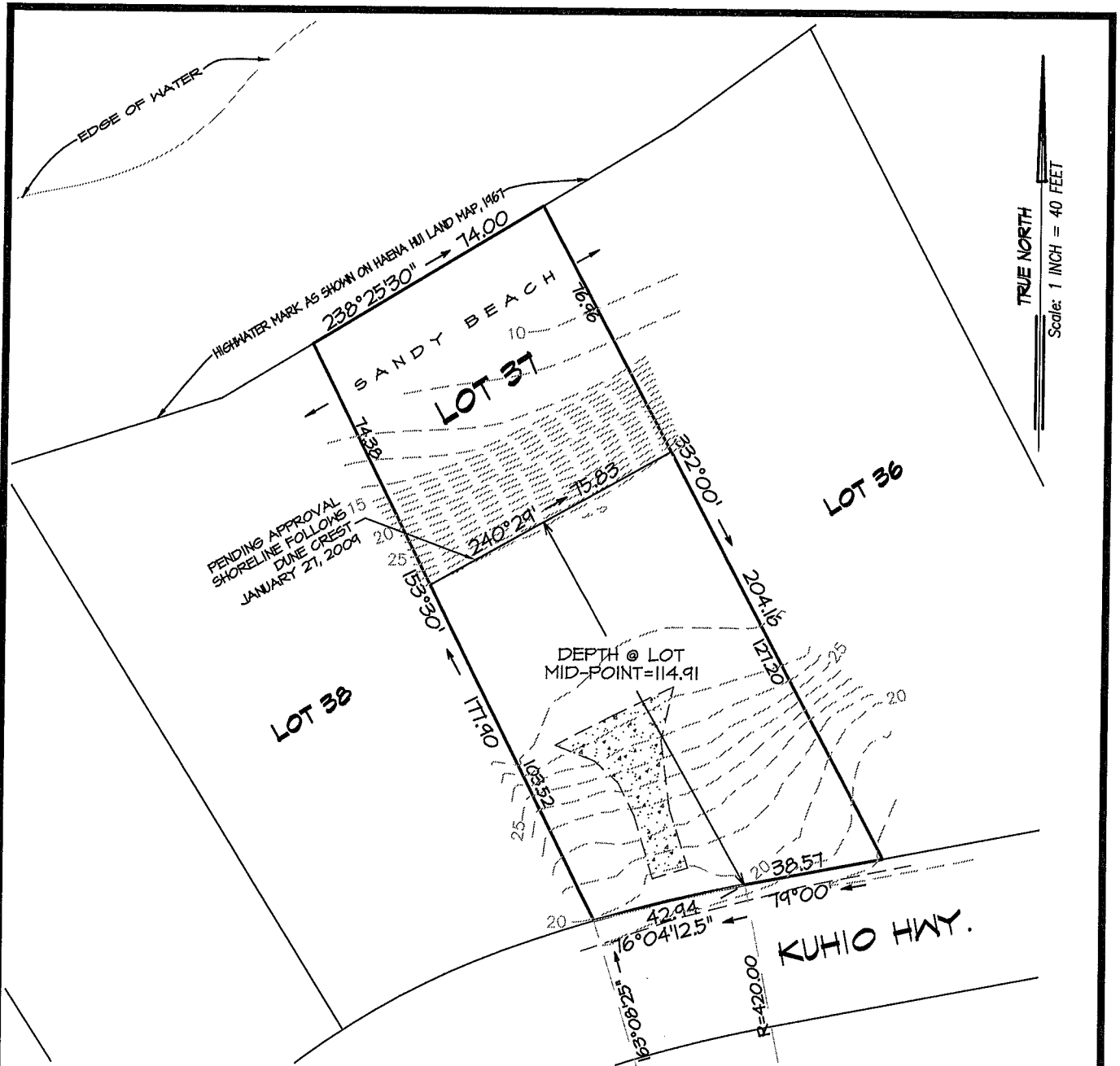
NOT TO SCALE

EXHIBIT 10

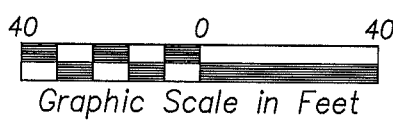


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TRUE NORTH  
Scale: 1 INCH = 40 FEET




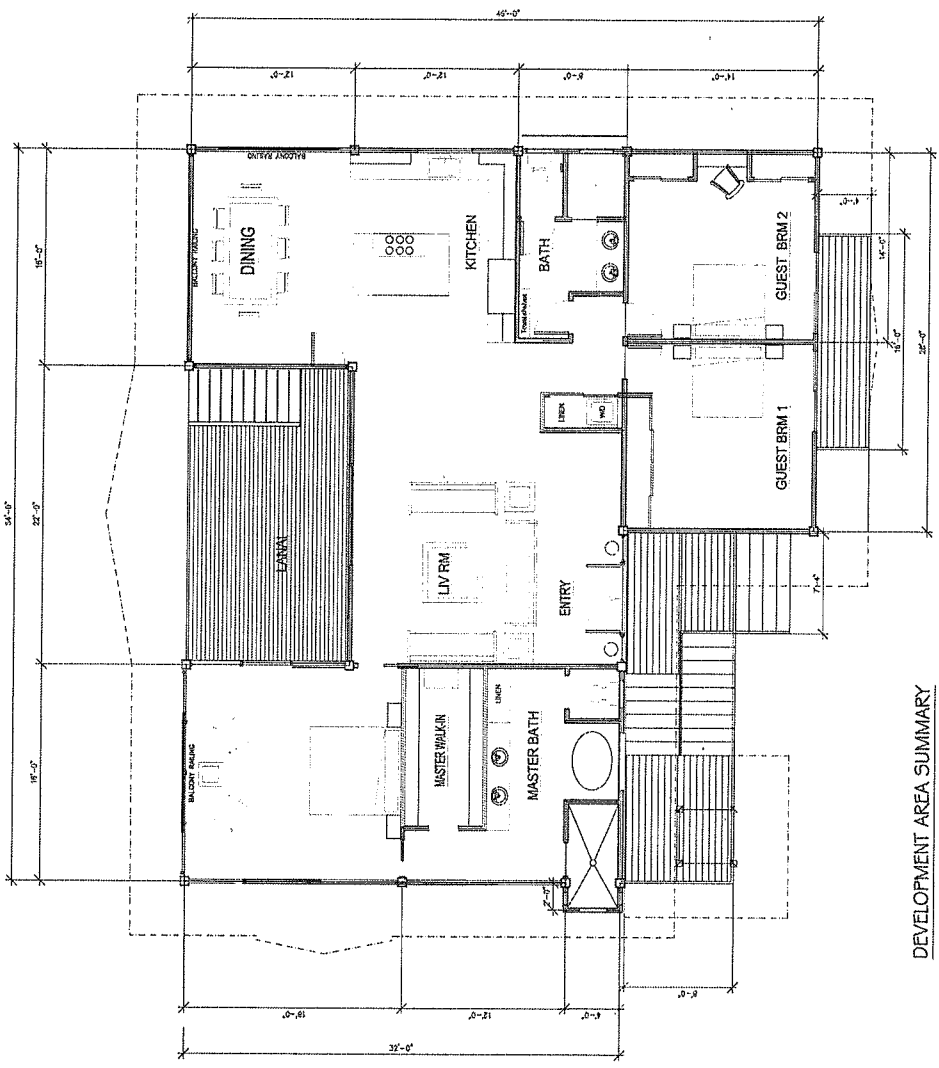
AVERAGE LOT DEPTH =  $(103.52 + 114.91 + 127.20) / 3 = 115.21$

NOTE:  
1. FEATURES SHOWN HEREON REFLECT  
CONDITIONS EXISTING ON JANUARY 27, 2009

# AVERAGE LOT DEPTH CALCULATION

MALERICH SINGLE-FAMILY RESIDENCE  
HAENA, KAUAI, HAWAII  
T.M.K. (4) 5-9-05:025

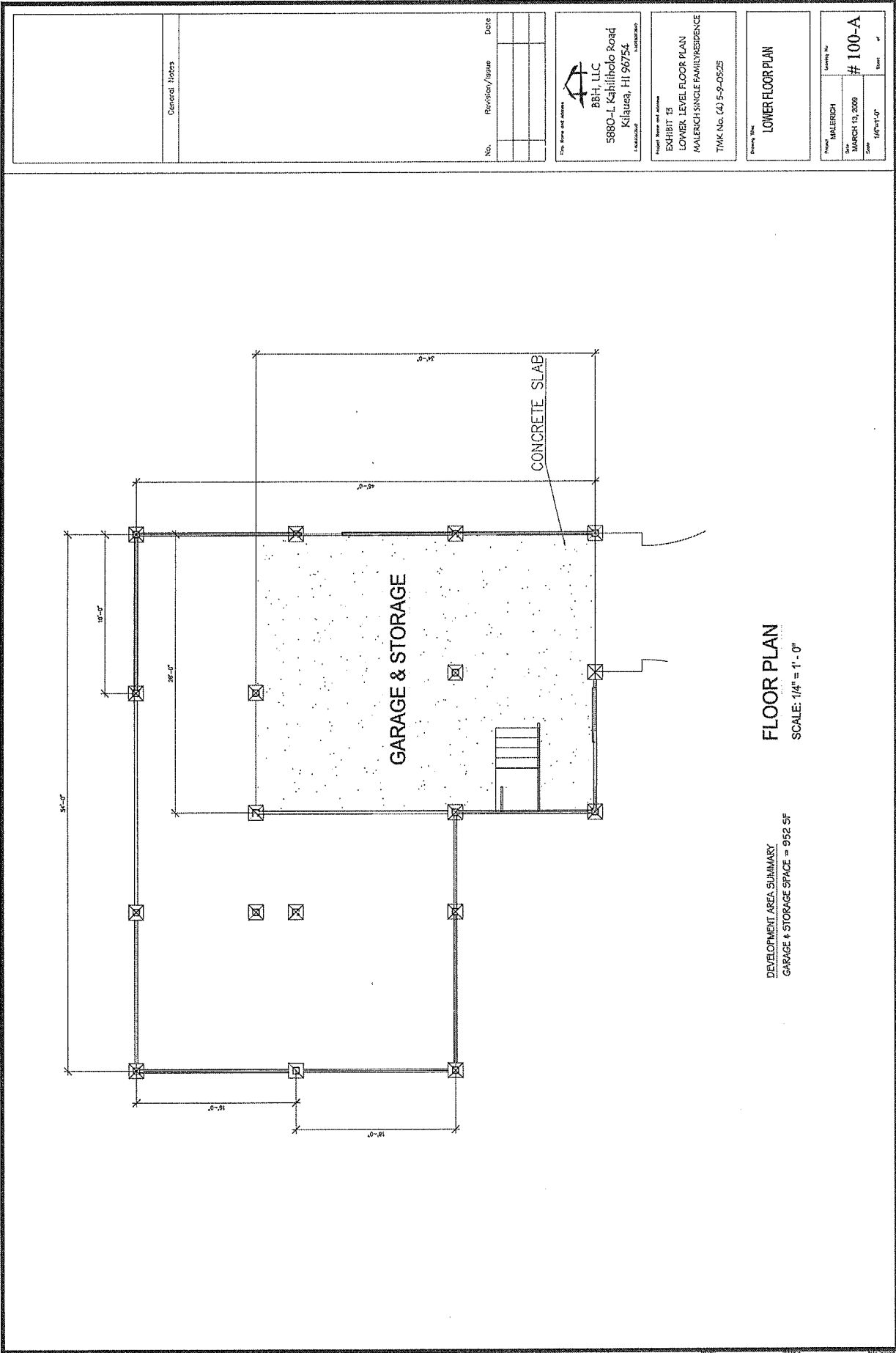
General Notes  	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">No.</th> <th style="width: 60%;">Revision/Issue</th> <th style="width: 30%;">Date</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	No.	Revision/Issue	Date										<div style="text-align: center;">   <b>BBH, LLC</b>            5880-L Kapihulo Road            Kilauea, HI 96754  <small>INCORPORATED</small> </div>	<div style="text-align: center;"> <small>Project Name and Address</small>  <b>EXHIBIT 12</b>  <b>UPPER LEVEL FLOOR PLAN</b>  <b>MALEKUCHI SINGLE FAMILY RESIDENCE</b>  <small>TRAK No. (43) 5-9-0525</small> </div>	<div style="text-align: center;"> <small>Drawing Title</small>  <b>UPPER FLOOR PLAN</b> </div>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"><small>Project</small> MALEKUCHI</td> <td style="width: 30%;"><small>Drawing No.</small></td> <td style="width: 40%;"><small>Sheet</small></td> </tr> <tr> <td><small>Date</small> MARCH 18, 2009</td> <td colspan="2" style="text-align: center;"><b># 100-B</b></td> </tr> <tr> <td><small>Drawn</small> JCF</td> <td><small>Checked</small> JCF</td> <td><small>Scale</small></td> </tr> </table>	<small>Project</small> MALEKUCHI	<small>Drawing No.</small>	<small>Sheet</small>	<small>Date</small> MARCH 18, 2009	<b># 100-B</b>		<small>Drawn</small> JCF	<small>Checked</small> JCF	<small>Scale</small>
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**FLOOR PLAN**  
SCALE: 1/4" = 1' - 0"

**DEVELOPMENT AREA SUMMARY**

- UPPER LEVEL INTERIOR LIVING SPACE = 1,864 SF
- LOWER LEVEL GARAGE & STORAGE SPACE = 952 SF
- LANAI & STAIR AREAS IN EXCESS OF 4' = 452 SF
- LANAI & STAIR AREAS 4' OR LESS = 122 SF
- TOTAL DEVELOPMENT AREA = 3,268 SF



**FLOOR PLAN**  
SCALE: 1/4" = 1'-0"

DEVELOPMENT AREA SUMMARY  
GARAGE & STORAGE SPACE = 952 SF

No.	Revision/Issue	Date

General Notes

884, LLC  
5880-L, Kapihulo Road  
Kilauea, HI 96754

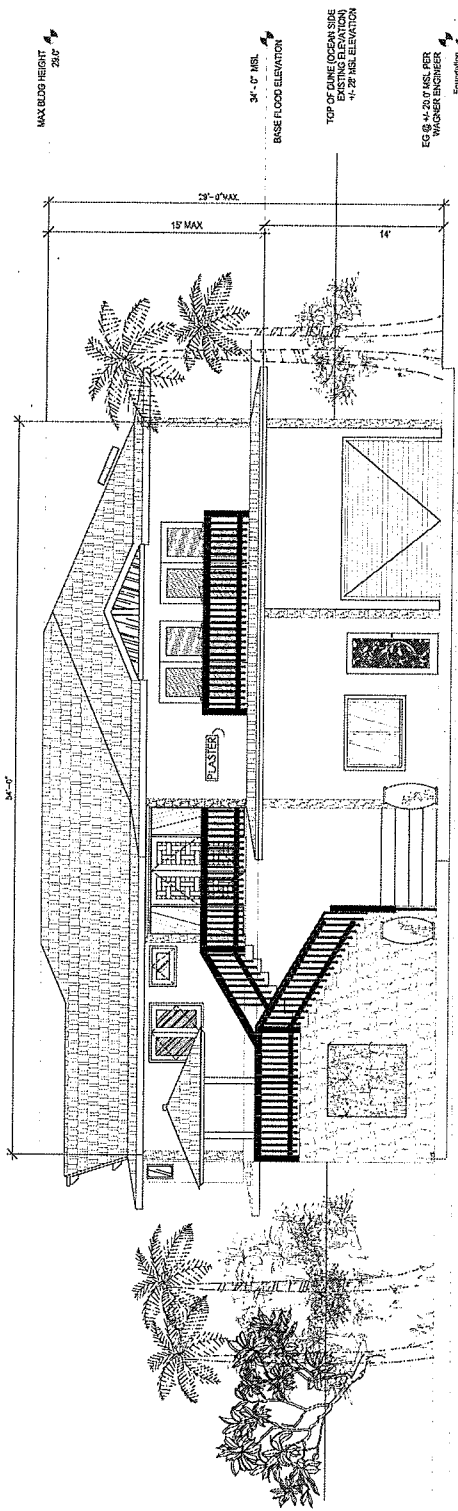
PROJECT NAME AND ADDRESS  
EXHIBIT 15  
LOWER LEVEL FLOOR PLAN  
MAALERICH SINGLE FAMILY RESIDENCE  
TWM No. (43) 5-9-0525

LOWER FLOOR PLAN

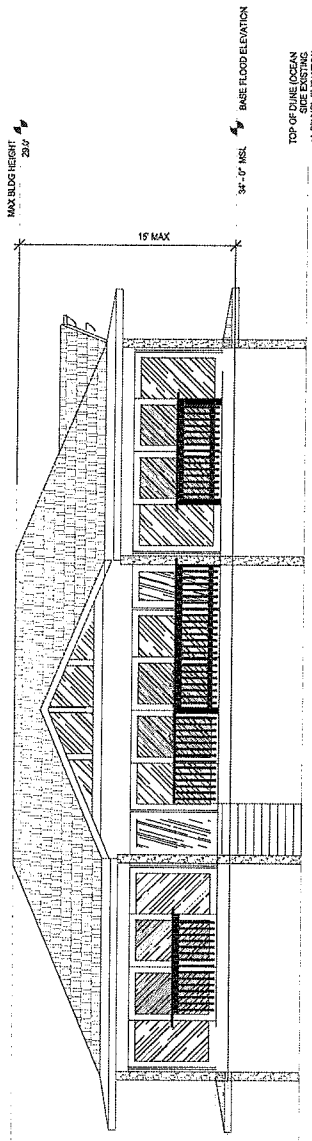
DATE	BY	SCALE
MARCH 13, 2009	MAALERICH	1/4" = 1'-0"
DRAWING NO.		PROJECT NO.
# 100-A		

General Notes	
No.	Revisions/Issue
	Date

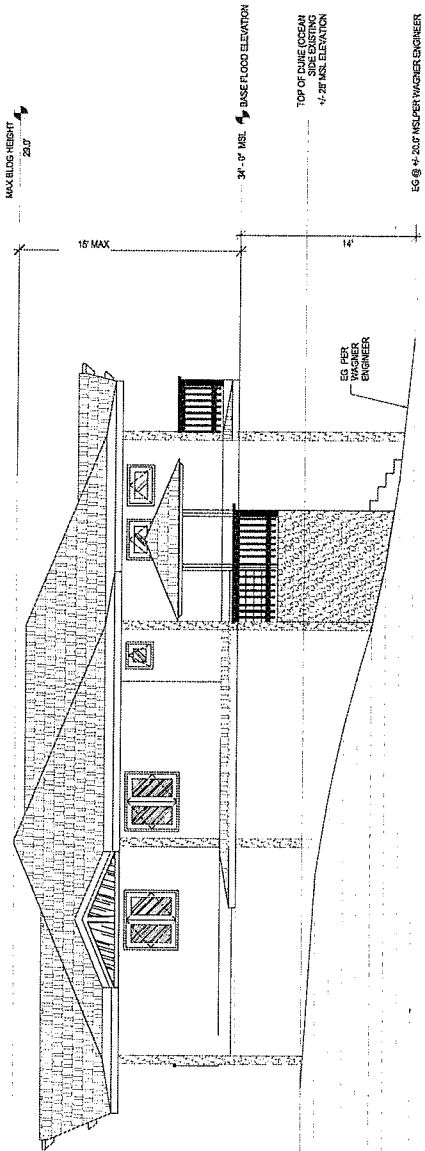
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BBH, LLC 5880-L Kahilihilo Road Kilauea, HI 96754	
Project Name and Address	
EXHIBIT 2 FRONT & REAR ELEV WALENCH SINGLE FAMILY RESIDENCE TAK NO. (A) 5-9-0525	
Drawing Title	
FRONT & REAR ELEVATIONS	
Project Manager	WALENCH
Date	MARCH 16, 2009
Sheet	# 101-A
Scale	1/8" = 1'-0"



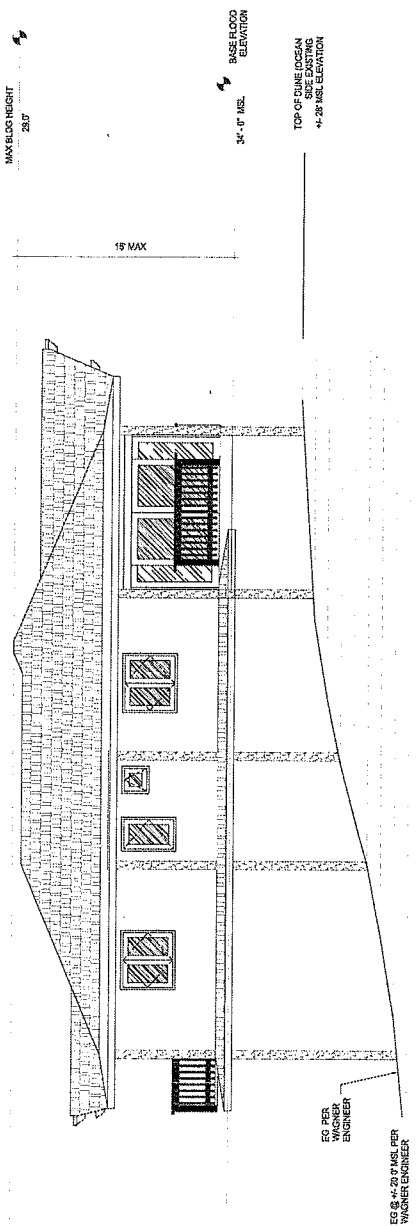
SOUTH (FRONT) ELEVATION  
SCALE: 1/8" = 1'-0"



NORTH (REAR) ELEVATION  
SCALE: 1/8" = 1'-0"




WEST (LEFT) ELEVATION  
SCALE: 1/4" = 1'-0"



EAST (RIGHT) ELEVATION  
SCALE: 1/4" = 1'-0"

General Notes	
No.	Revision/Issue
	Date

 <b>88H, LLC</b> 5880-L Kahaoholo Road Kilauea, HI 96754 <small>1-808-255-2200</small>	
Project Name and Address <b>EXHIBIT 15</b> <b>RIGHT &amp; LEFT ELEV</b> MAALERICH SINGLE FAMILY RESIDENCE T/MK No. (43) 5-9-0525	
Drawing Title <b>RIGHT &amp; LEFT ELEVATIONS</b>	
Preparing <b>MAALERICH</b>	Drawing No. <b># 101-B</b>
Date <b>MARCH 16, 2009</b>	Scale <b>1/4" = 1'-0"</b>



COPY

February 20, 2009

Ian Costa, Director  
County of Kauai, Planning Department  
4444 Rice Street, Site 473  
Lihue, HI 96766

**Attn: Lisa Ellen Smith**

**Re: SMA Single Family Residential Exemption  
TMK (4) 5-9-05: 025**

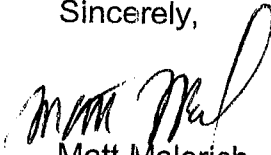
Dear Mr. Costa & Ms. Smith,

I am writing to you regarding the above referenced parcel, which my wife Judy and I own in Haena adjacent to the shoreline. Our property is situated within a portion of the State Land Use Conservation District and our proposal to construct a residence on the property is therefore subject to the Board of Land & Natural Resources' (BLNR) review and approval of a Conservation District use Application (CDUA). We have begun the process of assembling the Environmental Assessment (EA), archaeological reports, and accompanying documentation in order to file a CDUA within the next two months.

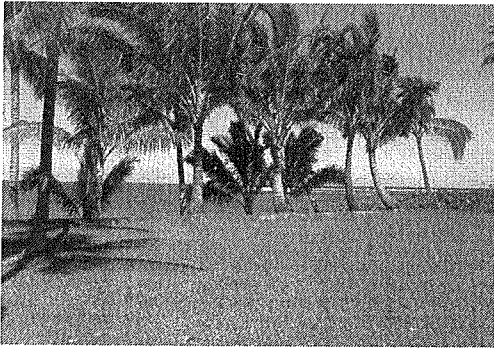
In order to satisfy the BLNR's concern regarding compliance with the County's SMA guidelines, we are requesting that you provide us with a written determination as to the SMA permitting requirements for the proposed residence. It is our understanding that per Section 1.4, Paragraph H (2)(a) of the Special Management Area Rules and Regulations of the County of Kauai, the construction of the proposed residence satisfies "non-development" criteria and is therefore exempt from obtaining an SMA Use Permit. Can you please verify this interpretation in writing?

Mahalo for your time and consideration in this matter.

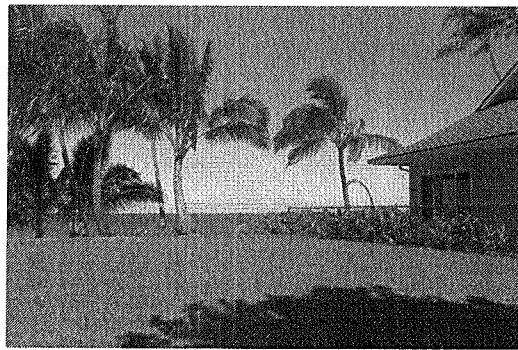
Sincerely,

  
Matt Malerich  
P.O. Box 1649  
Hanalei, HI 96714

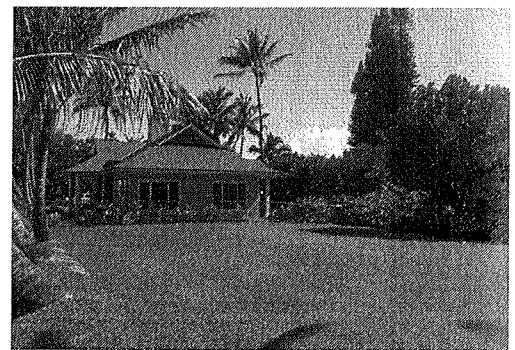
**EXHIBIT 16**  
**Inquiry re SMA Exemption**  
Malerich Single-Family Residence  
TMK (4) 5-9-05: 025  
Ha`ena, Kaua`i, Hawai`i



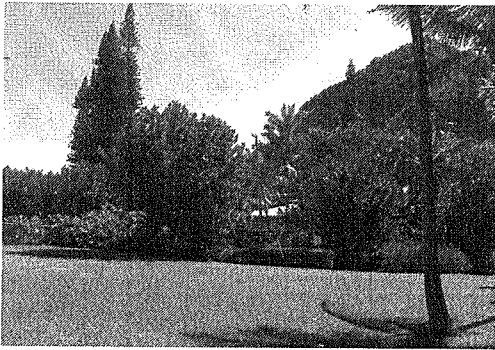
**Open Lawn & Existing  
Vegetation**



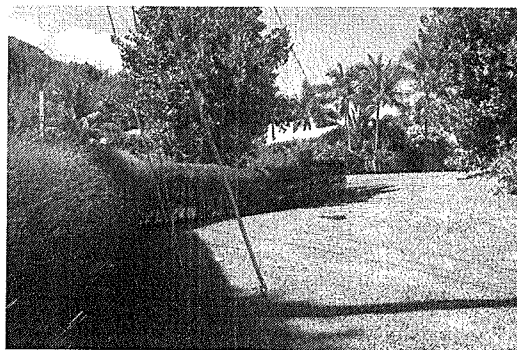
**Subject Parcel & Neighboring  
Home on Parcel to the East**



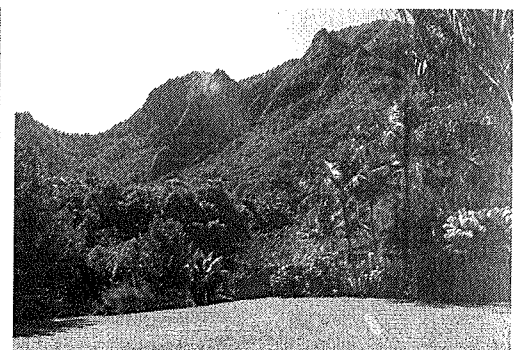
**View of Front Lawn &  
Neighboring House to East**



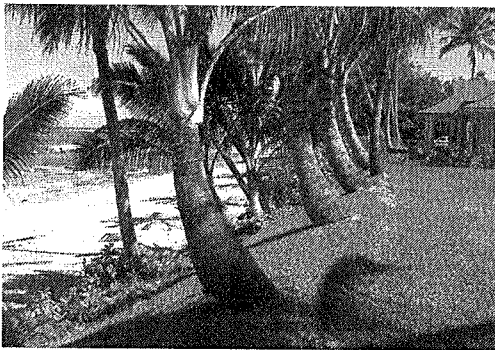
**View Toward Roadway &  
Area of Proposed Construction**



**View from SE Corner  
Near Roadway Boundary**



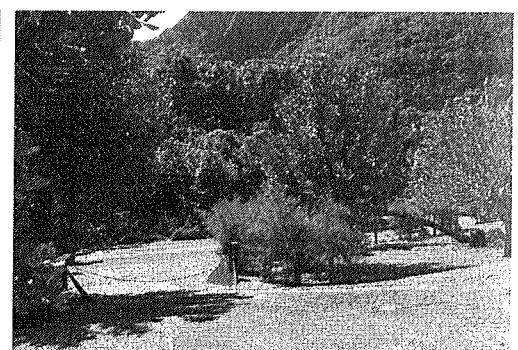
**View Southwest  
Toward Mountains**



**Shoreline Interface at  
Top of Sandbag Revetment**



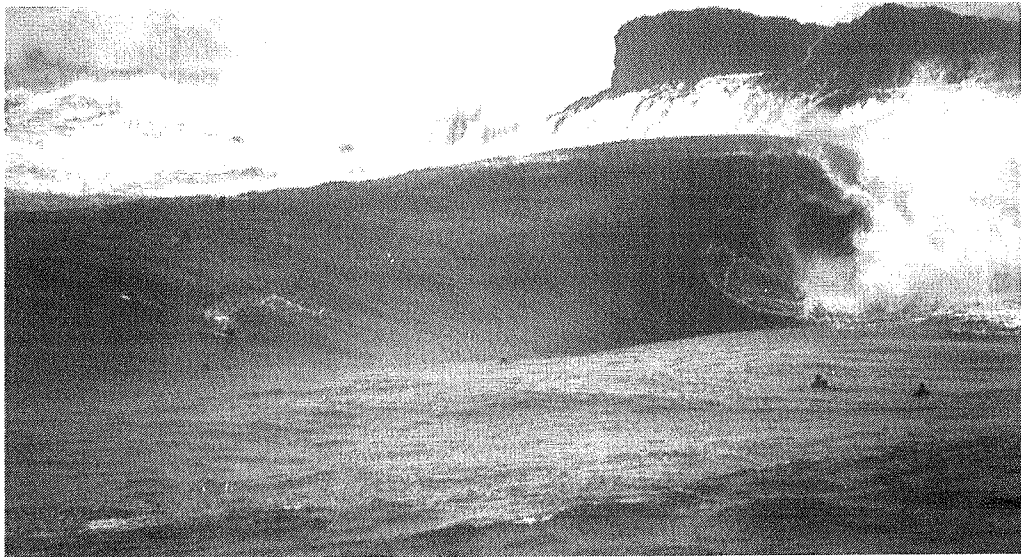
**Beachfront of Subject Parcel**



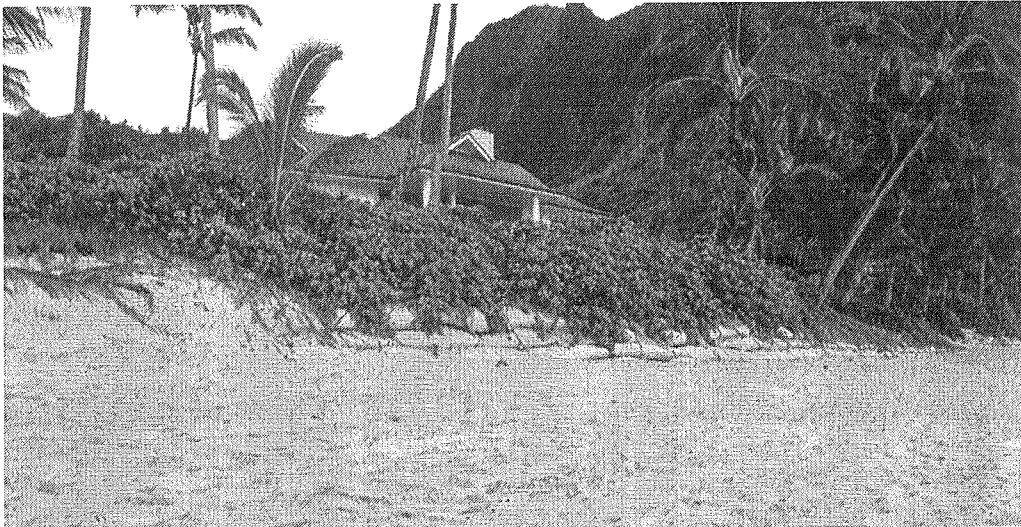
**Existing Driveway  
(To Be Removed)**

## **SITE PHOTOS**

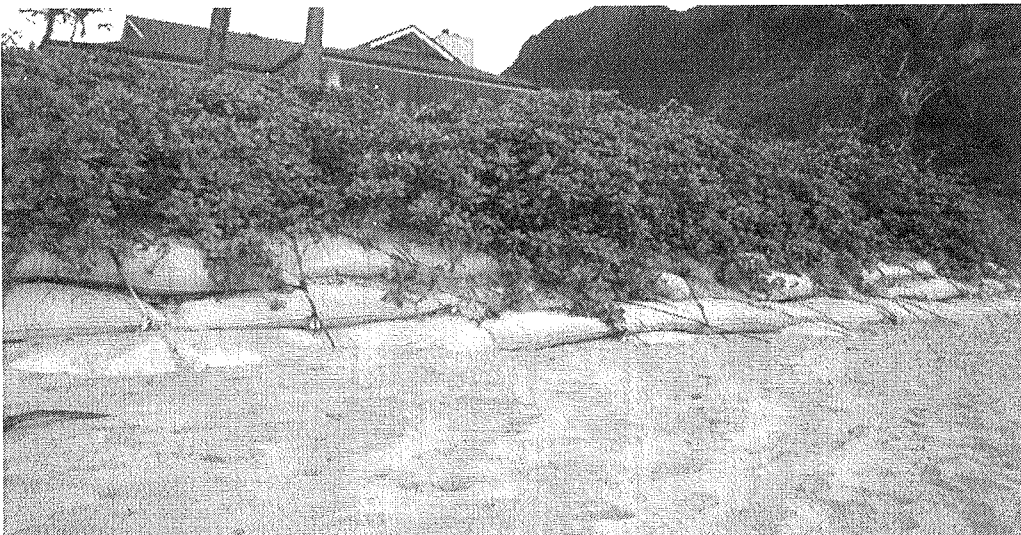
Malerich Single Family Residence  
TMK (4) 5-9-05: 025  
Haena, Kauai, Hawaii



**Photo 1 – Large Northeast Swell, Kauai – March 20, 2009**



**Photo 2 – Beach & Sandbags fronting subject parcel (taken April 1, 2009)**

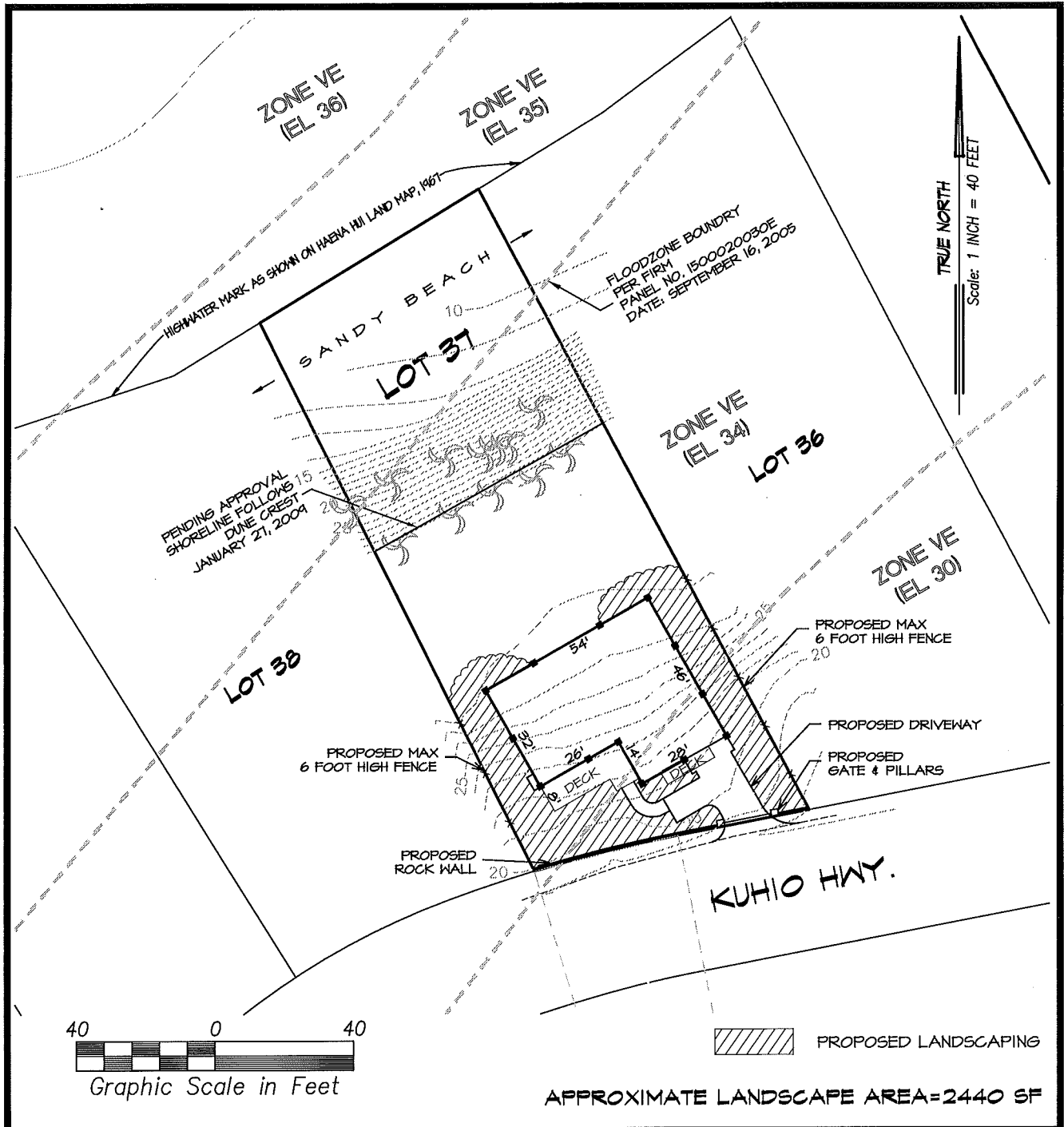


**Photo 3 – Beach & Sandbags fronting subject parcel (taken April 1, 2009)**



Wagner Engineering Services, Inc.

P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



# PROPOSED LANDSCAPE AREA

MALERICH SINGLE-FAMILY RESIDENCE

HAENA, KAUA'I, HAWAII

T.M.K. (4) 5-9-05:025



**KAUAI (HRS 343)**

**1. Malerich Residence (DEA)**

**Island:** Kauai  
**District:** Hanalei  
**TMK:** (4) 5-9-05:25  
**Applicant:** Matthew M. Malerich & Judith E. Malerich Family Trust, Matthew & Judith Malerich, Trustees, P.O. Box 1649, Hanalei, HI 96714. (661) 477-5422

**Approving Agency:** Department of Land and Natural Resources, Office of Conservation & Coastal Lands, P.O. Box 621, Honolulu, HI 96809. Sam Lemmo, Administrator, 587-0377

**Comments:** DEA pending 30-day comment. Address comments to the Applicant, with copies to the Approving Agency, and Consultant

**Permits:** CDUP, Building Permit, Special Management Area Use Permit, Individual Wastewater System

The proposed action is for the construction of a Single Family Residence of approximately 3,213 square feet within an established neighborhood located in Haena on Kauai's North Shore. The proposed residence will be elevated on piers to conform to applicable Federal and County regulations regarding the National Flood Insurance Program for coastal high hazard areas. The applicant is requesting that the Board of Land and Natural Resources grant approval for a four (4) foot height variance for the proposed residence due to the flood zoning characteristics of the parcel. The requested height variance is consistent with the County of Kauai's flood zoning ordinance. The Applicant is also requesting approval for a five (5) foot side-yard setback variance in order to maintain a suitable building envelope and comply with the County of Kauai's shoreline setback Ordinance No. 863 which requires a minimum 50-foot setback. The Applicant proposes to construct a rock wall along the roadway boundary of the property, together with a vehicular gate. Fencing will be erected along the lateral boundaries to within 40 feet of the certified shoreline. A copy of the Draft Environmental Assessment will be available for review at the Princeville Public Library. A Finding of No Significant Impact (FONSI) is anticipated.

**OAHU (HRS 343)**

**2. Hanua Street Soil Containment Cap and Barrier Project (FEA)**

**Island:** Oahu  
**District:** Ewa  
**TMK:** 9-1-2-26  
**Applicant:** REIT Management & Research, LLC

**Approving Agency:** Department of Planning and Permitting, City and County of Honolulu, 650 South King Street, Honolulu, HI 96813. Steve Tagawa, 768-8024

**Consultant:** Masa Fujioka & Associates, 96-021 Kamehameha Highway, Suite 337, Aiea, HI 96701-4914. Lana Brodziak, 484-5366

**Comments:** FEA accepted by the Approving Agency. There is no comment period

**Permits:** Special Management Area (SMA) Use Permit, Shoreline Setback Variance, Section 404 Discharge and 401 Water Quality Certification, CDUP, NPDES

To implement a containment soils (primarily lead) remediation project on a portion of a 9.6-acre site at the end of Hanua Street in the Campbell Industrial Park. This I-2 Intensive Industrial District site was previously used for various industrial activities, including a pre-cast and pre-stressed concrete (e.g. girders, beams, box drainage culverts, etc.) manufacturing facility. Con-Fab Corporation was granted a Major SMA Use Permit (No. 89/SMA-61) by the City Council for that facility on September 12, 1990 (Resolution No. 90-219).

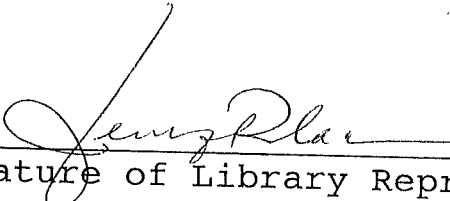
Today most of the site is vacant. A lumber distributor (Mendocino Forest Products, LLC) uses the northeast portion of the site for lumber storage and a small office trailer. According to DEA, the contaminated soil resulted from the deposit of ash and residue materials discarded from the vehicle recycling activity that was conducted adjacent to, and immediately north of, the site. The DEA indicates that in the past, Leeward Auto

# Library Reserve Deposit

Date: June 20, 2009  
To: Princeville Public Library  
From: Matt Malerich  
Subject: Receipt for Deposit on Reserve with  
Princeville Public Library  
Draft Environmental Assessment  
Proposed Malerich Single Family  
Residence  
TMK (4) 5-9-05: 025, Ha`ena, Kaua`i

---

This memo is to verify that on June 20,  
2009 a copy of the Proposed Malerich Single Family  
Residence Draft Environmental Assessment (DEA) was  
deposited with the staff of the Princeville Public  
Library for review by interested members of the  
public.

  
\_\_\_\_\_  
Signature of Library Representative

Jennifer Relacum  
\_\_\_\_\_  
Print Name & Title

# **APPENDIX 1**

## **Archaeological Assessment Survey**

**Malerich Single-Family Residence**

**TMK (4) 5-9-05: 025**

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

LAURA H. THELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWABARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

February 25, 2009

Dr. Robert Rechtman  
Rechtman consulting LLC  
507-A E. Lanikaula Street  
Hilo, Hawai'i 96720

LOG NO: 2009.0984  
DOC NO: 0902WT63  
Archaeology

Dear Dr. Rechtman:

**SUBJECT: 6E-42 Historic Preservation Review—  
An Archaeological Assessment Survey—  
Of TMK: (4) 5-9-05: 025,  
Hā'ena Ahupua'a', Halele'a District, Island of Kaua'i Hawai'i  
TMK: (4)5-9-05:025**

Thank you for the opportunity to review this revised Archaeological Assessment Report (AAR) (*An Archaeological Assessment survey of TMK: (4) 5-9-05: 025, Hā'ena Ahupua'a', Halele'a District, Island of Kaua'i Hawai'i TMK (4) 5-9-05: 025 [Rechtman PhD, February 2009]*) which was received on February 19, 2009.

This project involved the survey and testing of a privately owned 14,000 square foot parcel consisting of TMK: (4) 5-9-05: 025. A surface survey was conducted and three backhoe trenches excavated in order to ascertain the presence or absence of historic properties on the parcel. This work was conducted after research revealed that historic properties, in particular human burials and a discontinuous cultural layer present to the east and west of the parcel might be present here. No historic properties were recorded.

This report meets the minimum requirements, and is accepted as compliance with 6E-10 and Hawai'i Administrative Rules (HAR) §13-13-276 *Rules Governing Standards for Archaeological Inventory Survey and Studies*.

As this subject archaeological assessment report has received final acceptance please send one hardcopy of the document, clearly marked FINAL, along with a copy of this review letter and a text-searchable PDF version on CD to the attention of Wendy Tolleson and "SHPD Library" at the Kapolei SHPD office.

Please call Wendy Tolleson at (808) 692-8024 if there are any questions or concerns regarding this letter.

Aloha,

Nancy A. McMahon (Deputy SHPO)  
State Historic Preservation Officer



# An Archaeological Assessment Survey of TMK:4-5-9-05:025

Hā'ena Ahupua'a  
Halele'a District  
Island of Kaua'i



FINAL VERSION

PREPARED BY:

Robert B. Rechtman, Ph.D.

PREPARED FOR:

Matt and Judy Malerich  
P.O. Box 1649  
Hanalei HI 96714

February 2009

---

**RECHTMAN CONSULTING, LLC**

507-A E. Lanikaula St. Hilo, Hawaii 96720

phone: (808) 969-6066 fax: (808) 443-0065

e-mail: bob@rechtmanconsulting.com

ARCHAEOLOGICAL, CULTURAL, AND HISTORICAL STUDIES

An Archaeological Assessment Survey of  
TMK: 4-5-9-05:025

Hā'ena Ahupua'a  
Halele'a District  
Island of Kaua'i

## EXECUTIVE SUMMARY

At the request of Matt and Judy Malerich, Rechtman Consulting, LLC conducted an archaeological survey of a roughly 14,000 square foot parcel (TMK:(4)-5-9-05:025) located in Hā'ena Ahupua'a, Halele'a District, Island of Kaua'i. The survey strategy included a visual inspection of the entire surface area of the parcel. Based on observations made during this activity, three locations for subsurface testing were selected. A small excavator was used to excavate the three test trenches, one bucket-width (1 meter) wide. The soil removed during backhoe excavation was visually examined for cultural material and the stratigraphy visible in the walls of the trenches was recorded and described. During the current survey there were no archaeological resources observed on the surface nor were there any encountered during the subsurface testing. According to Hawai'i Administrative Rules 13§13-284-5, when no archaeological resources are discovered during an archaeological survey the production of an Archaeological Assessment report is appropriate. As there were no significant cultural sites or deposits encountered within the study parcels, it is recommended that no further archaeological work need be conducted prior to development.

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## INTRODUCTION

At the request of Matt and Judy Malerich, Rechtman Consulting, LLC conducted an archaeological survey of a roughly 14,000 square foot parcel (TMK:(4)-5-9-05:025) located in Hā'ena Ahupua'a, Halele'a District, Island of Kaua'i (Figures 1 and 2). The objective of the survey was to locate, record, evaluate, and provide treatment recommendations for any cultural resources encountered on the study parcel; none were identified. According to Hawai'i Administrative Rules 13§13-284-5, when no archaeological resources are discovered during an archaeological survey the production of an Archaeological Assessment report is appropriate. This report is intended to accompany a Conservation District Use Application (CDUA) and an environmental assessment being prepared in compliance with HRS Chapter 343, as well as fulfill the requirements of the County of Kaua'i Planning Department and the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) with respect to permit approvals for land-altering and development activities. The current project was undertaken in compliance with the historic preservation review process requirements of the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) as specified in Hawai'i Administrative Rules 13§13-284.

This report details the project objectives, scope of work, field methods and procedures, and survey findings. A brief archaeological and historical background is provided, which forms the basis for a set of project expectations. Recommendations addressing future historic preservation concerns are also offered.

### Scope of Work

Given the nature of known archaeological resources in the general vicinity of the current project area and in accordance with the historic preservation review requirements of DLNR-SHPD, the following tasks were determined adequate to constitute an appropriate scope of work:

- (1) Conduct an archival search of the available archaeological and historical literature, historic documents and records, and cartographic sources relevant to the immediate project area;
- (2) Perform an intensive surface survey of the subject parcel, locating and documenting all archaeological sites and features;
- (3) Excavate a series of backhoe trenches to sufficiently sample subsurface deposits within the project area in an effort to identify buried archaeological material; and
- (4) Analyze the researched and recovered information and prepare a report of the findings that includes significance evaluations and recommendations for any subsequent historic preservation work that may be required.

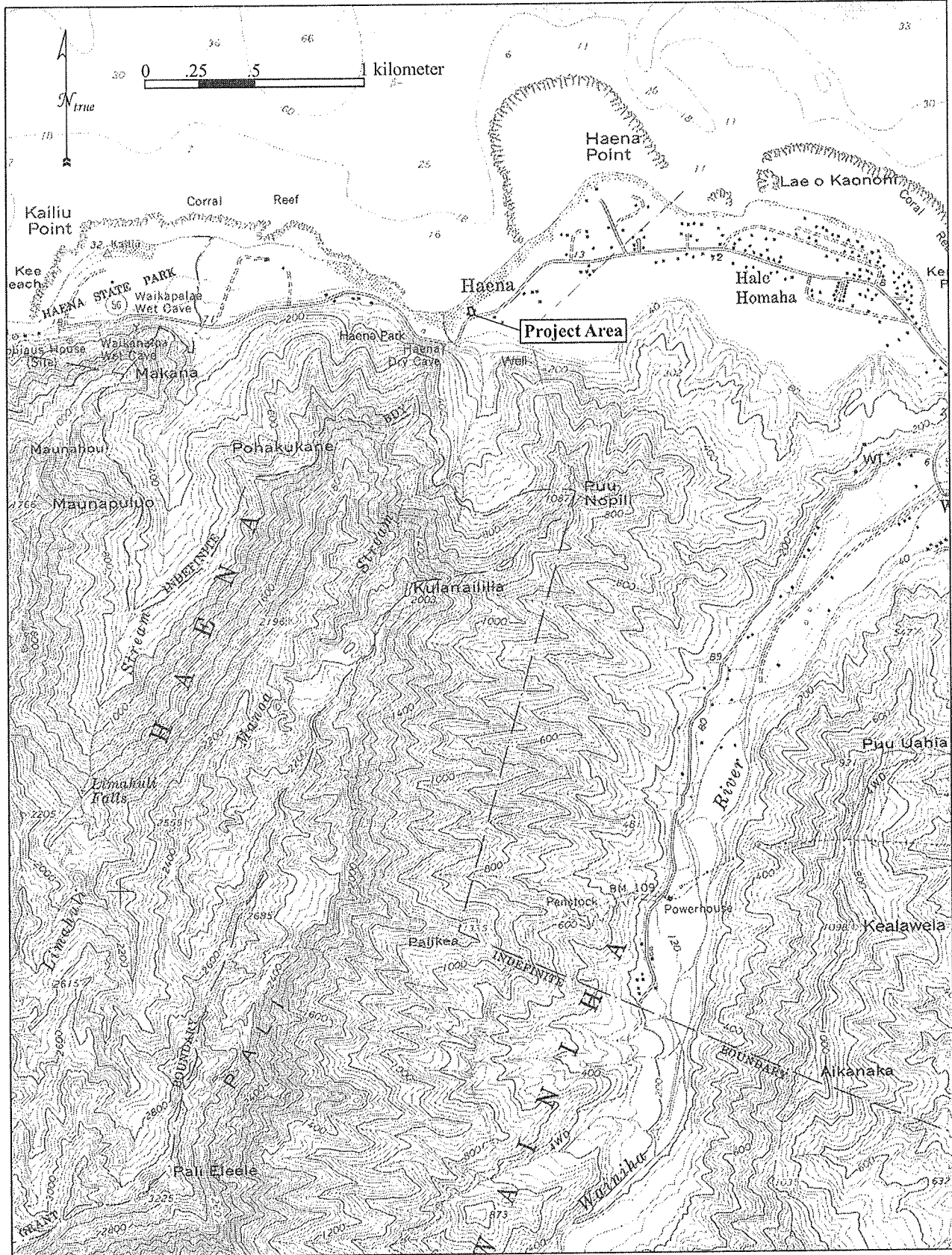


Figure 1. Project area location.

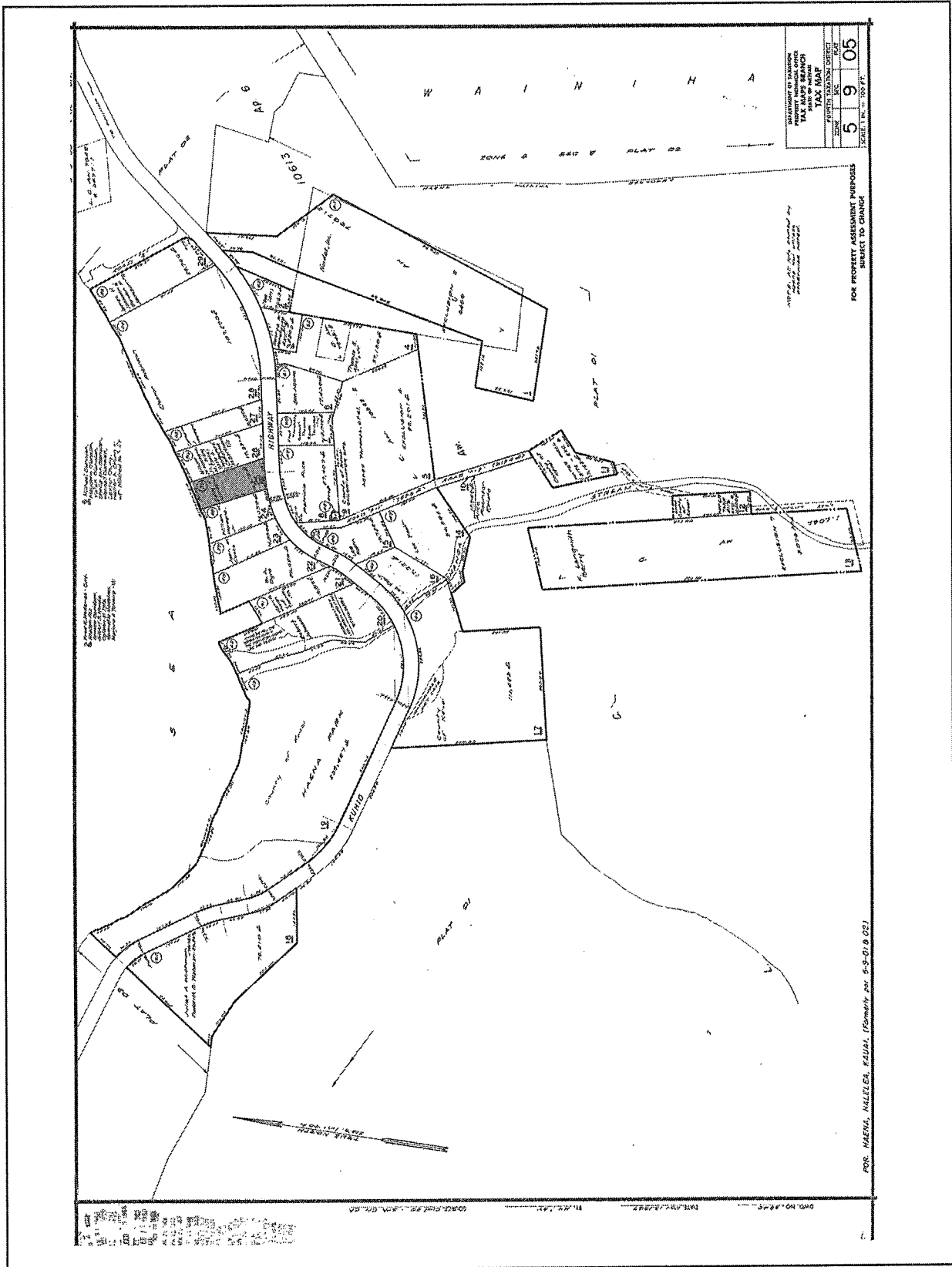


Figure 2. Portion of TMK:4-5-9-5 showing subject parcel (025, shaded).

## Project Area Description

Located in Hā'ena Ahupua'a, Halele'a District, Island of Kaua'i, the subject parcel (TMK:4-5-9-05:025) occupies an area of approximately 14,000 square feet of which roughly 9,000 square feet are situated *mauka* of the proposed shoreline at the top of the dune crest (Figure 3). The specific study area within the parcel is defined by the specified building envelope (see Figure 3). Hā'ena is a relatively small *ahupua'a*, encompassing only 7.7 square kilometers on the north shore of Kaua'i. The *ahupua'a* has a long coastal strip (almost 5 kilometers), but does not extend inland (*mauka*) for nearly as great a distance. Two streams, Limahuli Stream and Mānoa Stream, flow through Hā'ena year round. The coastal areas of the *ahupua'a* are characterized by dune and stabilized dune formations with alluvial benches adjacent to the major drainages. The mean annual rainfall ranges from approximately 67 inches (170 centimeters) along the coast to nearly 400 inches (1,000 centimeters) at inland locations.

The subject parcel is situated on the *makai* side of Kuhio Highway, between the highway and the shoreline. It is bounded to the west and east by developed residential parcels (see Figure 2). The terrain within the parcel is flat in the vicinity of the highway and gradually rises as a dune formation toward the ocean with a manicured lawn over most of the surface (Figure 4). Along the margins of the parcel a variety of ornamental shrubs have been planted along with several trees, including *kamani* (*Calophyllum inophyllum*), *naupaka* (*Scaevola sericea*), ironwood (*Casaurina* sp.), and coconut palms (*Cocos nucifera*) (Figures 5 and 6).



Figure 4. Subject parcel, view to the south.



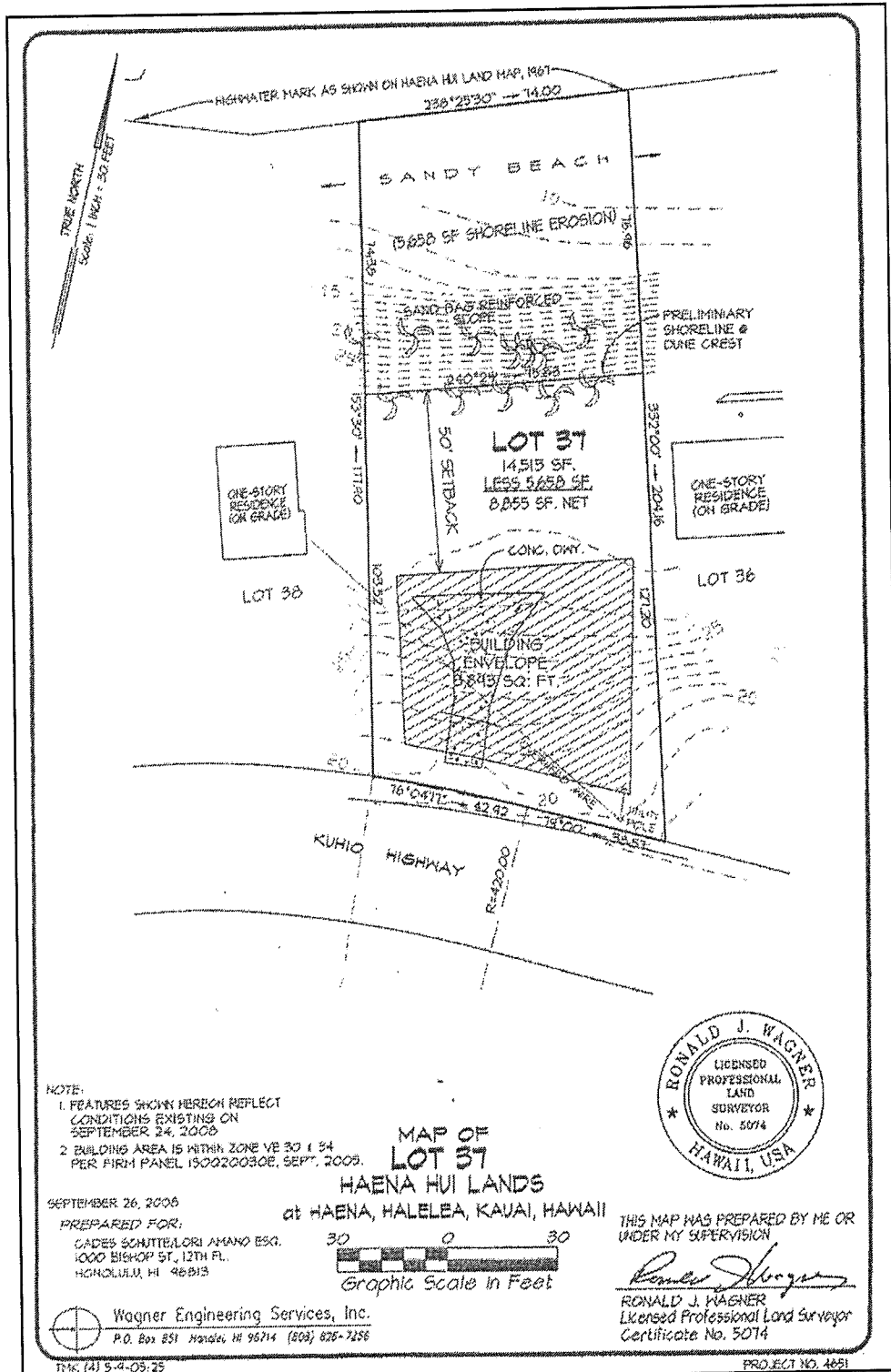


Figure 3. Recent surveyor map of subject parcel.



Figure 5. Typical border vegetation on the subject parcel (Kuhio Highway in the right background), view to the south.

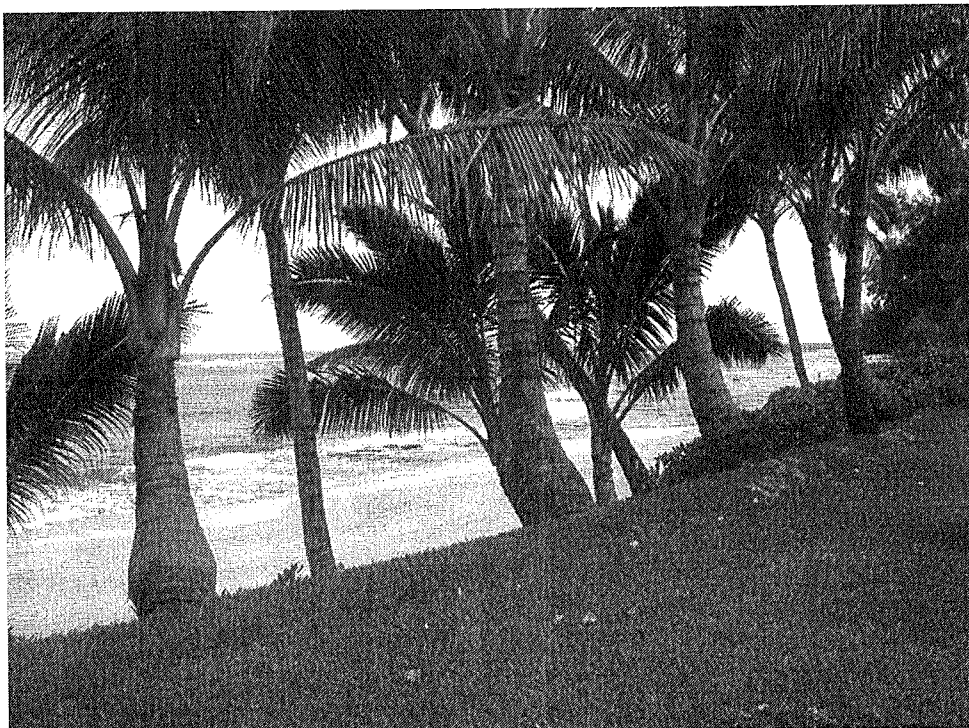


Figure 6. Coconut palms along and below the dune crest, view to the north.

## BACKGROUND

To generate a set of expectations regarding the nature of archaeological resources that might be encountered on the study parcel, and to establish an environment within which to assess the significance of any such resources, previous archaeological studies relative to the project area and a general historical context for the broader Hanalei region are presented.

### Previous Archaeological Research

Bennett (1931) conducted early archaeological research on Kaua'i. He recorded three sites in Hā'ena Ahupua'a, all in the Ke'e area. The first archaeological research focusing on the district of Halele'a, and more specifically Hā'ena Ahupua'a, commenced in 1972 (Earle 1973, 1978). In that year, Earle conducted a district-wide survey of Hawaiian agricultural features. He also recorded substantial site complexes along coastal Limahuli Stream and in the upper Mānoa River Valley. As his research was oriented toward gaining an understanding of the relationship between increasing sociopolitical complexity and the managerial opportunities provided by intensive agricultural irrigation systems, he did not undertake major excavations or survey near the Hā'ena Point area.

Substantial subsurface investigations were carried out for the Hā'ena State Park from Limahuli Stream to Ke'e Beach (Griffin et al. 1977; Hammatt and Meeker 1979; Hammatt et al. 1978; Yent 1980). This work identified and documented a significant coastal midden deposit (interpreted as temporary habitation) that may represent the earliest sites on Kaua'i's north coast, circa A.D. 900 (Hammatt et al. 1978). The use of the term *may* is intentional as this early date is based on volcanic glass hydration rind dating, which has produced questionable results for Hawaiian source materials. That research also indicated that the intensive use of irrigated agricultural fields began after A.D. 1200 (Hammatt et al. 1978) based on more secure radiocarbon dates. Additional work in the Limahuli area (Elmore and Kennedy 2001; Rechtman 2006) had confirmed the presence of the discontinuous cultural deposit extending to the eastern side of Limahuli Stream.

There have been six studies conducted in the immediate vicinity (on the same TMK plat) of the current study parcel (Bassford et al. 2007; Dye in prep; Hammatt et al. 1993; Kennedy 1989; Orstoff and Kennedy 2001; Wickler 1989). The Kennedy (1989), Orstoff and Kennedy (2001), and Wickler (1989) studies all produced negative results with respect to archaeological resources on Parcels 003, 020, and 007, respectively.

Hammatt et al. (1993) conducted an archaeological inventory survey on Parcel 023, two lots to the west of the current study parcel. During that study seventeen backhoe trenches were excavated, six of which revealed a buried cultural layer. This buried layer was only present in the extreme *mauka* portion of the property, within 10 meters of Kuhio Highway. The other eleven trenches in the central and *makai* portion of the property revealed culturally sterile sand. The cultural layer was located roughly 80 centimeters (roughly 3 feet) below the surface and consisted of habitation debris.

Bassford et al. (2007) prepared an archaeological inventory survey report for work conducted on Parcel 28, three lots to the east of the current study parcel. During that study they identified a buried cultural layer and dubbed it SIHP Site 50-30-02-4018. Among the cultural constituents of the site they identified two fire pits and an earth oven. Data recovery was the recommended treatment for Site 4018. T.S. Dye and Colleagues is currently completing the data recovery project (Dye in prep) on Parcel 28. Tom Dye provided the following information relative to the data recovery excavations. A traditional Hawaiian cultural deposit exists immediately beneath the surface sod. The deposit contains limited food remains and a variety of traditional Hawaiian artifacts. Also identified were numerous fire features and a few post-molds. Laboratory analysis of the cultural material is currently underway. No human remains were identified in their excavations.

To the east of the current study area, there have been numerous archaeological investigations at small parcels in the vicinity of Hā'ena Point. Cumulatively these studies have documented a buried midden deposit associated with temporary habitation (SIHP Site 50-30-01-1809) that extends throughout the area, albeit intermittently. This deposit has been buried by as much as 140 centimeters of sand on different parcels on Hā'ena Point, and contains faunal material from extirpated avifauna. Radiocarbon dates place the occupation associated with this deposit to between A.D. 1385 and 1500 (Hammatt and Schideler 1989). As others point out, Hā'ena is "one big archaeological site" and may "hold the key to understanding earliest Tahitian or Marquesan colonization in Hawaii" (Griffin et al. 1977:2).

## Historical Context

In 1995, Carol Silva prepared *A Historical and Cultural Report of Hā'ena State Park; Halele'a, Kaua'i*; (Silva 1995). This report documents the traditional and historical significance of Hā'ena within the context of the Halele'a District, Kaua'i, and all of the Hawaiian Islands. Oral traditions indicate that Hā'ena was an important center of ancient *hula* (Joesting 1984). Pele herself was drawn to Hā'ena by the drumming of the chief Lohiau at his *halau* at Ke'e (Emerson 1915). Historical records describe how during the conquest of the Hawaiian Islands by Kamehameha I, the ruling chief of Kaua'i (Kaumuali'i) avoided personal defeat through a peaceable transfer of power. He established a will that left Kaua'i to Kamehameha upon Kaumuali'i's death. Although subject to Kamehameha during the remainder of his life, Kaumuali'i retained leadership over the island. Kamehameha died five years before Kaumuali'i.

Upon Kaumuali'i's death in 1824 his agreement to Kamehameha was honored, rather than the traditional reassignment of lands to local chiefs, the O'ahu powers selected and installed Kaumuali'i's nephew (Kahalaia) as the new chief of Kaua'i. The O'ahu chief Kalanimoku was sent to Kaua'i to inform the local chiefs. The local chiefs rebelled, and a bloody one-sided battle ensued. Well-armed and well-trained warriors were sent to Kaua'i from O'ahu and Maui to support Kalanimoku. The ill-prepared farmers of Kaua'i were easily defeated, and Kaua'i came under the direct rule of the young king (Kamehameha III). Kaikiohewa was appointed governor and the lands were re-divided with the best tracts going to the "loafers and hangers-on (*palaualelo*) of O'ahu and Maui" (Kamakau 1992:269). "Thus, the old order of political power on Kaua'i is dissolved and displaced by a new society of *konohiki* (land managers) who descend from O'ahu and Maui lines" (Silva 1995:4).

This sociopolitical transformation was affirmed and codified by the *Māhele* of 1848. The *ahupua'a* of Hā'ena was awarded (LCAw. 10613) to Abner Paki husband of L. Konia, a granddaughter of Kamehameha I. In addition, there were 23 *kuleana* awards granted in Hā'ena for both *lo'i* and houselots; but the current study area was not one of them. Paki apparently was given the *ahupua'a* during the Kaikiohewa division of lands, post 1824. Paki controlled Hā'ena's fresh water supply, the produce from his 12 *kō'ele* (tenant-worked farms), the gathered mountain and ocean resources, and all octopuses from the coastal waters. In 1837, Kekela'akalaniwahikapua (E. Kekela) was appointed by Paki as the *konohiki* of Hā'ena to oversee his interests. Kekela was Paki's aunt and Kamehameha I's sister-in-law, and had resided on Kaua'i (in Lumaha'i Ahupua'a-near Hā'ena) since 1810. Many of the *kuleana* claims were from individuals who were given land by Kekela, who herself claimed land (LCAw. 7949) in the Limahuli area.

Paki died in 1855 and Konia in 1857. Bernice Pauahi Bishop, their only child, inherited their lands and in 1858 Hā'ena was sold to W. H. Pease. Although traditional farming lands become incorporated into a growing cattle industry, the taro *lo'i* along Limahuli and Mānoa streams and the sweet potato plots along the coastal plain remained productive into the twentieth century (Handy 1940). By the turn of the twentieth century this portion of Hā'ena was divided into the Hā'ena Hui house lots. Parcel 25 was originally Hui lot 37, and does not appear to have been constructed upon. Figure 7 shows the general locations of the *kuleana* awards and the locations of archaeologically recorded pondfield, habitation, ceremonial, and burial areas in coastal Hā'ena.

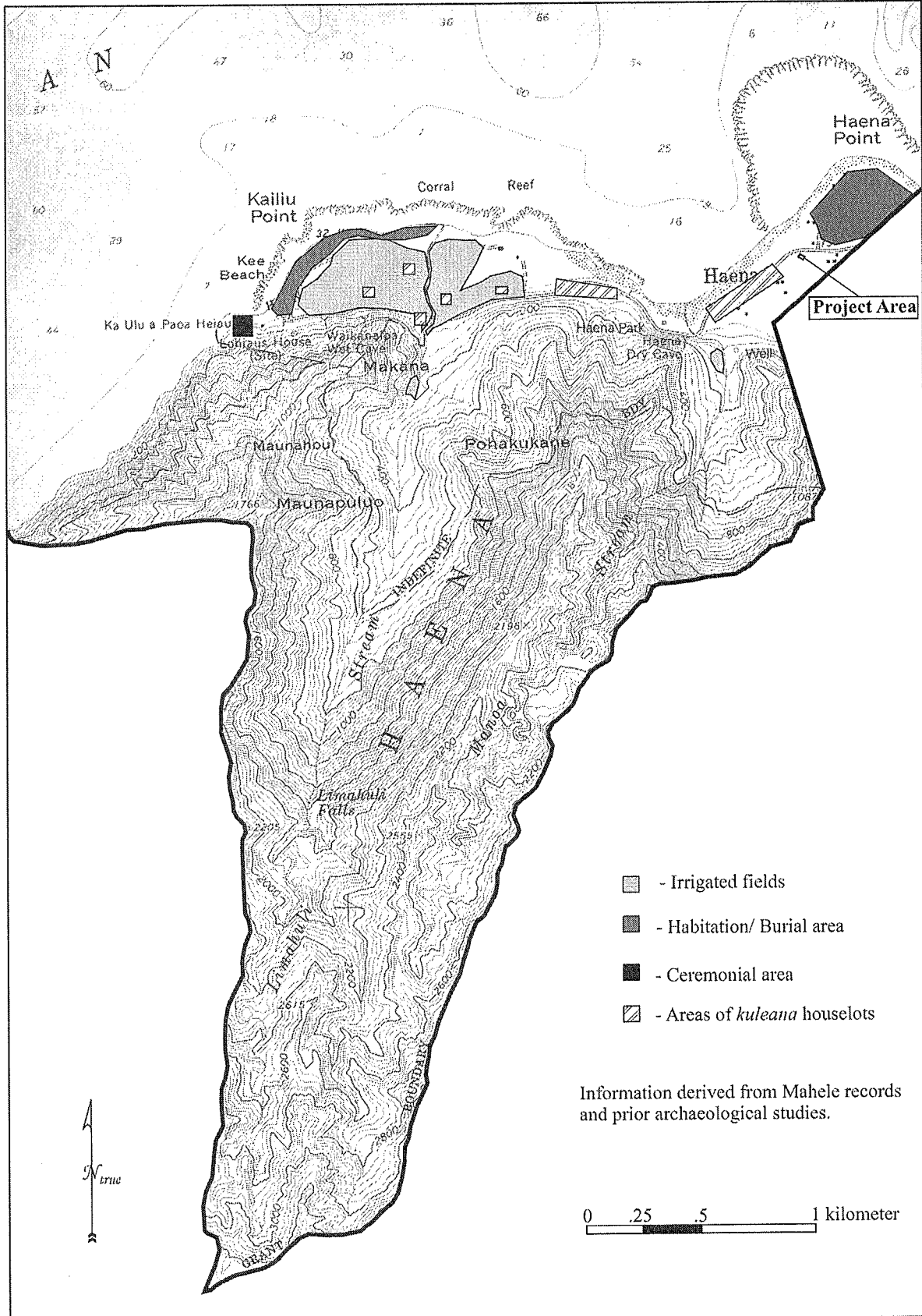


Figure 7. Hā'ena Ahupua'a showing general coastal site locations.

## PROJECT EXPECTATIONS

Given the substantial amount of archaeological research in the general project area along with the comprehensive historical and cultural background developed for Hā'ena (Silva 1995), the following set of expectations concerning potential findings can be generated. Burial sites exist in the area, and it is possible that such sites could be encountered on the subject parcel. When encountered, these sites tend to be located in stabilized dune formations. Also, a discontinuous but widespread buried cultural layer is known to exist throughout the project area vicinity, extending from Ke'e Beach to Wainiha. This deposit has been documented to exist on parcels to the west (Hammatt et al. 1993) and east (Bassford et al. 2007) of the current study parcel. Two historically recorded *tsunami* ravaged this area in 1946 and 1957 (Shepard et al. 1950). These episodes may have resulted in the removal of cultural deposits and the reshaping of the immediate shoreline. Evidence of Historic Period (early twentieth century) habitation might also be encountered associated with the establishment of the Hā'ena Hui; however it does not appear as though a structure was built on the study parcel during historic times, although a concrete driveway (still extant) was built during modern times (Figure 8).

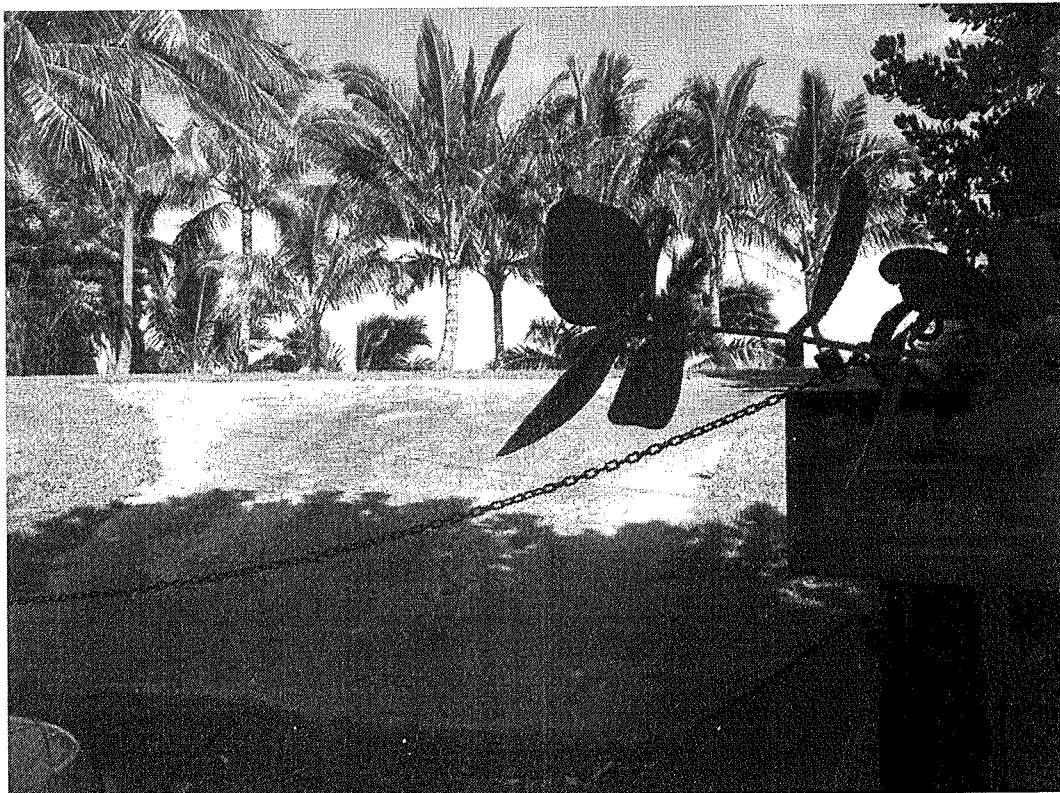


Figure 8. Modern driveway along Kuhio Highway, view to the northwest.

## FIELDWORK

Robert B. Rechtman, Ph.D. conducted a 100%-coverage pedestrian survey of the parcel, along with subsurface testing using a small excavator on February 9, 2009.

### Methods

The survey strategy included a visual inspection of the entire surface area of the parcel. Based on observations made during this activity, three locations for subsurface testing were selected within the confines of the specified development envelope. A small excavator was used to excavate the three trenches, one bucket-width (1 meter) wide. The soil removed during excavation was visually examined for cultural material and the stratigraphy visible in the walls of the trenches was recorded and described. The locations of the test trenches and the development envelope are plotted on Figure 9.

### Findings

During the current survey there were no archaeological resources observed on the surface nor were there any encountered during the subsurface testing. All three test trenches were excavated to a depth of 2 meters below the surrounding ground surface. Trench 1 was 3.5 meters long and Trenches 2 and 3 were 5 meters long. The general stratigraphy recorded in the trenches was consistent throughout the tested area, with some localized variations (Figure 10). Layer I, present in Trenches 1 and 3 and absent in Trench 2, was brown (10YR 4/3) sandy loam with organic material ranging between 10 and 15 centimeters in thickness. Layer II, present in all three trenches, was light yellowish brown (10YR 6/4) sand ranging between 30 centimeters to 1 meter thick. Layer II was the surface layer in Trench 2. Layer IIA, present only in Trenches 1 and 3 was a localized phenomenon of yellowish red (5YR 4/6) clay that appears to be the result of tree root deposition. Layer III is a very dark grayish brown (10YR 3/2) buried sandy soil ranging between 20 and 50 centimeters in thickness, which may correspond to the pre-dune ground surface. This layer was not observed in the Trench 3 profile, perhaps it may be present at a depth of greater than 2 meters at that location; Layer II was still present at the terminal depth of 2 meters in Trench 3. Layer IV is similar to Layer II in composition and color, but slightly more compact. Layer IV was only identified in Trench 1 and 2. Within Trench 3, there were two additional stratigraphic layers observed. Within Layer II was a black (10YR 2/1) sandy charcoal lens, 50 centimeters thick at the eastern end and feathering to nothing just past the center of the trench. This charcoal layer appeared to be capped with a layer of coarse pale brown (10YR 6/3) beach sand, perhaps signifying a modern burning event. The trench excavations are shown in Figures 11, 12, and 13.

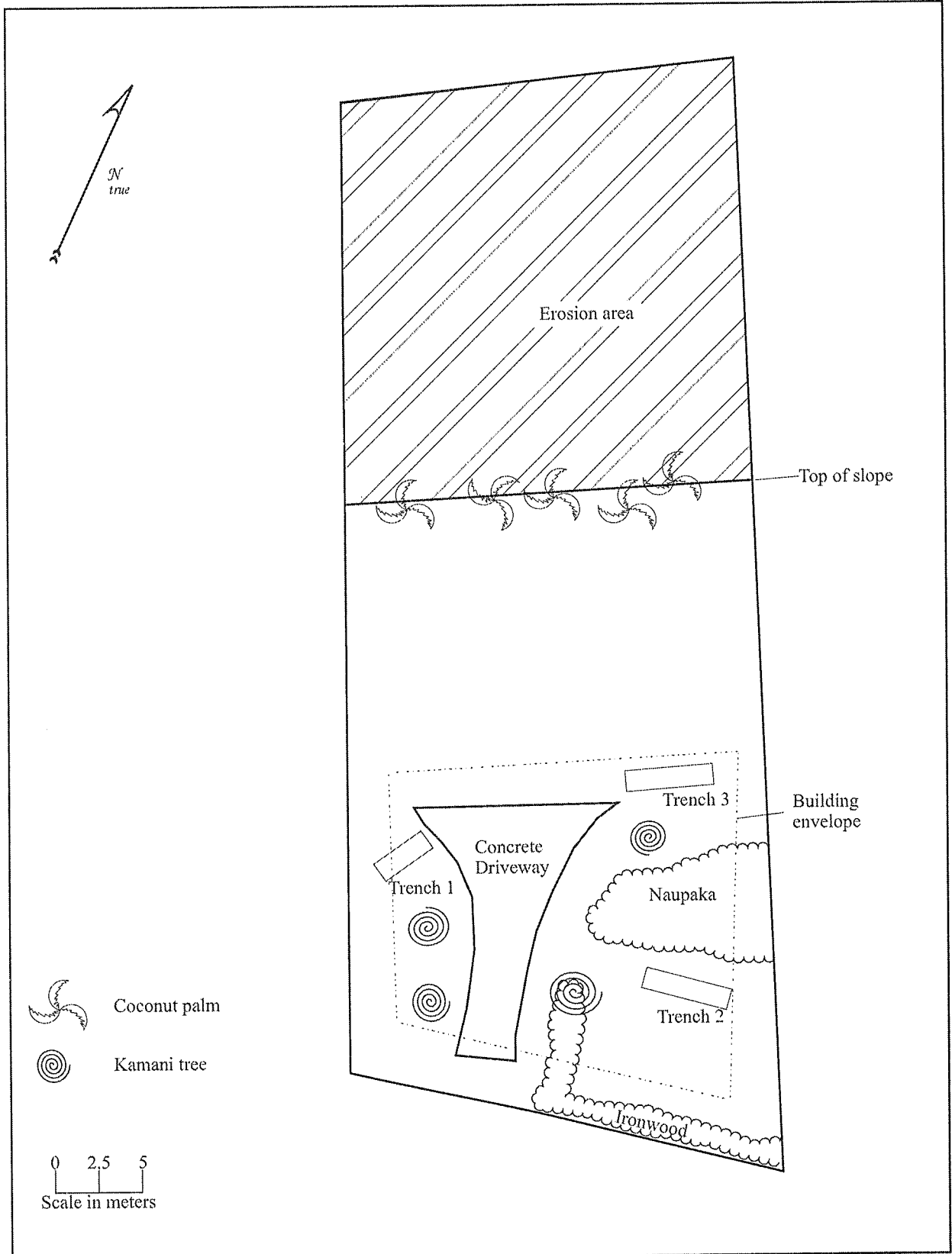


Figure 9. Project area plan view showing locations of test trenches.



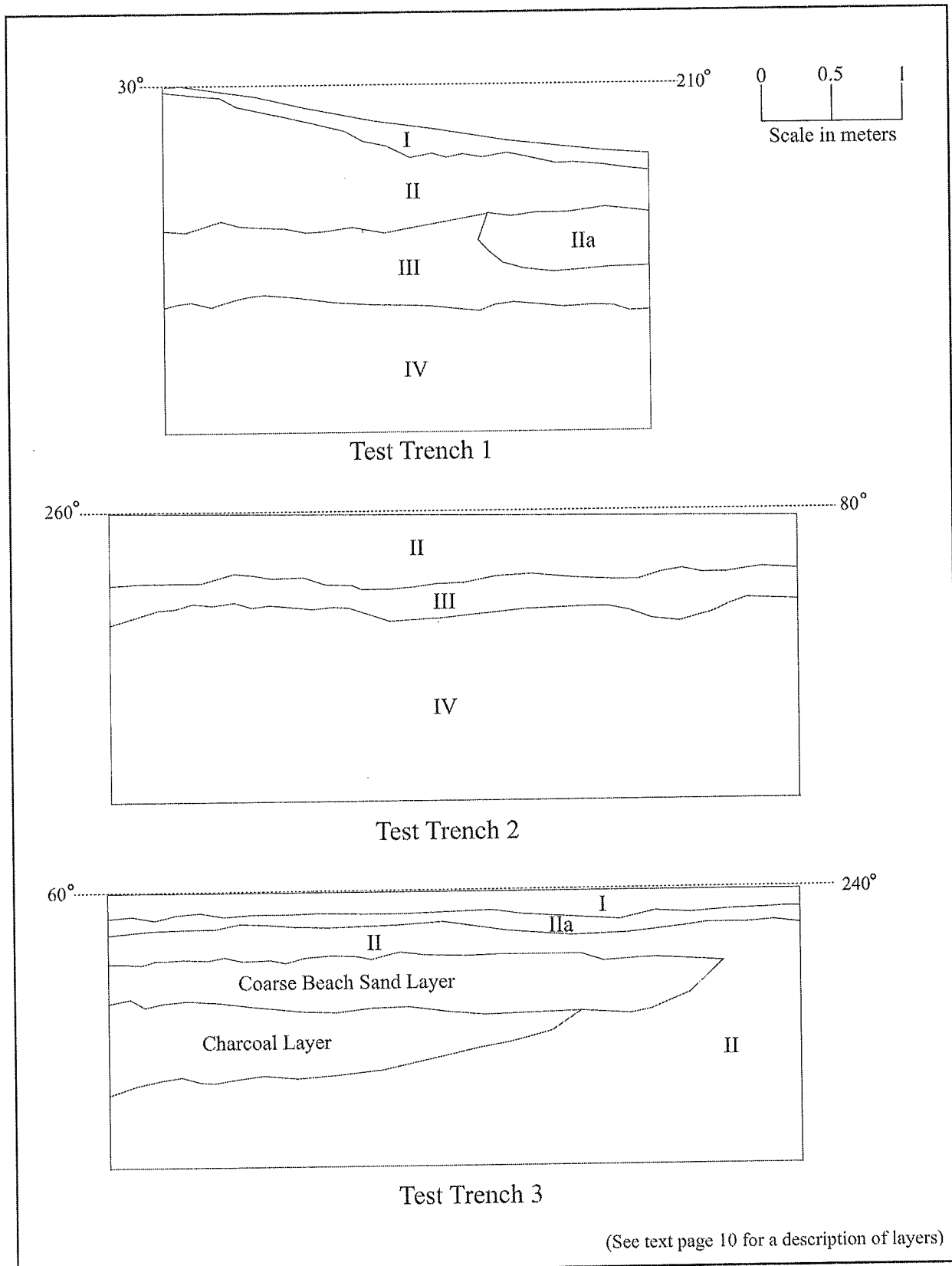


Figure 10. Stratigraphic profiles of test trenches.

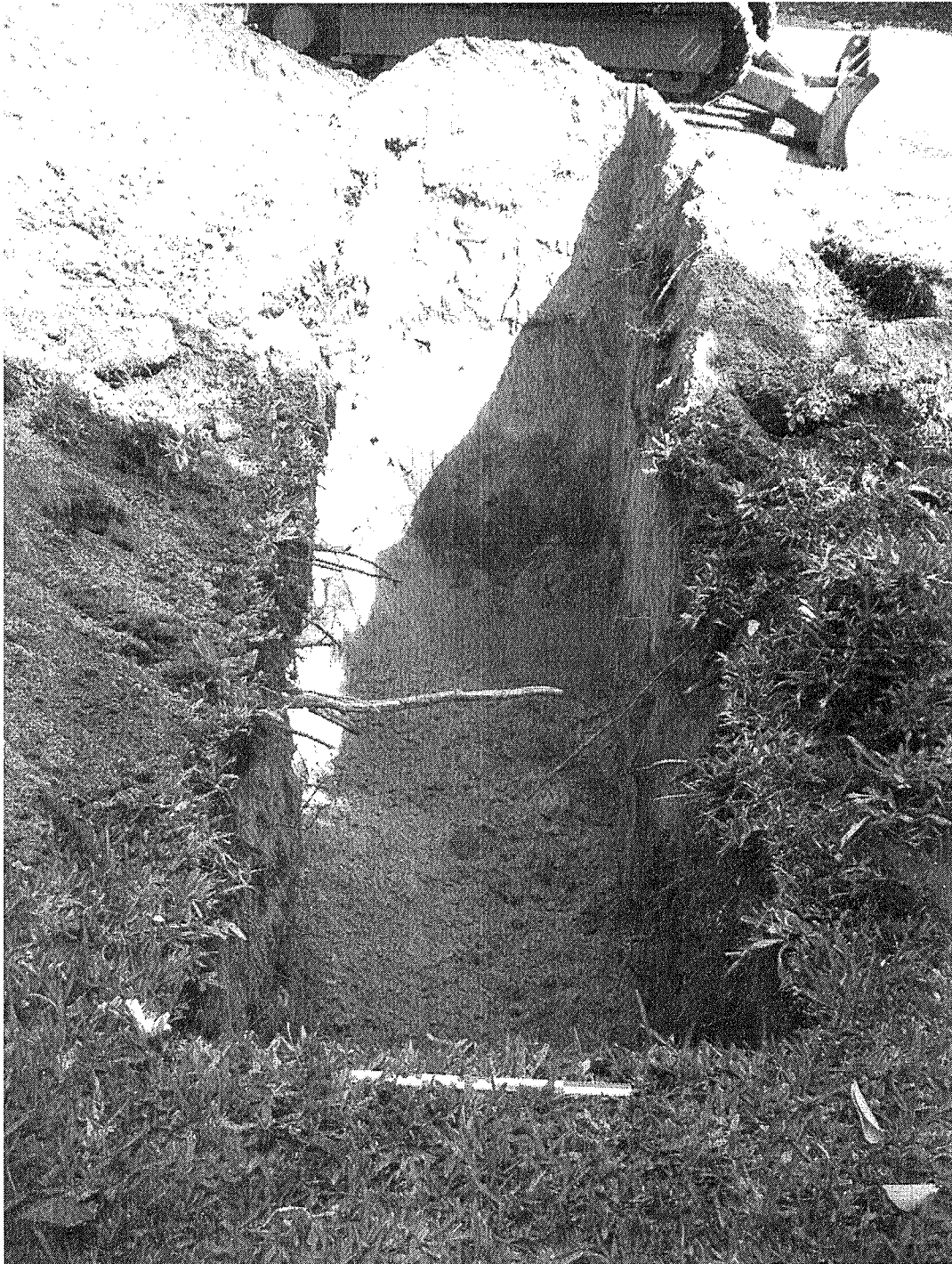


Figure 11. Trench 1 (partial western sidewall collapse), view to the north.



Figure 12. Trench 2 (after northern sidewall collapse), view to west.



Figure 13. Trench 3 (partial northern sidewall collapse), view to the southwest.

## RECOMMENDATIONS

As there were no significant cultural sites or deposits encountered within the study parcel, it is recommended that no further archaeological work need be conducted prior to development. However, in the unlikely event subsurface cultural deposits or human burials are inadvertently discovered during construction activities, such activities should be immediately suspended in the vicinity of the discovery, and DLNR-SHPD notified as outlined in the Hawai'i Administrative Rules 13§13-284.

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# **APPENDIX 2**

**Cultural Impact Assessment**  
**TMK (4) 5-9-05: 027**

**Applied by Reference for the Proposed**  
**Malerich Single-Family Residence**  
**TMK (4) 5-9-05: 025**

SCIENTIFIC CONSULTANT SERVICES, Inc.



711 Kapiolani Blvd., Suite 975 Honolulu, Hawai'i 96813

March 17, 2009

To Whom It May Concern:

**Subject: Cultural Impact Assessment (CIA)  
Proposed Malerich Single Family Residence  
TMK (4) 5-9-05: 025  
Ha'ena, Kaua'i, Hawai'i**

In August of 2007, Scientific Consultant Services, Inc. (SCS) prepared the attached Cultural Impact Assessment (CIA) for Russ & Katie Bartmess, then owners of a vacant parcel: TMK (4) 5-9-05: 027 which is located in Ha'ena, Kaua'i within a portion of the State Land Use Conservation District. The Moragne/Bartmess CIA was prepared in compliance with the State of Hawaii's environmental review process (HRS 343), as an element of the client's Conservation District Use Application (CDUA) and Environmental Assessment (EA) to construct a Single-Family Residence (SFR) on their parcel.

Except for the Office of Hawaiian Affairs' acknowledgement of SCS's correspondence, during the preparation of the CIA, no organizations or individuals responded to the Moragne/Bartmess solicitations for information concerning the potential for cultural resources to occur in the project area. Nor were there any suggestions for additional contacts or informants. The Moragne/Bartmess assessment therefore concluded, based upon a lack of organizational response and no responses from individual informants, as well as upon the findings of archival research, that it was reasonable to conclude, pursuant to Act 50, that the exercise of native Hawaiian rights, or any ethnic group, related to gathering, access or other customary activities would not be negatively affected by the proposed development on TMK parcel (4) 5-9-05: 027.

This correspondence concerns the Malerich parcel (4) 5-9-05: 025 which is located in close proximity to the Moragne/Bartmess parcel in Ha'ena (the two parcels are separated by a single intermediate, developed residential parcel by about 90 linear feet). Both parcels have comparable historical, environmental and physical characteristics. It is our opinion, subject to an interpretation and determination by the State, the findings of the Moragne/Bartmess CIA may be inferred to determine the cultural impacts (or non-impacts as the case may be) of the proposed development on the nearby Malerich parcel.

Sincerely,

Robert L. Spear, Ph.D., President  
Scientific Consultant Services, Inc.

Ph: 808-597-1182

SCS... SERVING ALL YOUR ARCHAEOLOGICAL NEEDS

Fax: 808-597-1193

Neighbor Island Offices • Hawai'i Island • Maui • Kaua'i



**A CULTURAL IMPACT ASSESSMENT  
OF A LAND PARCEL IN HĀ'ENA AHUPUA'A,  
HALELE'A DISTRICT,  
KAUA'I ISLAND, HAWAII  
[TMK 5-09-005:027]**

Prepared By:

**Leann McGerty, B.A.**

and

**Robert L. Spear, Ph.D.**

August 2007

Prepared For:

**Russ & Katie Bartmess**

**356 Meridian**

**Crystal Lake, IL 60014**

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## INTRODUCTION

At the request of Catherine Moragne Bartmess and Russ Bartmess., Scientific Consultant Services, Inc. (SCS) conducted a Cultural Impact Assessment (CIA), on a land parcel (TMK:3-09-005:027) located in Hā`ena Ahupua`a, Halele`a District, Kaua`i Island (Figures 1 and 2). This CIA was requested of SCS by Russ & Katie Bartmess, in anticipation of construction for the Bartmess Property and a proposed three bedroom three bath, new single family residence.

The Constitution of the State of Hawai`i clearly states the duty of the State and its agencies is to preserve, protect, and prevent interference with the traditional and customary rights of native Hawaiians. Article XII, Section 7 requires the State to “protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by *ahupua`a* tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778” (2000). In spite of the establishment of the foreign concept of private ownership and western-style government, Kamehameha III (Kauikeaouli) preserved the peoples traditional right to subsistence. As a result in 1850, the Hawaiian Government confirmed the traditional access rights to native Hawaiian *ahupua`a* tenants to gather specific natural resources for customary uses from undeveloped private property and waterways under the Hawaiian Revised Statutes (HRS) 7-1. In 1992, the State of Hawai`i Supreme Court, reaffirmed HRS 7-1 and expanded it to include, “native Hawaiian rights...may extend beyond the *ahupua`a* in which a native Hawaiian resides where such rights have been customarily and traditionally exercised in this manner” (Pele Defense Fund v. Paty, 73 Haw.578, 1992).

Act 50, enacted by the Legislature of the State of Hawaii (2000) with House Bill 2895, relating to Environmental Impact Statements, proposes that:

...there is a need to clarify that the preparation of environmental assessments or environmental impact statements should identify and address effects on Hawaii’s culture, and traditional and customary rights... [H.B. NO. 2895].

Act 50 requires state agencies and other developers to assess the effects of proposed land use or shore line developments on the “cultural practices of the community and State” as part of the HRS Chapter 343 environmental review process (2001). Its purpose has broadened, “to promote and protect cultural beliefs, practices and resources of native Hawaiians [and] other

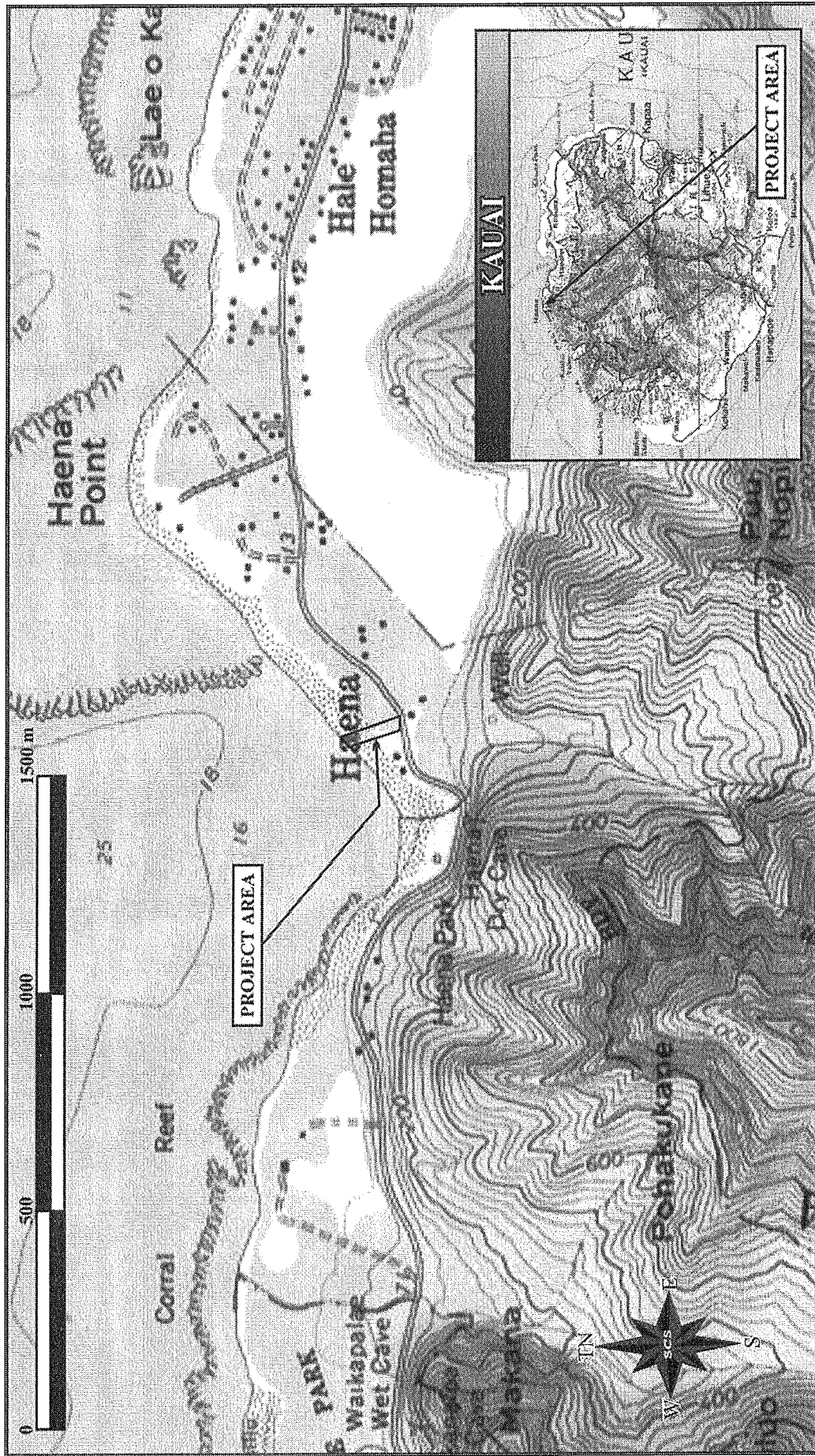


Figure 1: USGS Quadrangle Map Showing Project Area Location.

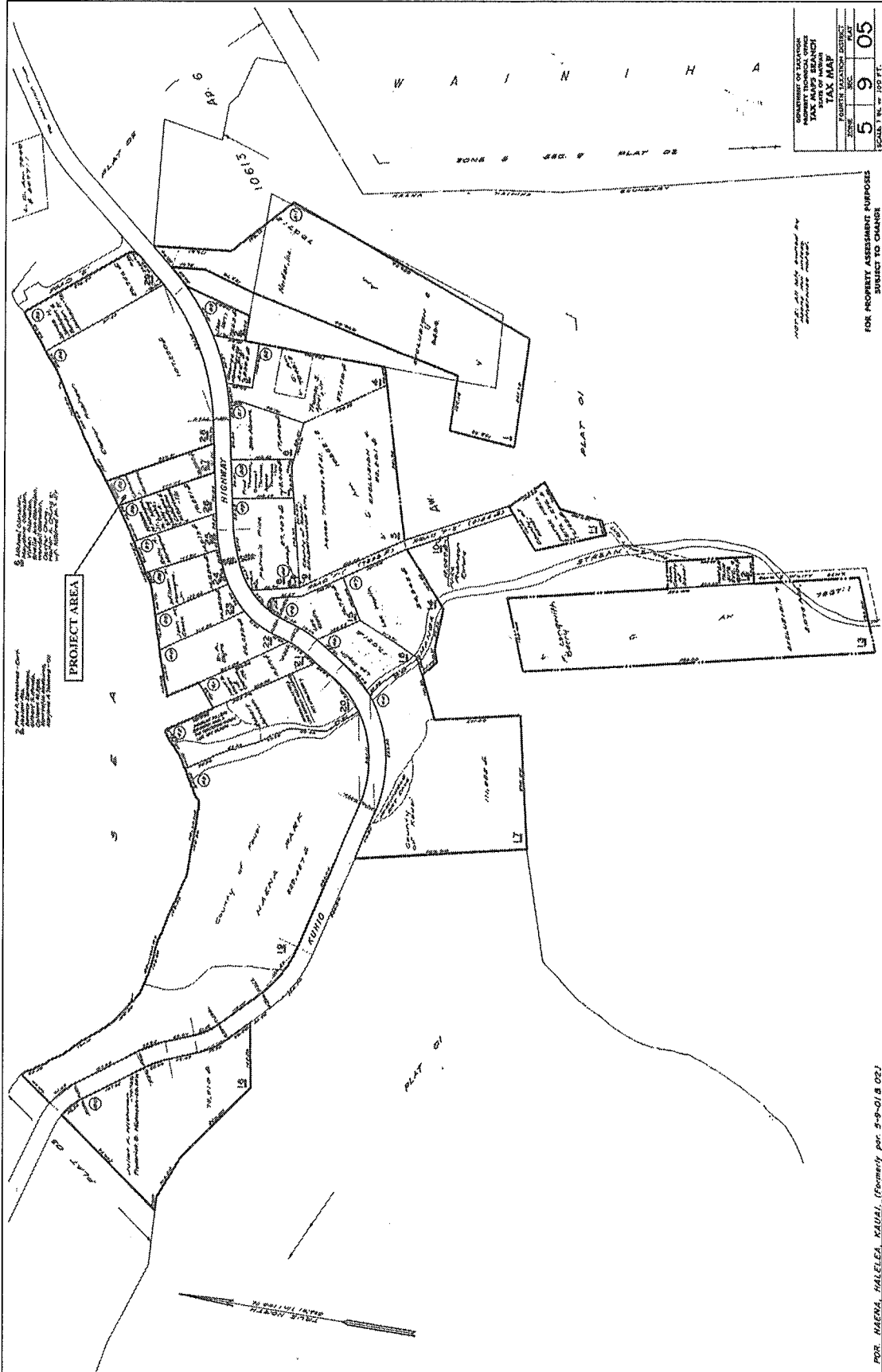


Figure 2: TMK Parcel Map

ethnic groups, and it also amends the definition of ‘significant effect’ to be re-defined as “the sum of effects on the quality of the environment including actions that are...contrary to the State’s environmental policies...or adversely affect the economic welfare, social welfare, or cultural practices of the community and State” (H.B. 2895, Act 50, 2000).

Thus, Act 50 requires an assessment of cultural practices to be included in the Environmental Assessments and the Environmental Impact Statements, and to be taken into consideration during the planning process. The concept of geographical expansion is recognized by using, as an example, “the broad geographical area, e.g. district or *ahupua`a*” (OEQC 1997). It was decided that the process should identify ‘anthropological’ cultural practices, rather than ‘social’ cultural practices. For example, *limu* (edible seaweed) gathering would be considered an anthropological cultural practice, while a modern-day marathon would be considered a social cultural practice.

According to the Guidelines for Assessing Cultural Impacts established by the Hawaii State Office of Environmental Quality Control (OEQC 1997):

The types of cultural practices and beliefs subject to assessment may include subsistence, commercial, residential, agricultural, access-related, recreational, and religions and spiritual customs. The types of cultural resources subject to assessment may include traditional cultural properties or other types of historic sites, both manmade and natural, which support such cultural beliefs.

This Cultural Impact Assessment involves evaluating the probability of impacts on identified cultural resources, including values, rights, beliefs, objects, records, properties, and stories occurring within the project area and its vicinity cultural values and rights within the project area and its vicinity (H.B. 2895, Act 50, 2000).

## **METHODOLOGY**

This Cultural Impact Assessment was prepared in accordance with the methodology and content protocol provided in the Guidelines for Assessing Cultural Impacts (OEQC 1997). In outlining the “Cultural Impact Assessment Methodology”, the OEQC state:

...information may be obtained through scoping, community meetings, ethnographic interviews and oral histories... (1997).

The report contains archival and documentary research, as well as communication with organizations having knowledge of the project area, its cultural resources, and its practices and beliefs. This Cultural Impact Assessment was prepared in accordance with the methodology and content protocol provided in the Guidelines for Assessing Cultural Impacts (OEQC 1997). The assessment concerning cultural impacts should address, but not be limited to, the following matters:

- (1) a discussion of the methods applied and results of consultation with individuals and organizations identified by the preparer as being familiar with cultural practices and features associated with the project area, including any constraints or limitations which might have affected the quality of the information obtained;
- (2) a description of methods adopted by the preparer to identify, locate, and select the persons interviewed, including a discussion of the level of effort undertaken;
- (3) ethnographic and oral history interview procedures, including the circumstances under which the interviews were conducted, and any constraints or limitations which might have affected the quality of the information obtained;
- (4) biographical information concerning the individuals and organizations consulted, their particular expertise, and their historical and genealogical relationship to the project area, as well as information concerning the persons submitting information or interviewed, their particular knowledge and cultural expertise, if any, and their historical and genealogical relationship to the project area;
- (5) a discussion concerning historical and cultural source materials consulted, the institutions and repositories searched, and the level of effort undertaken, as well as the particular perspective of the authors, if appropriate, any opposing views, and any other relevant constraints, limitations or biases;
- (6) a discussion concerning the cultural resources, practices and beliefs identified, and for the resources and practices, their location within the broad geographical area in which the proposed action is located, as well as their direct or indirect significance or connection to the project site;
- (7) a discussion concerning the nature of the cultural practices and beliefs, and the significance of the cultural resources within the project area, affected directly or indirectly by the proposed project;
- (8) an explanation of confidential information that has been withheld from public disclosure in the assessment;
- (9) a discussion concerning any conflicting information in regard to identified cultural resources, practices and beliefs;

- (10) an analysis of the potential effect of any proposed physical alteration on cultural resources, practices or beliefs; the potential of the proposed action to isolate cultural resources, practices or beliefs from their setting; and the potential of the proposed action to introduce elements which may alter the setting in which cultural practices take place, and;
- (11) the inclusion of bibliography of references, and attached records of interviews, which were allowed to be disclosed.

Based on the inclusion of the above information, assessments of the potential effects on cultural resources in the project area and recommendations for mitigation of these effects can be proposed.

### **ARCHIVAL RESEARCH**

Archival research focused on a historical documentary study involving both published and unpublished sources. These included legendary accounts of native and early foreign writers; early historical journals and narratives; historic maps and land records such as Land Commission Awards, Royal Patent Grants, and Boundary Commission records; historic accounts, and previous archaeological project reports.

### **INTERVIEW METHODOLOGY**

Interviews are conducted in accordance with Federal and State laws and guidelines. Individuals and/or groups who have knowledge of traditional practices and beliefs associated with a project area or who know of historical properties within a project area are sought for consultation. Individuals who have particular knowledge of traditions passed down from preceding generations and a personal familiarity with the project area are invited to share their relevant information. Often people are recommended for their expertise, and indeed, organizations, such as Hawaiian Civic Clubs, the Island Branch of Office of Hawaiian Affairs, historical societies, Island Trail clubs, and Planning Commissions are depended upon for their recommendations of suitable informants. These groups are invited to contribute their input, and suggest further avenues of inquiry, as well as specific individuals to interview.

If knowledgeable individuals are identified, personal interviews are sometimes taped and then transcribed. These draft transcripts are returned to each of the participants for their review and comments. After corrections are made, each individual signs a release form, making the information available for this study. When telephone interviews occur, a summary of the information is often sent for correction and approval, or dictated by the informant and then incorporated into the document. Key topics discussed with the interviewees vary from project to project, but usually include: personal association to the *ahupua`a*, land use in the project's



vicinity; knowledge of traditional trails, gathering areas, water sources, religious sites; place names and their meanings; stories that were handed down concerning special places or events in the vicinity of the project area; evidence of previous activities identified while in the project vicinity.

In this case, letters briefly outlining the development plans along with maps of the project area were sent to individuals and organizations whose jurisdiction includes knowledge of the area with an invitation for consultation. Consultation was sought from Kai Markell, the Director of Native Rights, Land and Culture, Office of Hawaiian Affairs on O`ahu; Kanani Kagawa, Coordinator of the Kaua`i branch of the Office of Hawaiian Affairs; and two members of the Hanalei Burial Council: Catherine Ham Young Pfeffer, and Barbara Say. If cultural resources are identified based on the information received from these organizations or additional informants, an assessment of the potential effects on the identified cultural resources in the project area and recommendations for mitigation of these effects can be proposed.

#### **PROJECT AREA AND VICINITY**

The project area was located in the coastal environmental zone, in the district of Halele`a, abutting Maniniholo Bay, named after a legendary fisherman, to the east (see Figure 2). Kūhiō Highway was to the west and private residential lots are to the north and south.

#### **CULTURAL HISTORICAL CONTEXT**

The word “H~`ena” has been translated as “red hot” (Pukui *et al.* 1974). The name may refer to the many *kapu* associated with the *ahupua`a* which included Kauluapaoa Heiau (established for the learning of traditional history and genealogies), the dancing pavilion and shrine of Lohiau, his reported house site, and a sacred hula school (Bennett 1931:136; Wichman 1998:126, 132; Emerson 1978).

Recorded legends pertain to the travels of Pele and Hi`iaka at H~`ena and there also stories concerning *menehune* living in the valleys of Halele`a (Wichman 1985:142-148, 150-153; 1998:126-132, Handy and Handy 1972:419; Thrum 1923:219, Puku`i 1951).

H~`ena was known for its excellent fishing as it contained the only lagoon on Kaua`i. Seals were drawn to the long beaches of Ha`ena. Additionally, a superior quality of dog was reportedly raised here for consumption by the ruling chiefess (Wichman 1998:126). Another cultural practice was that of throwing the dried logs of *p~pala k pau* (*Pisona* sp.) or *hau*

(*Hibiscus tiliaceus*) from the cliffs of H~`ena, especially Makana peak (Puku`i *et al.* 1974:141; Joesting 1984:35; Fornander 1920:Vol. VI, Part III:455, footnote 60). According to Wichman and Fornander (1985:141-148; 1998:128; Fornander 1920: Vol. VI, Part III:455, footnote 60), the throwing of the firebrands incorporated a great deal of skill and under certain weather conditions, the impressiveness of the activity was lauded.

### **PAST POLITICAL BOUNDARIES**

Approximately 600 years ago (from the time of M~`ilikukahi on O`ahu and based on a 25 year per-generation count), the native population had expanded throughout the Hawaiian Islands to a point where large political districts (*moku*) were formed (Lyons 1903:29, Kamakau 1991:54, 55; Moffat and Fitzpatrick 1995:28). Kaua`i consisted of six *moku*; Kona, Puna, Ko`olau, Halele`a, N~`pali, and Waimea (*ibid.*:23). Land was considered the property of the king or *ali`i`ai moku* (the *ali`i* who eats the island/district), which he held in trust for the gods. The title of *ali`i`ai moku* ensured rights and responsibilities pertaining to the land, but did not confer absolute ownership. The king kept the parcels he wanted, his higher chiefs received large parcels from him and, in turn, distributed smaller parcels to lesser chiefs. The *maka`~`inana* (commoners) worked the individual plots of land.

In general, several terms, such as *moku*, *ahupua`a*, *`ili* or *`ili`~`ina* were used to delineate various land sections. A district (*moku*) contained smaller land divisions (*ahupua`a*) which customarily continued inland from the ocean and upland into the mountains. Extended household groups living within the *ahupua`a* were therefore, able to harvest from both the land and the sea. Ideally, this situation allowed each *ahupua`a* to be self-sufficient by supplying needed resources from different environmental zones (Lyons 1875:111). The *`ili`~`ina* or *`ili* were smaller land divisions next to importance to the *ahupua`a* and were administered by the chief who controlled the *ahupua`a* in which it was located (*ibid.*:33; Lucas 1995:40). The *mo`o`~`ina* were narrow strips of land within an *`ili*. The land holding of a tenant or *hoa`~`ina* residing in a *ahupua`a* was called a *kuleana* (Lucas 1995:61).

### **TRADITIONAL SETTLEMENT PATTERNS**

Much of the current knowledge of traditional land use patterns is based upon written records dating to the time of, and shortly after, western Contact (1778). Early records, such as journals kept by travelers and missionaries, documented Hawaiian traditions that had survived long enough to be written down. Archaeological investigations have also assisted in understanding the past, written records and the archaeological record being necessarily utilized together when studying the past of the Hawaiian Islands.

The Hawaiian economy was based on agricultural production and marine exploitation, as well as raising livestock and collecting wild plants and birds. Extended household groups settled in various *ahupua`a*. During pre-Contact times, there were primarily two types of agriculture, wetland and dry land, both of which were dependent upon geography and physiography. River valleys provided ideal conditions for wetland *kalo* (*Colocasia esculenta*) agriculture that incorporated pond fields and irrigation canals. Other cultigens, such as *kō* (sugar cane, *Saccharum officinarum*) and *mai`a* (banana, *Musa* sp.), were also grown and, where appropriate, such crops as *uala* (sweet potato, *Ipomoea batatas*) were produced. This was the typical agricultural pattern seen during traditional times on all the Hawaiian Islands (Kirch and Sahlins 1992, Vol. 1:5, 119; Kirch 1985). Between A.D. 600-1100, sometimes referred to as the Developmental Period, the major focus of permanent settlement continued to be the fertile and well-watered windward valleys, such as Hanalei, Lumaha`i, Wainiha and those on the Na Pali Coast on Kaua`i (Kirch 1985).

The district of Halele`a consisted of nine *ahupua`a*, one of which was Hā`ena Ahupua`a. Most of these land sections were comprised of extensive river valleys originating at the mountain ridges and continuing to the ocean. Hā`ena Ahupua`a, comprising 7.7 sq. km, was an important exception as it extended along the coast for 4.9 km, rather than inland. The catchment areas of two streams, Limahuli and Mānoa, were incorporated within this *ahupua`a* (Earle 1972:31). The water from Limahuli and several springs crossed an alluvial plain forming a marsh behind the dunes and mountains slopes (*ibid.*).

Many river valleys contained areas suitable for cultivation, which predominantly occurred in lower valley sections and on bends in the stream where alluvial terraces could be modified to take advantage of stream flow (Kirch and Sahlins Vol. 2 1992:59; Earle 1978:31, 155). Each *ahupua`a* in Halele`a contained the full catchment area of at least one perennial stream, Hā`ena Ahupua`a incorporated portions of Limahuli and Mānoa Streams (Earle 1972:31). During pre-Contact times, impressive irrigation systems were built to transport water to agricultural fields. Some of these agricultural complexes in Halele`a were extensive and, because their origins had become unknown over time, traditions often attributed their construction to *menehune* or other supernatural beings (Earle 1978:67-9; Handy and Handy 1972:405, Dole 1892).

According to Handy and Handy (1972:119), the valleys of Lumaha`i, Hanalei and Wainiha comprised one of the most productive taro regions on Kaua`i. Terracing for *lo`i kalo*

(irrigated taro fields) were placed between the coastal dunes and the mountains. Near Limahuli Stream, in a swampy area, *kalo* was grown by the unique method of piling earth onto partially submerged rafts. This technique has only been recorded in one other place in Hawai'i, on the south shore of Kaua'i (McGerty and Spear 1997).

As recently as 1850, eleven irrigated *kalo* systems were in use in H~`ena (mostly in Limahuli, but M~noa stream, as well), these systems presumably continuing from prehistoric times. Additionally, sweet potato were often planted on the sand dunes of H~`ena (Handy and Handy 1972:411; Earle 1978:32).

### **THE GREAT MĀHELE**

In the 1840s, traditional land tenure shifted drastically with the introduction of private land ownership based on western law. While it is a complex issue, many scholars believe that in order to protect Hawaiian sovereignty from foreign powers, Kamehameha III was forced to establish laws changing the traditional Hawaiian economy to that of a market economy (Kame`eleihiwa 1992:169-70, 176; Kelly 1983:45, 1998:4; Daws 1962:111; Kuykendall 1938 Vol. I:145). The Great Māhele of 1848 divided Hawaiian lands between the king, the chiefs, the government, and began the process of private ownership of lands. The subsequently awarded parcels were called Land Commission Awards (LCAs). Once lands were thus made available and private ownership was instituted, the *maka`āinana* (commoners), if they had been made aware of the procedures, were able to claim the plots on which they had been cultivating and living. These claims did not include any previously cultivated but presently fallow land, *`okipū* (on O`ahu), stream fisheries, or many other resources necessary for traditional survival (Kelly 1983; Kame`eleihiwa 1992:295; Kirch and Sahlins 1992). If occupation could be established through the testimony of two witnesses, the petitioners were awarded the claimed LCA and issued a Royal Patent after which they could take possession of the property (Chinen 1961:16).

According to some sources, H~`ena had always been under the protection of a chiefess who was appointed for life and who did not lose her position at the death of the ruling or nominating *ali`i*. A number of similar such *ali`i* lived at many locales around Kaua`i. After repeated efforts to land on the island of Kaua`i failed, Kamehameha I began sending envoys to Kaumuali`i, Kaua`i's ruling chief, to persuade him to submit to Kamehameha's sovereignty. Kaumuali`i graciously bestowed gifts upon several of these messengers. One of these messengers was Kekela, a wife of Kamehameha's half brother Kalaimamah. After Kalaimamah's death in 1809, she became the wife of Kaumuali`i's cousin, Kamaholelani. Kekela was rewarded and given the *ahupua`a* of H~`ena by Kaumuali`i (BarrIre 1994:338).

A rebellion on the island of Kaua`i in 1824 complicated the land issue and, instead of the lands being awarded to the chiefs of Kaua`i, many Kaua`i *ahupua`a* were awarded to the heirs of the ruling Kamehameha dynasty (Kamakau 1961). However, H~`ena Ahupua`a was still in Kekela's possession after the rebellion, although she appears to have permanently left Kaua`i at this time (BarrIre 1994:338). Kekela claimed several *kŀ`ele, loko*, and a house lot in H~`ena at the time of the M~`hele in 1848.

No Land Commission Awards (LCA) are recorded directly within the project area, although LCAs are present to the east of M~`noa Stream which forms the eastern boundary of H~`ena, and further to the west. A total of 32 LCAs were awarded in the *ahupua`a* of H~`ena (Waihona `Aina Corporation, 2007). A census taken in 1847 recorded the population of H~`ena at 162 individuals (Schmitt, 1969).

H~`ena was long associated with ancient myths and legends of the Hawaiian people. Traditional activities such as *hula*, fishing, raising particularly succulent dogs, and throwing of firebrands off the high cliffs were well known for this area. Low sand dunes were often planted with sweet potato and *kalo* was grown on land along the stream beds. Coastal trails began at K ` and extended into the deep N~`pali valleys, eventually arriving at Polihale on the west side of Kaua`i.

At the time of the M~`hele, the *ahupua`a* of H~`ena was awarded to Abner P~`k♣, under the protection of the chiefess named Kekela (Buke M~`hele 1848:159). Land claims were primarily located in the large stream valleys where many irrigation systems for *kalo* were identified and where a unique method for growing *kalo* in swampy sections was devised. It was believed that the region from H~`ena to Hanalei was one of the most productive areas on Kaua`i.

### SUMMARY

The "level of effort undertaken" to identify potential effect by a project to cultural resources, places or beliefs (OEQC 1997) has not been officially defined and is left up to the investigator. A good faith effort can mean contacting agencies by letter, interviewing people who may be affected by the project or who know its history, research identifying sensitive areas and previous land use, holding meetings in which the public is invited to testify, notifying the community through the media, and other appropriate strategies based on the type of project being proposed and its impact potential. Sending inquiring letters to organizations concerning

development of a piece of property that has already been totally impacted by previous activity and is located in an already developed industrial area may be a “good faith effort”. However, when many factors need to be considered, such as in coastal or mountain development, a good faith effort might mean an entirely different level of research activity.

In the case of the present parcel, letters of inquiry were sent to organizations whose expertise would include the project area and consultation was sought from Kai Markell, the Director of Native Rights, Land and Culture, Office of Hawaiian Affairs on O`ahu; Kanani Kagawa, Coordinator of the Kaua`i branch of the Office of Hawaiian Affairs; and two members of the Hanalei Burial Council: Catherine Ham Young Pfeffer, and Barbara Say.

Historical and cultural source materials were extensively used and can be found listed in the References Cited portion of the report. Such scholars as I`i, Kamakau, Beckwith, Chinen, Kame`eleihiwa, Fornander, Kuykendall, Kelly, Handy and Handy, Puku`i and Elbert, Thrum, Sterling, and Cordy have contributed, and continue to contribute to our knowledge and understanding of Hawai`i, past and present. The works of these and other authors were consulted and incorporated in the report where appropriate. Land use document research was supplied by the Waihona `Aina 2007 Data base.

### **CIA INQUIRY RESPONSE**

As suggested in the “Guidelines for Accessing Cultural Impacts” (OEQC 1997), CIAs incorporating personal interviews should include ethnographic and oral history interview procedures, circumstances attending the interviews, as well as the results of this consultation. It is also permissible to include organizations with individuals familiar with cultural practices and features associated with the project area.

As stated above, consultation was sought from the consultation was sought from Kai Markell, the Director of Native Rights, Land and Culture, Office of Hawaiian Affairs on O`ahu; Kanani Kagawa, Coordinator of the Kaua`i branch of the Office of Hawaiian Affairs; and two members of the Hanalei Burial Council: Catherine Ham Young Pfeffer, and Barbara Say. Except for OHA acknowledging the receipt of our letter, no organizations or individuals responded with information concerning the potential for cultural resources to occur in the project area (TMK 3-8-06:004), or with additional suggestions for further contacts.

Analysis of the potential effect of the project on cultural resources, practices or beliefs, its potential to isolate cultural resources, practices or beliefs from their setting, and the potential of

the project to introduce elements which may alter the setting in which cultural practices take place is a requirement of the OEQC (No. 10, 1997). To our knowledge, the project area has not been used for traditional cultural purposes within recent times. Based on historical research and no response from the above listed contacts, it is reasonable to conclude that Hawaiian rights related to gathering, access or other customary activities within the project area will not be affected and there will be no direct adverse effect upon cultural practices or beliefs. The visual impact of the project from surrounding vantage points, e.g. the highway, mountains, and coast would appear to be minimal as the entire area is residential. However, in the interest of satisfying all aspects of cultural values, SCS recommends consultation between the developers and a Cultural Resource person before construction to avoid any inadvertent impact.

### **CULTURAL ASSESSMEMNT**

Based on the lack organizational response and individual informants, as well as archival research, it is reasonable to conclude that, pursuant to Act 50, the exercise of native Hawaiian rights, or any ethnic group, related to gathering, access or other customary activities will not be affected by development activities on a parcel 027. Because there were no cultural activities identified within the project area, there are no adverse effects.

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# **APPENDIX 3**

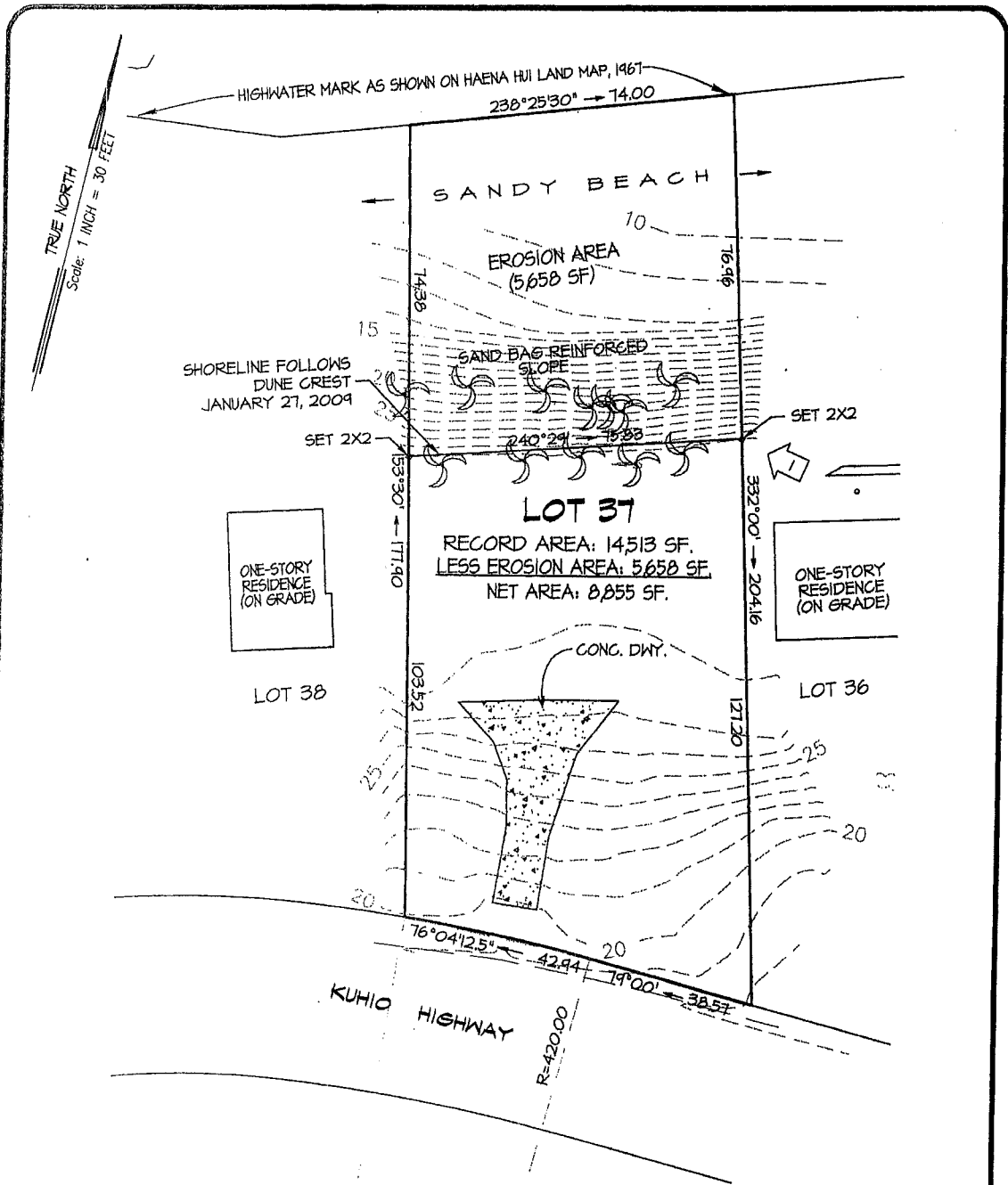
## **Shoreline Certification Survey & Application**

**Prepared by Wagner Engineering Services, Inc.**

- **Submitted on February 24, 2009**
- **Accepted for Processing on April 8, 2009**

**(Pending State Review & Certification)**

**Malerich Single-Family Residence  
TMK (4) 5-9-05: 025**



SHORELINE CERTIFICATION

MAP OF

**LOT 37**

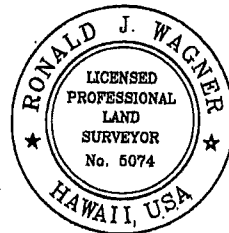
HAENA HUI LANDS

being a portion of


R.P. 3596, L.C. Aw. 10613, AP 6

to A. PAKI

at HAENA, HALELEA, KAUA'I, HAWAII



NOTE:

1. FEATURES SHOWN HEREON REFLECT CONDITIONS EXISTING ON JANUARY 27, 2009
2.  DENOTES COCONUT TREE

JANUARY 30, 2009

PREPARED FOR:

MATT MALERICH  
105 FAIRWAY  
BAKERSFIELD, CA 93309

30 0 30



Graphic Scale in Feet

THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION

*Ronald J. Wagner*  
RONALD J. WAGNER  
Licensed Professional Land Surveyor  
Certificate No. 5074



Wagner Engineering Services, Inc.

P.O. Box 851 Honolulu, HI 96714 (808) 826-7256

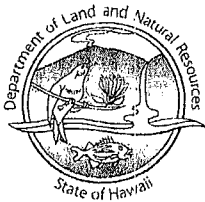
TMK (4) 5-9-C6:25

PROJECT NO. 4685

LINDA LINGLE  
GOVERNOR OF HAWAII



4483  
LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

April 8, 2009

File No.: KA-326

Wagner Engineering Services, Inc.  
P.O. Box 851  
Hanalei, Hawaii 96753

Dear Applicant:

Subject: Accepted Application for Shoreline Certification  
Owner(s): Matt & Judy Malerich  
Tax Map Key: (4) 5-9-005:025

Your application for shoreline certification of the subject property has been found to be complete and is accepted for processing. The commencement date for application processing is **April 8, 2009** and the completion date is **July 6, 2009**.

The file number assigned to this application for shoreline certification is **KA-326**.

We have submitted your application for publication in the **April 8, 2009** OEQC Environmental Notice to allow public comment. We have also transmitted your application to the Department of Accounting and General Services (DAGS) Survey Division for their review and action. Upon receipt of the State Land Surveyor's recommendation, we will schedule another public notice in the next available OEQC Environmental Notice.

If you have any questions, please feel free to contact us at (808) 587-0420 or DAGS Survey Division at (808) 586-0380. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Ian Hirokawa".

Ian Hirokawa  
Project Development Specialist

STATE OF HAWAII  
DEPARTMENT OF LAND & NATURAL RESOURCES

SHORELINE CERTIFICATION  
APPLICATION FORM

For DLNR use only:

Case file no.: \_\_\_\_\_  
Date application recvd: \_\_\_\_\_  
Date applic. complete: \_\_\_\_\_  
Completion date (+90): \_\_\_\_\_  
1st OEQC notice: \_\_\_\_\_  
2nd OEQC notice: \_\_\_\_\_  
Date appeals due (+20): \_\_\_\_\_  
Date briefs due: \_\_\_\_\_  
Date of decision (+60): \_\_\_\_\_

I. APPLICANT/AGENT


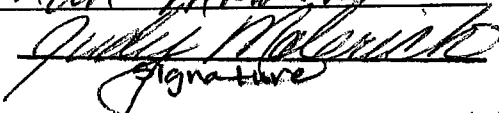
Applicant means the person submitting an application for shoreline certification.

Applicant name: Ronald J. Wagner, Wagner Engineering Services, Inc.  
Applicant address: P.O. Box 851  
Hanalei, Kauai, Hawaii 96714  
Phone numbers: (808) 826-7256 ext. 111 (808) 826-7745 ron@wagnereng.com  
Phone Fax E-mail

II. PROPERTY OWNER

Property owner means the equitable or legal holder of interest in, or the lessee holding under a recorded lease for the property for which a shoreline certification is requested, or the authorized agent.

Owner name: MATT & JUDY MALERICH  
Owner address: 105 Fairway Drive  
Bakersfield, CA. 93309

Signature:  Date: 2/17/09  
 Date: 2-17-09

III. LOCATION AND ADDRESS

Island: ( ) Oahu (X) Kauai ( ) Molokai  
( ) Hawaii ( ) Maui ( ) Lanai  
Town, District: Haena Tax Map Key: (4) 5-9-05:25  
Address: 7834 Kuhio Highway  
Haena, Hanalei, Kauai, Hawaii 96714

IV. PURPOSE

State the purpose for which the certification is being applied:  
CDUA and Building Permit

V. CHECKLIST OF ENCLOSURES

(X) At least three (3) sets of color photographs of the shoreline, in accordance with §13-222-8, HAR:

- (X) Shoreline, as delineated on the map, is indicated on each photograph.
- (X) Permanent markings on the ground or flaggings are indicated on the photographs.
- (X) Each photograph is labeled by number or alphabet to coincide with the map showing the direction the photograph was taken.
- (X) Photographs provide accurate perspectives of the shoreline in relation to permanent markings or other land features.
- (X) Each photograph is marked with the date and time taken.

(X) At least seven (7) maps of the shoreline, in accordance with §13-222-9, HAR:

- (X) Maps are on whiteprints and are one of the following sizes (in inches): 8.5 x 13, 10 x 15, 13 x 23, 15 x 21, 21 x 32, 22 x 36, 24 x 36, 30 x 36, 36 x 42, 42 x 42-72.
- (X) Maps are drawn using an engineer or architect scale, in units of feet. Scale is clearly noted on the map. No reduced or enlarged maps allowed.
- (X) Maps are based on an actual field survey conducted within the prior 90 days.
- (X) Maps have the licensed surveyor's seal and testament indicating the work was done by the surveyor or under the surveyor's supervision.
- (X) Maps indicate true north pointing towards the top.
- (X) Map title and reference to location include the original source of title and name of awardee, patentee, or grantee and the ili, ahupuaa, and the TMK and the property owner's name and address.
- (X) Maps show all permanent identification marks established on the ground and all pertinent azimuths and distances.
- (X) Maps indicate the type of shoreline being determined (i.e., vegetation line, debris line, upper reaches of the wash of waves, face of artificial structure, or combination).
- (X) At least two (2) of the maps show the direction the photographs were taken and the point or shoreline depicted in the photographs.

(X) Field survey was conducted on January 27, 2009 by Erik Pasco.  
(date of field survey) (name of person who conducted field survey)

(X) The licensed land surveyor who made or supervised the field survey was:

Name Ronald J. Wagner, L.S.  
Address P.O. Box 851, Hanalei, Kauai, HI. 96714  
Phone no. (808) 826-7256, ext. 111

(X) Application fee of \$75 is enclosed.

(X) Statement signed by property owner granting the State of Hawaii the right to enter the property.

( ) Statement(s) signed by applicable owners granting the State of Hawaii the right to enter land not owned by the property owner necessary for access.

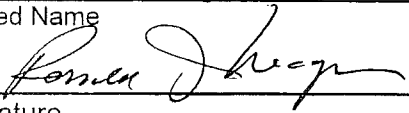
- ( ) Copy of any federal, State or county enforcement or other legal action involving the subject shoreline.
- (X) If shoreline is being located at the top of a manmade structure, copy of all documents supporting that the structure has been approved by the appropriate government agencies or is exempt from such approval.

VI. CERTIFICATION

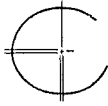
I hereby certify that the statements and information contained in this application, including all attachments, are true and accurate to the best of my knowledge and understand that if any statements are shown to be false or misrepresented, this application may be rejected. Further, I understand that the Department may review any shoreline certification during its 12-month validity period and may rescind the certification where there is substantial misrepresentation or material fact in the application, whether intentional or unintentional, as determined by the State Land Surveyor or the Department.

Ronald J. Wagner  
Printed Name

2/24/09  
Date


X   
Signature

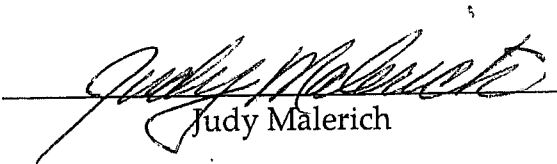




Letter of Authorization  
by  
Property Owner

I (We) the undersigned do hereby authorize representatives of the State of Hawaii, including the State Surveyor, the right to enter the property at Haena, Hanalei, Kauai, Hawaii, being Tax Map Key (4) 5-9-05:25 of the shoreline under review for certification.

Signature of property owner(s):   
Matt Malerich

  
Judy Malerich

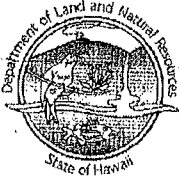
Address of property owner(s): 105 Fairway Drive  
Bakersfield, CA. 93309

Project No: 4685

LINDA LINGLE  
GOVERNOR OF HAWAII



4685  
LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCES MANAGEMENT



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

June 30, 2009

Ref: KA-326

Wagner Engineering Services, Inc.  
P.O. Box 851  
Hanalei, Hawaii 96714

Dear Applicant:

Subject: Extension of Time to Process Shoreline Certification  
Owner: Matt & Judy Malerich  
Tax Map Key: (4) 5-9-005:025

We write to follow-up on the subject shoreline application.

Pursuant to §13-222-7(j), Hawaii Administrative Rules, the Department finds that due to time constraints, it is necessary to extend the time period for processing this application for shoreline certification. The completion date for processing this application for shoreline certification is therefore extended to January 2, 2010.

If you have any questions, please feel free to contact us at (808) 587-0420 or DAGS Survey Division at (808) 586-0380. Thank you.

Sincerely,

Ian Hirokawa  
Project Development Specialist

cc: DAGS  
KDLO

# **APPENDIX 4**

## **Draft EA Pre-Assessment Agency & Community Input**

**Malerich Single-Family Residence  
TMK (4) 5-9-05: 025**

COPY

February 18, 2009

Paul Conry  
DLNR, Division of Forestry and Wildlife  
1151 Punchbowl St., Rm 325  
Honolulu, HI 96813

**Re: Proposed Malerich Single Family Residence  
CDUA & Draft Environmental Assessment  
TMK (4) 5-9-05: 025, Haena, Kauai, Hawaii  
Pre-Assessment Consultation from Impacted Entities**

Dear Mr. Conry,

Pursuant to Chapter 343, Hawaii Revised Statutes, and Title 11; Chapter 200, Environmental Impact Statement Rules, my wife Judy and I are notifying you of our proposal to construct a 3-bedroom, single-family residence on our recently acquired property, which is located in Haena on the North Shore of Kauai. Our property is located adjacent to the coastline along Kuhio Highway about 1/4 mile east of the Haena Beach Park.

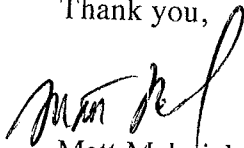
The property is located within the Conservation District, therefore, our proposed residence triggers the requirement for a Conservation District Use Application (CDUA), a component of which is the preparation of an Environmental Assessment (EA), which will evaluate the potential environmental impacts of the proposed development and suggest mitigative actions where necessary.

As the owners and "Applicants" in this action, it is our responsibility to solicit comments from agencies, community groups, concerned citizens, and other parties within the impacted community prior to the preparation of a Draft EA. Therefore, if you would like to comment upon the proposed action, then please submit your written remarks by no later than March 31, 2009. Please reference the "**Malerich Single Family Residence CDUA**" and send comments to:

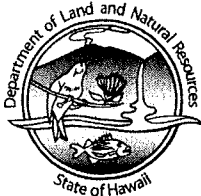
Matt & Judy Malerich  
P.O. Box 1649  
Hanalei, HI 96714

Due diligence will be exercised in responding to your comments. The State Department of Land and Natural Resources (DLNR) has oversight in administering the CDUA process. It is anticipated that a Draft EA and CDUA will be submitted to the DLNR for filing by no later than April 30<sup>th</sup>, 2009. A Draft EA notice will then be posted in the OEQC Bulletin and copies of the DEA and CDUA will be placed on reserve with the Princeville Public Library where they will be available for further public review and comment.

Thank you,

  
Matt Malerich

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

DIVISION OF FORESTRY AND WILDLIFE  
1151 PUNCHBOWL ST., ROOM 325  
HONOLULU, HAWAII 96813  
TEL (808) 587-0166 FAX (808) 587-0160

February 19, 2009

**LAURA H. THIELEN**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**RUSSELL Y. TSUJI**  
FIRST DEPUTY

**KEN C. KAWAHARA**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Mr. Matt Malerich  
P.O. Box 1649  
Hanalei, HI 96714

Dear Mr. Malerich:

Subject: Proposed Malerich Single Family Residence, CDUA and Draft  
EA TMK: 5-9-05: 025, Haena, Kauai, Hawaii.

DLNR, Division of Forestry and Wildlife appreciates the opportunity to comment on your subject request. Based on your cover letter dated February 18, 2009, we do not have the information needed to support or reject your proposed construction of your family residence. Since the biological flora and fauna information is required of the draft EA, we will defer comments until this document is completed for our review. Thank you for allowing us to review your project.

Sincerely yours,

A handwritten signature in black ink that reads "Paul J. Conry".

Paul J. Conry  
Administrator

C: DOFAW Kauai Branch

April 23, 2009

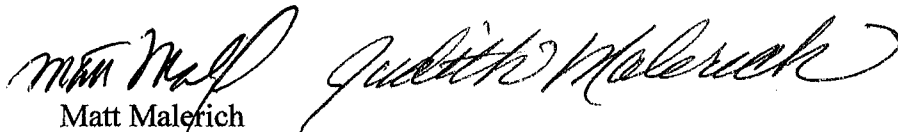
Paul J. Conry, Administrator  
DLNR, Division of Forestry and Wildlife  
1151 Punchbowl St., Room 325  
Honolulu, HI 96813

**Re: Pre-Assessment Comments  
CDUA & Draft Environmental Assessment  
Proposed Malerich Single Family Residence  
TMK (4) 5-9-05: 025; Ha'ena, Kaua'i**

Dear Mr. Conry,

This is to acknowledge receipt of your Draft EA Pre-Assessment comment letter dated February 19, 2009. Since there were no substantive comments provided by your office, we will await your further input on the Draft EA. We anticipate that the Draft EA will be published in early April of this year.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Malerich". The signature is written in a cursive style and is positioned above the printed name.

Matt Malerich  
P.O. Box 1649  
Hanalei, HI 96714

C: DLNR, Office of Conservation & Coastal Lands



**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
711 KAPI'OLANI BOULEVARD, SUITE 500  
HONOLULU, HAWAII 96813

HRD09/4182

March 10, 2009

Matt Malerich  
P.O. Box 1649  
Hanalei, HI 96714

**RE: Request for pre-assessment comments on proposed single family residence, Hā'ena, Kaua'i, TMK: 5-9-05:025.**

Aloha e Matt Malerich,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated January 6, 2008. OHA has reviewed the project and offers the following comments.

OHA expresses initial concern over your proposed project. This general area is one that has a deep significance for our beneficiaries and a recent history of poor stewardship over its cultural resources.

We understand that the subject locality has a high potential for the unearthing of cultural deposits. This area was (and is) used for traditional Hawaiian cultural activities and practices including burials. Further, there are archaeological sites that exist near the project area.

We urge that an Archaeological Inventory Survey be conducted including an intensive subsurface survey with a qualified archaeologist overseeing the process. If during the inventory survey investigation, human remains are encountered, such remains will be treated following the procedures outlined in Chapter 6E-Hawaii Revised Statutes and Chapter 13-300, Hawaii Administrative Rules.

An intensive subsurface survey within the footprint of the proposed building site should locate any burials before building begins. This will be beneficial for everyone involved, including the applicant as discoveries during construction can be quite burdensome. OHA notes, however, that because this is a culturally significant area, iwi kūpuna and other cultural

Matt Malerich  
March 10, 2009  
Page 2

materials may be found during other ground disturbing activities as well. Therefore, we again request assurances that applicable laws and procedures will be followed if this occurs.

OHA also has a variety of comments and suggestions to help better shape proposals. Specifically we have comments that reflect our concerns over constitutionally protected Native Hawaiian access and usage rights that may be occurring on and around the project area, as well as negative impacts to biological resources including water quality concerns. We, therefore, look forward to further consultation.

Thank you for the opportunity to comment. If you have further questions, please contact Grant Arnold by phone at (808) 594-0263 or e-mail him at [granta@oha.org](mailto:granta@oha.org).

‘O wau iho nō me ka ‘oia‘i‘o,



Clyde W. Nāmu‘o  
Administrator

C: OHA CRC Kaua‘i

Louise Sausen

Caren Diamond



April 23, 2009

Clyde W. Namu`o, Administrator  
Office of Hawaiian Affairs  
711 Kapi`olani Blvd., Suite 500  
Honolulu, HI 96813

**Re: Pre-Assessment Comments  
CDUA & Draft Environmental Assessment  
Proposed Malerich Single Family Residence  
TMK (4) 5-9-05: 025; Ha`ena, Kaua`i**

Dear Mr. Namu`o

Thank you for your comment letter dated March 10, 2009 on our proposal to construct a new residence on our property in Ha`ena.

My wife Judy and I are aware of the potential for burials and other archeological/cultural deposits in the vicinity of our parcel. Therefore, we have taken a proactive course of action. In February of this year, we contracted with Rechtman Consulting, LLC (a qualified archaeologist) to carryout an archaeological survey of our property in order to determine the presence or absence of archaeological features and to assess their significance. Investigative subsurface trenches were excavated during the Rechtman survey. Rechtman reports that *“during the survey there were no archaeological resources observed on the surface nor were there any encountered during the subsurface testing.”* Based upon its findings, Rechtman recommended that no further archaeological work need be conducted prior to construction.

Following review of Rechtman’s Survey Report, the SHPD, in a letter dated February 28, 2009, acknowledged that no historic properties were recorded during the survey. SHPD further confirmed that the Rechtman report met the minimum requirements, and was therefore accepted in compliance with 6E-10 and HAR) 13§13-276 *Rules Governing Standards for Archaeological Inventory Surveys and Studies*. A complete copy of the Rechtman Archaeological Assessment Survey Report will be included as an appendix to the Draft Environmental Assessment. A copy of the referenced SHPD approval letter is attached for your files.

Notwithstanding the SHPD approval granted, we understand that in the event that human burials are inadvertently discovered during construction activities, all work must immediately stop within the vicinity of the burials, and the SHPD shall be contacted to determine the jurisdiction and proper mitigation protocol for the burials. The State Office of Hawaiian Affairs and the Kauai-Ni`ihau Island Burial Council will also be notified in such event.

Regarding Native Hawaiian access and usage rights, we are proposing a 50-foot shoreline setback for our residence. The setback will be measured from the certified shoreline. The proposed setback is in strict compliance with the recently adopted County of Kauai, Ordinance No. 863 *Relating to Shoreline Setback and Coastal Protection*. The

setback will allow for unimpeded lateral shoreline access for Native Hawaiians and the general public.

We look forward to any further comments that you may have on the Draft Environmental Assessment. We anticipate that the Draft EA will be published in early April.

Thank you for your time in reviewing and commenting on our proposal.

Sincerely,



Matt Malerich  
P.O. Box 1649  
Hanalei, HI 96714

C: DLNR, Office of Conservation & Coastal Lands

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

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CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

February 28, 2009

Mr. Matt Malerich  
P. O. Box 1649  
Hanalei, Kaua'i

LOG NO: 2009.0974  
DOC NO: 0902WT64  
Archaeology

Dear Mr. Malerich:

**SUBJECT: Chapter 6E-8 Historic Preservation Review—  
Pre-Assessment Consultation Letter—  
Proposed Malerich Single Family Residence, CDUA and Draft  
Environmental Assessment, Hā'ena Ahupua'a, Halele'a District, Kaua'i  
Island, Hawai'i  
TMK (4) 5-9-05: 025**

---

We are in receipt of your request for comments regarding the development of a Draft Environmental Assessment (DEA) for the property at TMK: (4) 5-9-05: 025, which we received on February 19, 2009.

This office has reviewed the Archaeological Assessment Survey report generated by Rechtman Consulting LLC (LOG NO: 2009.0984/DOC NO: 0902WT63). No historic properties were recorded. Therefore we find that there is **no historic properties affected**. Please reference this letter in any future correspondence. We look forward to reviewing the submittal of the Conservation District Use Application (CDUA) and the DEA upon completion.

Please contact Wendy Tolleson at (808) 692-8024 if you have any questions or concerns regarding this letter.

Aloha,

A handwritten signature in cursive script that reads "Nancy A. McMahon".

Nancy A. McMahon (Deputy SHPO)  
State Historic Preservation Officer

**BERNARD P. CARVALHO, JR.**  
MAYOR



**IAN K. COSTA**  
DIRECTOR OF PLANNING

**GARY K. HEU**  
ADMINISTRATIVE ASSISTANT

**IMAIKALANI P. AIU**  
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUA'I  
PLANNING DEPARTMENT**  
4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUA'I, HAWAII 96766-1326

TEL (808) 241-6677 FAX (808) 241-6699

March 24, 2009

Mr. Matt Malerich  
P. O. Box 1649  
Hanalei, Hawaii 96714

Subject: Request for Exemption of Special Management Area Rules and Regulations  
Tax Map Key 5-9-005:025  
Ha'ena, Kaua'i

Dear Mr. Malerich,

Your letter dated February 20, 2009, states that "development" does not include the "construction of a single family residence" Section 1.4, H (2)(a) of the Special Management Rules and Regulations, a "single family residence that is not part of a larger development". Upon submission of a plot plan with all proposed improvements, and floor plans the Department would be able to confirm your request for exemption. Please note that all other requisite State of Hawaii and County of Kauai permits will be necessary.

Be advised that in accordance with procedure we will be commenting on the CDUA to the DLNR and we feel strongly that the existing SMA (E) 97-3 permit issues need to be addressed; due to the outstanding issues on this emergency permit we will suggest that these issues be resolved prior to considering review of further action on this property. Please call Lisa Ellen Smith, our assigned project planner to discuss any questions.

IAN K. COSTA  
Planning Director

cc: Sam Lemmo, Office of Conservation and Coastal Lands

April 23, 2009

Ian Costa, Director  
County of Kauai, Planning Department  
4444 Rice Street, Suite A-473  
Lihue, HI 96766-1326

**ATTN: Lisa Ellen Smith, CZO Planner**

**Re: Proposed Malerich Single-Family Residence  
TMK (4) 5-9-05: 025  
Ha`ena, Kaua`i, Hawai`i**

Dear Mr. Costa and Ms. Smith,

Thank you for your comment letter dated March 24, 2009 regarding our proposal to construct a residence on our property in Ha`ena.

We understand that once you review the details of our proposed project, including your review of the proposed plot plan and building plans, you will make a determination regarding the SMA permit exemption which we have requested. Detailed plans will be included with our CDUA and Draft Environmental Assessment (DEA), copies of which will be routed to your Department by the State Office of Conservation & Coastal Lands (OCCL).

Regarding the conditions of the existing SMA permit, SMA (E) 97-3 -- we are currently collaborating with the other four landowners whose properties are bounded by the sandbag revetment. Bob Downs, co-owner of TMK (4) 5-9-05: 024, located to the west of our parcel, is spearheading this effort and has been communicating with your office (see attached correspondences dated November 13, 2008 and March 10, 2009). To this end, the group of five owners have retained a coastal engineer, Elaine Tamaye of EKNA Services, Inc., and Ron Wagner, a professional surveyor, to conduct an assessment of the shoreline interface and the littoral cell in an attempt to quantify what effects the sand bags may be having on beach processes. The assessment survey will monitor seven separate beach profiles, which will be surveyed at regular intervals three times each year. Three of the profiles will span the five subject properties and two profiles each will be on the east and west sides of the sand bag revetment, approximately equidistance apart. The profiles will extend from the top of the escarpment to the toe of the beach. Wagner Engineering gathered the initial data set for the study between February 3<sup>rd</sup> and February 6<sup>th</sup> of this year. Once the study gathers sufficient data to develop statistical confidence, our consultants will offer their assessment and recommendations for actions.

Our parcel is the centermost of the parcels that are bounded by the sand bag revetment. The Conservation District Use Application (CDUA) and Draft Environmental Assessment that we are submitting will not seek permit approval or any manner of justification for retention of the sandbags. Rather, our CDUA and Draft EA will address the construction of a new residence on our property and will propose a shoreline setback of 50 feet, which is based upon the average depth of our lot, consistent with the recently

adopted County of Kauai Ordinance No. 863 regulating "Shoreline Setback and Coastal Protection". As a result, our proposed residence will be located approximately 40 feet further inland than the two older, existing homes on either side of our property.

We have been provided with copies of an approved Shoreline Certification dated September 29, 2008 and a CDUP dated August 8, 2008 authorizing development of a Single Family Residence on the Bartmess property (TMK (4) 5-9-05: 027). The Bartmess property is located two lots east of our property and is one of the five parcels fronting the revetment. We understand that the issue of the sandbag revetment came up in both the shoreline certification and CDUP processes relative to the Bartmess parcel and that the relevant agencies (DLNR and the County of Kauai) decided to allow the Bartmess application and the revetment permitting issues to proceed on separate tracks. We request that our applications be treated in a manner consistent with the Bartmess application in this regard. It is also our understanding that, at the time the Bartmess applications were in the permitting process, the 5 owners had not yet initiated the cooperative effort to obtain scientific data to assist them and the agencies in making appropriate decisions relative to the sandbag revetment. We feel strongly that the long-term permitting concerns surrounding the existing SMA permit (E) 97-3 and the sandbag revetment can and should be treated under their own, separate permitting process, which should continue to involve all of the impacted parcel owners. Permits for the sandbag were issued comprehensively for the five contiguous parcels and the revetment was engineered, approved and constructed as a single structure. Hopefully, the statistical monitoring, which is now underway, will guide us all toward the adoption of a reasonable and sustainable solution for the sandbags that will balance the interests of the private property owners with those of the public, the county and the state.

On behalf of my wife Judy, and myself, thank you for your time and consideration of our proposal. We look forward to your further input.

Sincerely,



Matt Malerich

cc: Sam Lemmo, OCCL

Sharon Carroll  
Robert Downs  
16350 Matilija Drive  
Los Gatos, CA 95030  
408-399-1527

November 13, 2008

Ian K. Costa  
Planning Director  
County of Kaua'i  
Kapule Building, Suite A473  
4444 Rice Street  
Lihue, Hawai'i 96766-1326

Re: Special Management Area Emergency Permit SMA (E) 97-03 and Shoreline Setback Variance; TMK Nos.: 5-9-005: 023 through 027

Dear Mr. Costa:

I have volunteered to coordinate the efforts of the owners of the five oceanfront parcels in Haena identified as Tax Map Key Numbers 5-9-005: 023, 024, 025, 026, and 027 to address the issues and concerns relative to the sand bag revetment on the makai portions of these lots. As you are aware, the placement of these sand bags was authorized by the above-referenced SMA Emergency Permit and Shoreline Setback Variance and by a related right of entry from the State.

In your letter of August 11, 2008, you asked the owners to address certain conditions in the SMAEP and SSV. Because the sand bags form a continuous revetment along the makai portions of the five lots, we believe a coordinated approach to these issues is preferable. Further, we believe that our responses to your inquiries and our efforts to address the concerns you raise should be guided by a more specific and complete assessment of the effectiveness of the sand bags and any impacts on the shoreline and coastal environment. We intend to develop this information with the assistance of qualified professionals.

To this end, we have retained Elaine Tamaye of EKNA Services, Inc., and Ron Wagner, a professional surveyor, to conduct an assessment of the shoreline environment to determine what effects, if any, the sand bags may have had on beach processes. We have been advised that the assessment we request will require measurements at different seasons and \$15,900 dollars for a baseline study. Our consultants have also recommended follow-up assessments every year to assess the potential impact of the sandbags on the beach. Our consultants will give us their assessment and recommendations for action once their study reaches the point where they have some confidence in the results.

We request an extension of time to April 30, 2009, to submit our consultants' initial assessment and recommendation. This assessment should meet the requirements of Condition 8.

Based on the results of the consultants' assessments, we can evaluate how best to proceed with Conditions 5 and 6. In other words, the results of the assessments will help us determine what shoreline protection measures are appropriate in the longer term. This will, in turn, guide us in determining what permits are required.

With respect to Condition 7, what we have done in the past to protect and maintain the shoreline protection measures is to periodically cover the sand bags with sand. This action shields the bags from harmful solar radiation and from vandalism. We would like to continue this maintenance activity and hereby request that we be authorized to re-cover the bags.

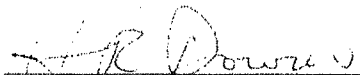
Our house and the one on parcel 26 were legally built more than fifty years ago. These houses would be put at risk if the sandbags were removed.

We note that your department has concluded that the permits are in full force and effect unless and until formal action is taken by the County to rescind or revoke the permits (your letter to Morris Atta dated July 30, 2008). We request that you allow us to conduct appropriate professional assessments and to make requests and applications based on the results of these studies.

Please contact me if you have questions.

Sincerely,

Robert Downs and Sharon Carroll  
(Owners of Parcel 24)

By   
Robert Downs

cc: Heather and Jonathan Ive (Parcel 23)  
Judy and Matt Malerich (Parcel 25)  
Troy Eckert (Parcel 26)  
Catherine and Russ Bartmess (Parcel 27)

Ian K. Costa



Sharon Carroll  
Robert Downs  
16350 Matilija Drive  
Los Gatos, CA 95030  
408-399-1527

March 10, 2009

Ian K. Costa  
Planning Director  
County of Kaua'i  
Kapule Building, Suite A473  
4444 Rice Street  
Lihue, Hawai'i 96766-1326

Re: Special Management Area Emergency Permit SMA (E) 97-03 and Shoreline  
Setback Variance; TMK Nos.: 5-9-005: 023 through 027

Dear Mr. Costa:

This letter will follow up on my letter to you dated November 13, 2008. Please consider this an interim status report under SMA (3) 97-03.

As stated in the November 13, 2008, letter, the owners of the five parcels which have the sandbag revetment along the makai portions of the lots have retained professional surveyor Ron Wagner and coastal engineer Elaine Tamaye of EKNA Services. We have paid both consultants and they have commenced work.

Ms. Tamaye is recommending that seven (7) separate beach profiles be surveyed three (3) times a year. Three (3) of the profiles will span the five subject properties and two (2) profiles each on the east and west sides, about equidistance apart. Profiles 1 and 2 are on opposite sides of Manoa Stream. The profiles will extend from the top of the escarpment to the toe of the beach. We will keep you informed of the progress and results of this work.

Two of the parcels have changed ownership. The new owners are:

TMK 5-9-005: 023

Formerly: Jonathan and Heather Ive  
Now: Neal A. Norman

TMK 5-9-005: 025

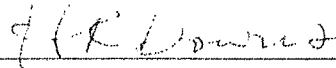
Formerly: Sally Ann Moragne Mist Trust  
Now: Matthew M. and Judith E. Malerich Trust

It remains our hope that we will be able to develop scientific data to assist the owners and the responsible agencies in deciding how best to proceed.

Please contact me if you have questions.

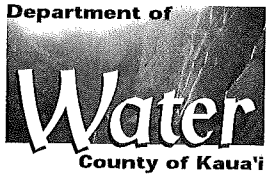
Sincerely,

Robert Downs and Sharon Carroll  
(Owners of Parcel 24)

By   
Robert Downs

cc: Neal A. Norman (Parcel 23)  
Judy and Matt Malerich (Parcel 25)  
Troy Eckert (Parcel 26)  
Catherine and Russ Bartmess (Parcel 27)

Attch: Nov 13, 2008 Letter



*Water has no substitute..... Conserve it*

March 16, 2009

UID #5675

Mr. Matt Malerich  
Ms. Judy Malerich  
P.O. Box 1649  
Hanalei, HI 96714

Dear Mr. and Ms. Malerich:

Subject: Proposed Malerich Single Family Residence CDUA and Draft Environmental Assessment,  
Lot 37, TMK: 5-9-05:025, Haena, Kauai, Hawaii  
Pre-Assessment Consultation from Impacted Entities

This letter is in response to your February 18, 2009 request for comment letter.

The following are the Department of Water (DOW) comments for the proposed 3-bedroom single-family residence on Lot 37, TMK: 5-9-05:025.

- TMK: 5-9-05:025 is located within 1,000 feet of a public, domestic water well that services the area. The Department has concerns of possible contamination of the water well related to the proposed development.
- The applicant shall comply with all Department of Health requirements and regulations/rules concerning the proximity to the domestic water well to the proposed development.
- Any actual subdivision or development of this area will be dependent on the adequacy of the source, storage, and transmission facilities existing at that time.

If you have any questions, please contact Mr. Keith Aoki at (808) 245-5418.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregg Fujikawa".

Gregg Fujikawa  
Chief of Water Resources and Planning

KA:mll  
W5-9-05-025 malerich CDUA T-10820

c: Ms. Lori Vetter, State Department of Health, Kauai Branch

April 23, 2009

Gregg Fujikawa  
Chief Water Resources and Planning  
Department of Water, County of Kaua'i  
P.O. Box 1706  
Lihue, HI 96766

**Re: Pre-Assessment Comments  
CDUA & Draft Environmental Assessment  
Proposed Malerich Single Family Residence  
TMK (4) 5-9-05: 025; Ha'ena, Kaua'i**

Dear Mr. Fujikawa,

Thank you for your comment letter dated March 16, 2009 on our proposal to construct a new residence on our property in Ha'ena.

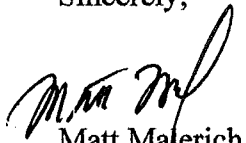

Per your letter, we are aware that portions of our lot are within 1,000 feet from a public, domestic water well that services the area and that the Department of Water has concerns of possible wastewater contamination to the public well as a result of our proposed residential development.

To address your concern, we will have our civil engineer determine if there are any portions of our lot that are beyond the 1,000 foot radius from the public well, which may be suitable for locating our Individual Wastewater System (IWS). If, through this process, we discover that we cannot locate our IWS beyond the 1,000-foot radius, then we understand that we may have to install an enhanced septic system to protect against groundwater contamination.

We will investigate your concerns and develop a solution in consultation with a qualified wastewater engineer and the State Department of Health, Wastewater Branch for a compliant IWS in accordance with their rules. We anticipate that the IWS will be designed after the approval of our CDUA by the State and prior to filing building permits with the County.

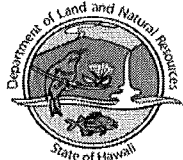
Thank you for your comments.

Sincerely,

  
Matt Malerich 

C: Sam Lemmo, OCCL  
Lori Vetter, State Department of Health, Kauai Branch

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

LAURA H. THIRLEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
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ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

February 25, 2009

Matt and Judy Malerich  
P.O. Box 1649  
Hanalei, Hawaii 96714

Log. No. 2009.0973  
Doc. No. 0902NM22  
Archaeology

Dear Mr. Malerich:

**SUBJECT: Chapter 6E-42 - Historic Preservation Review – CDUA and Draft EA for Single Family Residence  
Haena, Halelea District, Island of Kaua'i  
TMK: (4) 5-9-05: 025**

Given that Haena is rich in cultural resources, we will recommend that an archaeological inventory survey (AIS) be conducted. Burials and historic cultural deposits have been found in nearby parcels. For these reasons, an archaeological inventory survey is warranted. The Hawai'i State Preservation Division website contains a listing of local firms (<http://www.hawaii.gov/dlnr/hpd/archcon.htm>). We recommend archaeological consultants to contact us, *before* starting the work, in order to ensure that the study meets the requirements of HAR Chapter 13-276.

The wording for the condition of the CDUA will look something like the following for the archaeological inventory survey:

The AIS shall be conducted by a qualified archaeologist. A report documenting the archaeological work shall be submitted to the SHPD for review and approval. The report shall follow HAR Chapter 13-276, and at a minimum should include: (1) Detailed site/resource descriptions; (2) GIS maps: 1:24,000 scale project overview with site locations and zoomed-in version(s) showing site/resource locations, features, and site boundaries; (3) accurate UTM site/resource coordinates; (4) Stratigraphic profile scale drawings; (5) photographs (with scale) of features, diagnostic artifacts, etc. and site overviews (with cardinal direction); (6) functional analysis; (7) valid interpretations; (8) appropriate significance evaluation criteria; and, when possible (9) <sup>14</sup>C dates, float analysis, lithic analysis, etc.

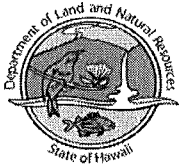
If significant historic sites are found, then proposed mitigation (*i.e.*, monitoring plan, burial treatment plan, data recovery plan, preservation plan) shall be submitted for review and approval. If you have any questions please call me at 808-692-8021.

Aloha,

A handwritten signature in cursive script that reads "Nancy A. McMahon".

Nancy McMahon, Archaeology Branch Chief  
State Historic Preservation Division

LINDA LINGLE  
GOVERNOR OF HAWAII



LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

February 28, 2009

Mr. Matt Malerich  
P. O. Box 1649  
Hanalei, Kaua'i

LOG NO: 2009.0974  
DOC NO: 0902WT64  
Archaeology

Dear Mr. Malerich:

**SUBJECT: Chapter 6E-8 Historic Preservation Review—  
Pre-Assessment Consultation Letter—  
Proposed Malerich Single Family Residence, CDUA and Draft  
Environmental Assessment, Hā'ena Ahupua'a, Halele'a District, Kaua'i  
Island, Hawai'i  
TMK (4) 5-9-05: 025**

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We are in receipt of your request for comments regarding the development of a Draft Environmental Assessment (DEA) for the property at TMK: (4) 5-9-05: 025, which we received on February 19, 2009.

This office has reviewed the Archaeological Assessment Survey report generated by Rechtman Consulting LLC (LOG NO: 2009.0984/DOC NO: 0902WT63). No historic properties were recorded. Therefore we find that there is **no historic properties affected**. Please reference this letter in any future correspondence. We look forward to reviewing the submittal of the Conservation District Use Application (CDUA) and the DEA upon completion.

Please contact Wendy Tolleson at (808) 692-8024 if you have any questions or concerns regarding this letter.

Aloha,

A handwritten signature in cursive script that reads "Nancy A. McMahon".

Nancy A. McMahon (Deputy SHPO)  
State Historic Preservation Officer

April 23, 2009

Nancy A. McMahon, Archaeology Branch Chief  
DLNR, State Historic Preservation Division  
601 Kamokila Blvd., Room 555  
Kapolei, HI 96707

**SHPD Log Nos. 2009.0973 & 0974**  
**SHPD Doc. Nos. 0902NM22 & 0902WT64**

**Re: Pre-Assessment Comments**  
**CDUA & Draft Environmental Assessment**  
**Proposed Malerich Single Family Residence**  
**TMK (4) 5-9-05: 025; Ha'ena, Kaua'i**

Dear Ms. McMahon,

Thank you for your comment letters dated February 25 and February 28, 2009 regarding our proposal to construct a new residence on our property in Ha'ena.

Your correspondence will be included with the Draft Environmental Assessment and the Conservation District Use Application.

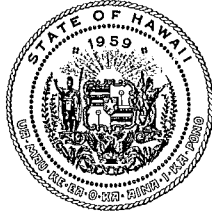
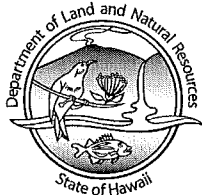
Sincerely,



Matt Malerich  
P.O. Box 1649  
Hanalei, HI 96714

C: DLNR, Office of Conservation & Coastal Lands

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

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ENGINEERING

FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:DH

Correspondence: KA-09-160

Matt Malerich  
P.O. Box 1649  
Hanalei, Hawaii 96714

MAR 30 2009

Dear Mr. Malerich,

**SUBJECT:** Proposed Single Family Residence (SFR) on Subject Parcel TMK: (4) 5-9-005:025, Haena, Island of Kauai

The Department of Land and Natural Resource (DLNR), Office of Conservation and Coastal Lands (OCCL) is in receipt of your letter, dated February 19, 2009, requesting pre-comments for the preparation of the Draft Environmental Assessment (DEA) for the proposed SFR on Subject parcel TMK: (4) 5-9-005:025, Haena District, Island of Kauai.

The OCCL notes the subject parcel appears to be located in the State Land Use (SLU) Conservation District, Limited subzone. Departmental records indicate that Conservation District Use Application (CDUA) KA-2746 was submitted and rejected for processing on December 14, 1994.

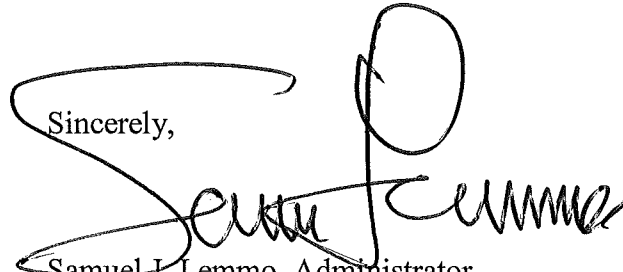
The OCCL notes that on December 5, 1996, the County of Kauai issued an Emergency SMA Permit (E)-97-03 to approve temporary shoreline protection for TMK's (4) 5-9-005:23-27 in the form of a sandbag revetment due to a high surf event. The OCCL notes that the immediate threat to the health and safety to the residents passed after the event. There has been sufficient time since the authorization of the issuance the permit by the County of Kauai to develop an alternative erosion control strategy. Therefore, the OCCL notes in the DEA and CDUA you should address the adherence to the conditions of the emergency SMA related to the shoreline, the temporary nature of the structure, and the development of an alternative erosion control strategy. The OCCL notes you should remove the temporary structure, or apply for a CDUA for permanent shore protection so this matter can be resolved.

The OCCL notes the proposed use is an identified land use in the Limited subzone, pursuant to Section 13-5-23, Hawaii Administrative Rules (HAR); L-6, SINGLE FAMILY RESIDENCES, D-1, "a single family residence in a floodplain or coastal high hazard area that conforms to applicable county regulations regarding the National Flood Insurance program and Single Family Residential standards as outlined in this chapter." However, the OCCL reminds you that all uses of Conservation District lands are subject to the discretion of the Board of Land and Natural Resources. The OCCL further notes that any application for the land would be subject to a Shoreline Certification and adequate shoreline setback.



Should you have further questions please contact Dawn Hegger of the Office of Conservation and Coastal Lands staff at 587-0380.

Sincerely,



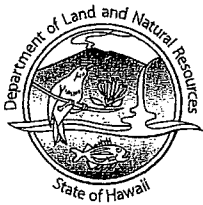
Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

c: KDLO  
Kauai County Planning Department

LINDA LINGLE  
GOVERNOR OF HAWAII



LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

May 27, 2008

Ref: KA-302

Mr. Ian K. Costa  
Director of Planning  
County of Kauai  
Planning Department  
4444 Rice Street  
Kapule Building, Suite A473  
Lihue, Kauai, Hawaii 96766-1326

Dear Mr. Costa,

Subject: Sandbag revetment for property situated at 7820 Kuhio Highway, Hanalei, Kauai, TMK (4) 5-9-005:027, Catherine Bartmess Trust, Owner.

The Department of Land and Natural Resources (Department) requests your assistance in determining the status of the sandbag revetment, located seaward of the proposed certified shoreline. A recent application for shoreline certification on the subject parcel requires we confirm the status of the permits. On December 5, 1996, the County of Kauai issued an emergency SMA permit, SMA (E)-97-03, approving temporary shoreline protection for TMK's (4) 5-9-005:023-027 including the property described above. The Department is concerned that the subject structure has surpassed the temporary emergency nature and is concerned with the adherence to conditions 2, 5 and 7 of the emergency SMA related to the shoreline and the temporary nature of the structure. Based on this the Department concludes that the revetment is now unauthorized, due to the expiration of the temporary approval granted by the emergency SMA permit.

The Department requests that the County provide a determination on the validity of the subject revetment and the emergency SMA permit. If the Department does not receive a determination by June 15th, 2008, the permit will be presumed to be invalid and the revetment as unauthorized.

If you have any questions, please contact Ian Hirokawa, Project Development Specialist, at (808) 587-0420. Thank you.

**BILL "KAIPO" ASING**  
MAYOR

**GARY K. HEU**  
ADMINISTRATIVE ASSISTANT



**COUNTY OF KAUA'I**  
PLANNING DEPARTMENT  
4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUA'I, HAWAII 96766-1326

TELEPHONE: (808) 241-6677 FAX: (808) 241-6699

**IAN K. COSTA**  
DIRECTOR OF PLANNING  
**RECEIVED**  
**LAND DIVISION**

**2008 AUG - 4 10:40**  
**IMAICALANI P. AIU**  
DEPT. DIRECTOR OF PLANNING

**DEPT. OF LAND &  
NATURAL RESOURCES**  
**STATE OF HAWAII**

July 30, 2008

Mr. Morris M. Atta, Administrator  
State of Hawaii,  
DLNR, Land Division  
P.O. Box 621  
Honolulu, Hawaii 96809

**Subject: Special Management Area Emergency Permit SMA (E) 97-03  
and Shoreline Setback Variance  
Temporary Shoreline Protection Measures  
TMK 5-9-005:023 - 027  
Kuhio Highway, Haena, Kauai, Hawaii**

**Reference: DLNR, Land Div. letter dated May 27<sup>th</sup>, 2008 (ref: KA-302)**

Dear Mr. Atta,

Please be advised the Planning Department's position is that the referenced permits are and remain valid until a formal notice to rescind or revoke the permits is issued by our Department.

It is the Department's intent to put the applicants on notice that condition 5 (temporary until acceptable permanent measures...), condition 6 (temporary convert to permanent...) and/or condition 8 (... the applicant shall submit a report prepared by a qualified professional, containing an assessment of the projects effectiveness, impacts on the shoreline, and recommendations for additional action.) be addressed and submitted to the Department for review and processing, which may also require approval by the Kauai Planning Commission.

As for condition 2 (placement inland of shoreline), the applicant is responsible, as indicated in condition 9, to secure all necessary permits from other agencies, as required. If the toe of the sand bags extended seaward of the shoreline, it may have been due to the site conditions/slope design circumstances and DLNR should have been notified by the owner/applicant for proper authority/permits. A site inspection was conducted by Planning Dept. staff on June 13, 1997 and noted the sand bag placement had been completed to the specifications of the approved permit documents.

Mr. Morris M. Atta, Administrator

Page 2

July 30, 2008

Please feel free to contact Leslie Milnes (CZM Inspector), or Lisa-Ellen Smith (CZM Planner) at 241-6677, should you have any further questions.

Malama Pono,

A handwritten signature in black ink, appearing to read 'Ian K. Costa', written over a horizontal line.

IAN K. COSTA  
Planning Director

cc. Office of the Mayor  
Leslie P. Milnes, CZM Planning Inspector  
Ms. Mary M. Cooke, Etal

April 23, 2009

Sam Lemmo, Administrator  
DLNR, Office of Conservation and Coastal Lands  
P.O. Box 621  
Honolulu, HI 96809

**Attention: Dawn Hegger, Staff Planner**

**Re: Proposed Malerich Single Family Residence (SFR)  
OCCL Correspondence: KA-09-160  
TMK (4) 5-9-05: 025  
Ha'ena, Kaua'i, Hawai'i**

Dear Mr. Lemmo & Ms. Hegger,

Thank you for your letter dated March 30, 2009 regarding our proposal to construct a residence on our property in Ha'ena.

In your correspondence you note that the proposed use is an identified land use in the Limited Subzone, pursuant to Section 13-5-23, Hawaii Administrative Rules (HAR); L-6, SINGLE FAMILY RESIDENCES, D-1.

Regarding the conditions of the existing SMA permit, SMA (E) 97-3 - - we are currently collaborating with the other four landowners whose properties are bounded by the sandbag revetment. Bob Downs, co-owner of TMK (4) 5-9-05: 024, which is located to the west of our parcel, is spearheading this effort and has been communicating with the County of Kauai, Planning Department (see attached correspondences dated November 13, 2008 and March 10, 2009). To this end, the group of five owners have retained a coastal engineer, Elaine Tamaye of EKNA Services, Inc., and Ron Wagner, a professional surveyor, to conduct an assessment of the shoreline interface and the littoral cell in an attempt to quantify what effects the sand bags may be having on beach processes. The assessment survey will monitor seven separate beach profiles, which will be surveyed at regular intervals three times each year. Three of the profiles will span the five subject properties and two profiles each will be on the east and west sides of the sand bag revetment, approximately equidistance apart. The profiles will extend from the top of the escarpment to the toe of the beach. Wagner Engineering gathered the initial data set for this study between February 3<sup>rd</sup> and February 6<sup>th</sup> of this year. Once the study gathers sufficient data to develop statistical confidence, our consultants will offer their assessment and recommendations for action.

Our parcel is the centermost of the parcels that are bounded by the sand bag revetment. The Conservation District Use Application (CDUA) and Draft Environmental Assessment that we are submitting will not seek permit approval or any manner of justification for retention of the sandbags. Rather, our CDUA and Draft EA will address the construction of a new residence on our property and will propose a shoreline setback of 50 feet, which is based upon the average depth of our lot, consistent with the recently adopted County of Kauai Ordinance No. 863 regulating "Shoreline Setback and Coastal

Protection". As a result, our proposed residence will be located approximately 40 feet further inland than the two older, existing homes on either side of our property.

We have been provided with copies of an approved Shoreline Certification dated September 29, 2008 and a CDUP dated August 8, 2008 authorizing development of a Single Family Residence on the Bartmess property (TMK (4) 5-9-05: 027). The Bartmess property is located two lots east of our property and is one of the five parcels fronting the revetment. We understand that the issue of the sandbag revetment came up in both the shoreline certification and CDUP processes relative to the Bartmess parcel and that the relevant agencies (DLNR and the County of Kauai) decided to allow the Bartmess application and the revetment permitting issues to proceed on separate tracks. We request that our applications be treated in a manner consistent with the Bartmess application in this regard. It is also our understanding that, at the time the Bartmess applications were in the permitting process, the 5 owners had not yet initiated the cooperative effort to obtain scientific data to assist them and the agencies in making appropriate decisions relative to the sandbag revetment. We feel strongly that the long-term permitting concerns surrounding the existing SMA permit (E) 97-3 and the sandbag revetment can and should be treated under their own, separate permitting process, which should continue to involve all of the impacted parcel owners. Permits for the sandbag were issued comprehensively for the five contiguous parcels and the revetment was engineered, approved and constructed as a single structure. Hopefully, the statistical monitoring, which is now underway, will guide us all toward the adoption of a reasonable and sustainable solution for the sandbags that will balance the interests of the private property owners with those of the public, the county and the state.

On behalf of my wife Judy, and myself, thank you for your time and consideration of our proposal. We look forward to your further input.

Sincerely,



Matt Malerich

cc: Kauai County Planning Department

Sharon Carroll  
Robert Downs  
16350 Matilija Drive  
Los Gatos, CA 95030  
408-399-1527

November 13, 2008

Ian K. Costa  
Planning Director  
County of Kaua'i  
Kapule Building, Suite A473  
4444 Rice Street  
Lihue, Hawai'i 96766-1326

Re: Special Management Area Emergency Permit SMA (E) 97-03 and Shoreline Setback Variance; TMK Nos.: 5-9-005: 023 through 027

Dear Mr. Costa:

I have volunteered to coordinate the efforts of the owners of the five oceanfront parcels in Haena identified as Tax Map Key Numbers 5-9-005: 023, 024, 025, 026, and 027 to address the issues and concerns relative to the sand bag revetment on the makai portions of these lots. As you are aware, the placement of these sand bags was authorized by the above-referenced SMA Emergency Permit and Shoreline Setback Variance and by a related right of entry from the State.

In your letter of August 11, 2008, you asked the owners to address certain conditions in the SMAEP and SSV. Because the sand bags form a continuous revetment along the makai portions of the five lots, we believe a coordinated approach to these issues is preferable. Further, we believe that our responses to your inquiries and our efforts to address the concerns you raise should be guided by a more specific and complete assessment of the effectiveness of the sand bags and any impacts on the shoreline and coastal environment. We intend to develop this information with the assistance of qualified professionals.

To this end, we have retained Elaine Tamaye of EKNA Services, Inc., and Ron Wagner, a professional surveyor, to conduct an assessment of the shoreline environment to determine what effects, if any, the sand bags may have had on beach processes. We have been advised that the assessment we request will require measurements at different seasons and \$15,900 dollars for a baseline study. Our consultants have also recommended follow-up assessments every year to assess the potential impact of the sandbags on the beach. Our consultants will give us their assessment and recommendations for action once their study reaches the point where they have some confidence in the results.

We request an extension of time to April 30, 2009, to submit our consultants' initial assessment and recommendation. This assessment should meet the requirements of Condition 8.

Based on the results of the consultants' assessments, we can evaluate how best to proceed with Conditions 5 and 6. In other words, the results of the assessments will help us determine what shoreline protection measures are appropriate in the longer term. This will, in turn, guide us in determining what permits are required.

With respect to Condition 7, what we have done in the past to protect and maintain the shoreline protection measures is to periodically cover the sand bags with sand. This action shields the bags from harmful solar radiation and from vandalism. We would like to continue this maintenance activity and hereby request that we be authorized to re-cover the bags.

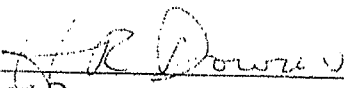
Our house and the one on parcel 26 were legally built more than fifty years ago. These houses would be put at risk if the sandbags were removed.

We note that your department has concluded that the permits are in full force and effect unless and until formal action is taken by the County to rescind or revoke the permits (your letter to Morris Atta dated July 30, 2008). We request that you allow us to conduct appropriate professional assessments and to make requests and applications based on the results of these studies.

Please contact me if you have questions.

Sincerely,

Robert Downs and Sharon Carroll  
(Owners of Parcel 24)

By   
Robert Downs

cc: Heather and Jonathan Ive (Parcel 23)  
Judy and Matt Malerich (Parcel 25)  
Troy Eckert (Parcel 26)  
Catherine and Russ Bartmess (Parcel 27)

Ian K. Costa



Sharon Carroll  
Robert Downs  
16350 Matilija Drive  
Los Gatos, CA 95030  
408-399-1527

March 10, 2009

Ian K. Costa  
Planning Director  
County of Kaua'i  
Kapule Building, Suite A473  
4444 Rice Street  
Lihu'e, Hawai'i 96766-1326

Re: Special Management Area Emergency Permit SMA (E) 97-03 and Shoreline Setback Variance; TMK Nos.: 5-9-005: 023 through 027

Dear Mr. Costa:

This letter will follow up on my letter to you dated November 13, 2008. Please consider this an interim status report under SMA (3) 97-03.

As stated in the November 13, 2008, letter, the owners of the five parcels which have the sandbag revetment along the makai portions of the lots have retained professional surveyor Ron Wagner and coastal engineer Elaine Tamaye of EKNA Services. We have paid both consultants and they have commenced work.

Ms. Tamaye is recommending that seven (7) separate beach profiles be surveyed three (3) times a year. Three (3) of the profiles will span the five subject properties and two (2) profiles each on the east and west sides, about equidistance apart. Profiles 1 and 2 are on opposite sides of Manoa Stream. The profiles will extend from the top of the escarpment to the toe of the beach. We will keep you informed of the progress and results of this work.

Two of the parcels have changed ownership. The new owners are:

TMK 5-9-005: 023

Formerly: Jonathan and Heather Ive  
Now: Neal A. Norman

TMK 5-9-005: 025

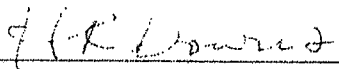
Formerly: Sally Ann Moragne Mist Trust  
Now: Matthew M. and Judith E. Malerich Trust

It remains our hope that we will be able to develop scientific data to assist the owners and the responsible agencies in deciding how best to proceed.

Please contact me if you have questions.

Sincerely,

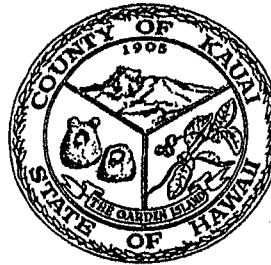
Robert Downs and Sharon Carroll  
(Owners of Parcel 24)

By   
Robert Downs

cc: Neal A. Norman (Parcel 23)  
Judy and Matt Malerich (Parcel 25)  
Troy Eckert (Parcel 26)  
Catherine and Russ Bartmess (Parcel 27)

Atch: Nov 13, 2008 Letter

**BERNARD P. CARVALHO, JR.**  
MAYOR



**IAN K. COSTA**  
DIRECTOR OF PLANNING

**GARY K. HEU**  
ADMINISTRATIVE ASSISTANT

**IMAIKALANI P. AIU**  
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUA'I  
PLANNING DEPARTMENT**

4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUA'I, HAWAII 96766-1326

TEL (808) 241-6677 FAX (808) 241-6699

April 16, 2009

Robert Downs and Sharon Carroll  
16350 Matilija Drive  
Los Gatos, CA 95939

Subject: Special Management Area Emergency Permit SMA (E) 97-03 and Shoreline  
Setback Variance; Tax Map Key 5-9-005:023 through 027  
Ha'ena, Kaua'i

RE: Status letter received

Dear Mr. Downs and Ms. Carroll,

Thank you for your undated letter, received by the Planning Department November 13, 2008. We recognize your need to conduct professional assessments so that you may meet the conditions of your emergency permit issued in 1997 and grant your request for an extension of time until June 30, 2009; this additional time is to address all of the conditions of the permit highlighted in the Department letter of August 8, 2008 and submit applications for permit(s).

The Department looks forward to receiving the assessment with recommendations by you or your consultant post June 30, 2009, but no later. A Letter of Authorization is necessary from all property owners confirming your stated efforts to coordinate and address the issues and concerns regarding the temporary permit.

Condition 1 a. of the permit can be used to address your periodic covering of the sandbags with a *legally approved source of beach compatible sand*. In an effort to maintain the revetment with a sand covering, ensure that a gradual shoreline is created on all sides including the flanking ends. It was noted that maintenance, sometime in the past, has included pushing of sand by mechanical means in the beach front area in front of the temporary revetment. The Department of Land and Natural Resources, Office of Coastal and Conversation Lands has jurisdiction over all sand replenishment and/or redistribution of beach front sand. Your continued interaction with the DNLR, OCCL is paramount to this process in either case of imported sand or beach sand redistribution.

Page 2  
April 16, 2009  
Robert Downs and Sharon Carroll

Please call Lisa Ellen Smith at (808) 241-6677, our assigned project planner to discuss any questions you have.

A handwritten signature in black ink, appearing to read "Ian K. Costa", written over a circular stamp or mark.

IAN K. COSTA  
Planning Director

cc: IVE Revocable Trust 5-9-005-023  
Harold R. Downs 5-9-005-024  
Sally A. M. Mist Trust 5-9-005-25  
Troy Eckert 5-9-005-026  
Catherine M. Bartmess, Trustee 5-9-005-027  
Mary M. Cooke, et al.



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT  
FORT SHAFTER, HAWAII 96858-5440

March 23, 2009

Regulatory Branch

File No. POH-2009-103

Matt and Judy Malerich  
P.O. Box 1649  
Hanalei, Hawai'i 96714

Dear Mr. and Mrs. Malerich:

This letter is in response to your request, received February 19, 2009, for early consultation comments on the preparation of the Draft Environmental Assessment (DEA) for the **Malerich Single Family Residence CDUA** located in Haena, Kauai, Hawaii.

Based on the information you provided, we are unable to verify whether waters of the United States exist within the project area and if so, the extent of our geographical jurisdiction. In general, the U.S. Army Corps of Engineers (Corps) asserts jurisdiction over traditional navigable waters (TNWs) (e.g., Pacific Ocean), under Section 10 of the Rivers and Harbors Act (RHA) of 1899; wetlands adjacent to TNWs, non-navigable tributaries that have perennial flow or continuous seasonal flow, and wetlands directly abutting such tributaries. For other types of waters, including those that do not have relatively permanent flows, as well as any wetlands adjacent to such tributaries, we must determine jurisdiction on a case-by-case basis using a fact-specific analysis to assess the flow characteristics and functions of the tributary and its adjacent wetlands to determine if in combination they significantly affect the chemical, physical, and biological integrity of downstream navigable waters, particular emphasis being given to hydrological and ecological factors.

We recommend your DEA identify all streams and wetlands on the project site and in the immediate vicinity of the proposed project, characterize the hydrology and ecology of those features, and provide a description of all ground-disturbing activities associated with the project construction occurring on the project site. Thank you for the opportunity to comment. If you have any questions, please contact Ms. Meris Bantilan-Smith, of my staff at 808-438-7701 (FAX: 808-438-4060) or by electronic mail at [Meris.Bantilan-Smith@usace.army.mil](mailto:Meris.Bantilan-Smith@usace.army.mil). Please include File No. POH-2009-103 in any future correspondence regarding this project.

Sincerely,

A handwritten signature in black ink, appearing to read "George P. Young".

George P. Young, P.E.  
Chief, Regulatory Branch

April 23, 2009

George P. Young, P.E.  
Chief, Regulatory Branch  
Department of the Army  
U.S. Army Engineer District, Honolulu  
Building #230  
Fort Shafter, HI 96858-5440

**Re: Pre-Assessment Comments  
CDUA & Draft Environmental Assessment  
Proposed Malerich Single Family Residence  
TMK (4) 5-9-05: 025; Ha`ena, Kaua`i**

Dear Mr. Young,

Thank you for your comment letter dated March 23, 2009 regarding our proposal to construct a new residence on our property in Ha`ena.

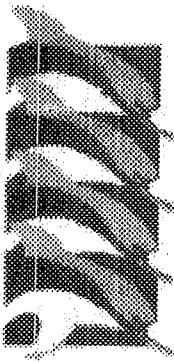
There are no streams, rivers, estuaries, wetlands or other classified waters of the United States within the proposed residential project area. Grading and grubbing associated with the residence will be minimized and will occur primarily in the vicinity of the footprint of the home, for the lower level garage and storage area, for the access driveway and for the Individual Wastewater System (IWS).

The Draft Environmental Assessment (DEA) will be published in early April and will contain maps and other pertinent site-specific information that will aid you and your department in reviewing the proposed project. We welcome your further input after you have reviewed the DEA.

Sincerely,

  
Matt Malerich

C: Sam Lemmo, OCCL



Hanalei-Ha'ena Community Association  
Post Office Box 789  
Hanalei, HI 96714

February 24, 2009

Matt and Judy Malerich  
P.O. Box 1649  
Hanalei, HI 96714

Re: Malerich Single Family Residence CDUA and EA (TMK 4-5-9-05:025)

Aloha Matt and Judy,

Thank you for soliciting the comments of the Hanalei-to-Ha'ena Community Association in connection with your proposal to construct a single-family residence in the Ha'ena Conservation District at TMK 4-5-9-05:025.

Our primary concerns at this time are related to preserving shoreline access for the community and maintaining the residential characteristics of the area. Therefore, we request that both the Conservation District Use Application and the Environmental Assessment clearly state the following:

1. The shoreline setback associated with the proposed project will comply with the requirements of Kauai Shoreline Setback Ordinance No. 863;
2. No shoreline hardening, sandbags or other structures will be allowed to artificially fix the shoreline during the life of the residence and related development;
3. No fencing will be installed within 40 feet of the shoreline, consistent with the Kauai Shoreline Setback Ordinance;
4. The approval of any development will be conditioned on providing and maintaining an easement that will ensure safe lateral access for people traversing the beach in front of this property during the life of the residence and related development;
5. The portion of the property that is makai of the certified shoreline will be kept cleared of naupaka and any other salt-tolerant, artificially-induced plantings;
6. No commercial uses, including transient vacation rentals, will be permitted on the property;
7. The conditions cited above will be incorporated into the conditions for project approval and the deed for the property, and will be recorded with the Bureau of Conveyances.

When the Draft EA and CDUA application are complete, we would appreciate receipt of two copies so that we can review and comment on those documents.

Thank you again for including the HHCA in the review process.

Carl Imperato  
President, Hanalei-to-Ha'ena Community Association

April 23, 2009

Carl Imparato, President  
Hanalei-to-Ha'ena Community Association  
P.O. Box 789  
Hanalei, HI 96714

**Re: Pre-Assessment Comments  
CDUA & Draft Environmental Assessment  
Proposed Malerich Single Family Residence  
TMK (4) 5-9-05: 025; Ha'ena, Kaua'i**

Dear Mr. Imparato,

Thank you for your comment letter dated February 24, 2009 on our proposal to construct a new residence on our property in Ha'ena. I will respond to each of your numbered requests in sequence:

1. **Shoreline Setback** - - the proposed shoreline setback for our residence is 50-feet from the certified shoreline. The proposed setback is in strict compliance with the requirements of the recently adopted Kauai Shoreline Setback Ordinance No. 863.
2. **Shoreline Hardening** - - As you are probably aware, there is an existing sandbag revetment along the seaward edge of our property. The sandbags border a total of 5 properties, ours is centermost of these parcels. The Conservation District Use Application (CDUA) and Draft Environmental Assessment that we are preparing will not seek permit approval for retention of the sandbags. Rather, the CDUA and Draft EA will address the construction of a new residence on our property. We believe that the long-term permitting issues surrounding the sandbag revetment should be treated under a separate permitting process with an associated environmental assessment, which process should involve all of the parcel owners. Permits for the sandbag were issued comprehensively for the five contiguous parcels and the revetment was engineered, approved and constructed as a single structure. Therefore, any assessment of the revetment and any decision to retain or remove the sandbags should be made with notice to and participation from all of the affected owners. Currently statistical monitoring of the shoreline and littoral beach cell are under way in order to develop a comprehensive science-based understanding of the entire littoral cell so as to better quantify what effect, if any, the revetment is having upon the seasonal dynamics of the beach. Once again, our CDUA and the accompanying Environmental Assessment will not propose to address or justify the retention or removal of the sandbags.
3. **Shoreline Setback for Fencing** - - we are not proposing any fencing to within less than 40 feet of the certified shoreline.



4. **Lateral Beach Access** - - a considerable portion of our property is located makai of the proposed shoreline survey. This area of our parcel has been and will continue to be available for public use, including but not limited to public access traversing the beach. We do not believe therefore, that it is necessary or appropriate to grant a public access easement over that portion of the property which is makai of the shoreline.
5. **Shoreline Vegetation** - we have not planted or removed, nor do we intend to plant or remove vegetation makai of the shoreline.
6. **Commercial Use** - - It is our understanding that the Board of Land & Natural Resources (BLNR) typically prohibits commercial uses, including transient vacation rental use, as a condition of CDUA permit approval. We will defer to the Board's decision in such matters.
7. **CDUA Conditions** - - Conditions imposed by the BLNR in the issuance of a CDUA permit will be recorded as deed restrictions with the Bureau of Conveyances.

Per your request, we will furnish you with two copies of the Draft EA and CDUA. We look forward to any further comments that you may have on the proposed project. We anticipate that the Draft EA will be published in early April. Thank you for your time in reviewing and commenting on our project.

Sincerely,



Matt Malerich  
P.O. Box 1649  
Hanalei, HI 96714

C: DLNR, Office of Conservation & Coastal Lands



SIERRA Club Kaua'i Group of the Hawai'i Chapter  
Post Office Box 3412, Lihue, Kauai, Hawai'i, 96766

March 4, 2009

Matt and Judy Malerich  
P.O. Box 1649  
Hanalei, HI 96714

Re: Malerich Single Family Residence CDUA and EA (TMK 4-5-9-05:025)

Aloha Matt and Judy,

The Kaua'i Group of the Sierra Club appreciates the opportunity to provide preliminary comments on your proposal to construct a single-family residence in the Ha'ena Conservation District at TMK 4-5-9-05:025.

Our primary concern is the protection of public resources and the public's access to and along the beach that fronts this property.

Parcel 4-5-9-05:025 is one of five parcels on which a temporary sandbag revetment, which has been in place since 1996, has prevented the natural littoral processes from establishing the natural shoreline for 12 years and has affected the adjacent public beach. For the reasons that are outlined below, we believe that the revetment issue must be resolved before any CDUA can be considered.

1. The sandbag revetment that fronts this parcel has exceeded its authorized life.

The County of Kaua'i issued SMA Emergency Permit (SMA (E)-97-03) on Dec. 5, 1996 for the installation of a sandbag revetment at parcels (4) 5-9-005:023-027 in the State Conservation District of Ha'ena. Condition #5 of that permit states that "*[t]he emergency shoreline protection measures shall be temporary [emphasis added] until acceptable permanent measures, which may include relocation of the structures, are approved through normal permitting procedures...*"

The State of Hawai'i issued a permit one week later, on Dec 12, 1996, for the same parcels. The pertinent condition of that permit states that "*[t]he expiration date shall be December 12, 1997; The permittee during the one year timeframe for this authorization shall prepare a shoreline survey and work to resolve the shoreline emergency through the appropriate permitting process:*"

2. The sandbag revetment that fronts this parcel is detrimental to the public interest.

Instead of being removed after one year, the sandbag revetment, which was constructed seaward of the May 24, 1984 certified shoreline, has repeatedly been reinforced over the past 12 years through sand pushing. The large amounts of sand that have been pushed from the lower areas of the beach to reinforce the revetment have increased the steepness of the beach and have diminished the size of the beach, leading to a lack of lateral access during high tides and surf.

Allowing the sandbag revetment to remain would also lead to further beach loss and would lead to an unacceptable loss of public access along the Ha'ena shoreline, one of the community's and state's most valuable resources.

The DLNR has correctly recognized the problem created by this temporary, emergency revetment. In its July 28, 2008 correspondence (CORR: KA-08-248) to neighboring property owners Carroll and Downs, the DLNR denied the request for another round of sand pushing for this revetment. The DLNR noted that *"sand pushing/scraping can destabilize the beach profile and actually increase beach loss and coastal land loss. This can, in some cases increase the steepness of the beach profile and accelerate erosion processes."*

In addition, the project area is used by endangered Hawaiian monk seals, which rely on this area's habitat for survival. The temporary sand bag revetment interferes with that critical habitat. The beach fronting the revetment has narrowed since the sandbag revetment has been in place, with the beach profile becoming steeper and steeper, making it impossible for monk seals to haul out and rest in what has been traditional monk seal habitat.

3. The true location of the shoreline is masked by the sandbag revetment, to the detriment of the public beach.

The removal of the existing temporary revetment must be a precondition for the approval of any permits and any shoreline certification, as the natural shoreline needs to be established in the absence of the revetment, prior to siting any development.

No new permanent structure, including your proposed development, can be properly sited as long as the temporary revetment is in place. A shoreline setback based on a shoreline certification in the presence of that revetment would not achieve its purpose of providing an adequate buffer zone against future erosion, as it would be predicated on a false shoreline that is unnaturally seaward due to the armoring of the shoreline and likely would lead to the need for permanent armoring resulting in beach loss. We believe that the public interest in protecting public access along Ha'ena's beaches will inevitably require that the community take a firm stand against any proposals for permanent hardening (revetments, seawalls, etc.) of the shoreline.

The Final Environmental Assessment for the neighboring Bartmess property states that *“the fact that the sandbags are exposed on a regular basis during the winter season demonstrates that the sandbags (or other form of shoreline protection) are necessary to prevent the high shoreline embankment from suffering erosion damage and collapse.”*

In fact, portions of the revetment broke up during last winter's winter swells, with sandbags dislodged from the revetment and trapped within the reef and rocks resulting in environmental degradation of Ha'ena's Conservation District. It would certainly be imprudent to construct a new house where erosion and the hazards of collapse are known.

---

In conclusion, the key issues that must be acknowledged in the CDUA and EA are that the existing revetment is a temporary structure, that no permanent structures will be allowed to harden the shoreline in order to protect the proposed development, and that resolution of the revetment issue must therefore precede any consideration of the CDUA.

Public access and public resources, as well as the proposed development, can only be protected by following the proper procedures:

- Removing the temporary sandbag revetment;
- Allowing the natural littoral processes sufficient time to re-establish the location of the shoreline;
- Certifying that location and determining the shoreline setback from that location, consistent with the state and county shoreline setback requirements.

Neither the CDUA nor the EA can be legitimate unless they acknowledge that the structure must be removed prior to the determination of the location of the shoreline and prior to any construction.

Please be assured that it is not our intent to prevent the construction of a residence on your parcel. Rather, it is our intent to ensure that any construction is done in a manner that protects the public interest, the environment, and any development on the parcel. We believe that this can be achieved through the process outlined above.

We would appreciate receiving a copy of the Draft EA and CDUA application when complete, for our review and comment.

Sincerely,



Caren Diamond, on behalf of the Kauai Group of the Sierra Club

April 23, 2009

Caren Diamond  
Sierra Club, Kauai Group of the Hawaii Chapter  
P.O. Box 3412  
Lihue, HI 96766

**Re: Pre-Assessment Comments  
CDUA & Draft Environmental Assessment  
Proposed Malerich Single Family Residence  
TMK (4) 5-9-05: 025; Ha'ena, Kaua'i**

Dear Ms. Diamond,

Thank you for your comment letter dated March 4, 2009 on our proposal to construct a new residence on our property in Ha'ena. I will respond to each of your numbered comments in order:

1. **Existing Sandbag Revetment (SMA Permit (E)-97-3)** - - The Conservation District Use Application (CDUA) and Draft Environmental Assessment that we are preparing does not seek permit approval for removal or retention of the sandbags. Rather, the CDUA and Draft EA is specific to the proposed construction of a new residence on our property - - this is an identified land use for the Limited Subzone of the State Land Use Conservation District per Chapter 13-5 Hawaii Administrative Rules (HAR).

It is our position that the long-term permitting issues surrounding the sandbag revetment should be treated under a separate permitting process, which should involve all of the impacted parcel owners. Permits for the sandbag were issued comprehensively for the five contiguous parcels and the revetment was engineered, approved and constructed as a single structure. Therefore, any assessment of the revetment and any decision to retain or remove the sandbags should be made with notice to and participation from all of the affected owners.

As recently as July 30, 2008 the County of Kauai, Planning Department stated in its letter to Morris Atta, Administrator of the State DLNR, Land Division that the County's position relative to the sandbag revetment is "*that the referenced permits are and remain valid until a formal notice to rescind or revoke the permits is issued by our Department*". Together with our neighbors, our legal counsel and a qualified coastal geologist, we are working with the County to address the SMA permit conditions. Statistical monitoring of the shoreline and littoral beach cell are under way in order to develop a comprehensive, science-based understanding of the entire littoral cell so as to better quantify what effect, if any, the revetment is having upon the seasonal dynamics of the beach.

2. **Impacts of Sandbag Revetment** - - Up until very recently, the impact that the sandbag revetment may be having upon the beach in Haena has not been studied or quantified. Therefore, at this time, there is no statistical evidence to support your

opinion that the size of the beach has been diminished by the sandbags. The historical aerial photos are very inconclusive in this regard. According to our consultant, some of the more recent photos (following construction of the revetment) show the beach toe to be further seaward than in years prior. It is fair only to say that this is a very dynamic reach of coastline and that more analysis is needed in order to draw any meaningful conclusions. As stated earlier, statistical monitoring of the shoreline and littoral beach cell are now under way in an effort to develop a more comprehensive, science-based understanding of the entire littoral cell. This will help us to better quantify what effect, if any, the revetment is having upon the seasonal dynamics of the beach.

The sand pushing carried out in the past does not “reinforce” the sandbags as you opine. Rather, it covers the bags to reduce sun damage to the fabric, to prevent vandalism and to improve aesthetics for beachgoers. Nonetheless, the DLNR has denied the recent request for sand pushing on the basis that doing so will skew the statistical analysis which is now underway.

Regarding the monk seals, there is no evidence that the sandbags are affecting the behavior or the survival prospects of the monk seals. Specifically, our proposal, which is for the construction of a residence, to be set back 50 feet from the shoreline, well beyond the monk seals’ beach habitat, will not have an impact upon their habitat or survival.

3. **Shoreline Location** - - Since we are proposing to comply with the setback guidelines set forth in the County of Kauai Shoreline Setback Ordinance No. 863, we do not agree with your opinion that the existing temporary sandbag revetment must be removed as a pre-condition for any building permit(s) and/or shoreline certification. The proposed Moragne/Bartmess residence on TMK parcel (4) 5-9-05: 027 was recently approved without any such precondition. Wagner Engineering is currently in the process of securing a shoreline certification through the State for our parcel. Once the shoreline is certified, our home will be setback according to the guidelines established in Ordinance No. 863. Upon this basis, we are proposing a 50-foot setback, which will place our residence further mauka than the existing homes on either side.

The proposed construction of a new residence on our property is an identified land use for a Limited Subzone of the State Land Use Conservation District per Chapter 13-5 Hawaii Administrative Rules (HAR). We anticipate and understand that in reviewing and approving our permit, the BLNR will likely impose a condition that the shoreline cannot be hardened (to protect our residence) for the life of the structure. This is a condition that we are willing to comply with and a risk that we have considered in purchasing the property and siting our home. We understand and accept that this may require that the sandbags be removed at some point in the future. However this should not prevent us from building a home on our property as you suggest.

In closing, while we appreciate and share your concerns regarding protection of the beach resources, we feel that your recommendation, that we should not be able to build our home until the sandbag issue is resolved, is unjustifiable. By siting the home 50

feet from the certified shoreline we are adopting an adequate buffer to protect our development from the cumulative effects of shoreline erosion.

Sincerely,



Matt Malerich



C: Sam Lemmo, OCCL

# APPENDIX 5

## Documentation Relating to Sandbag Revetment & Special Management Area Use Permit SMA (E) 97-03

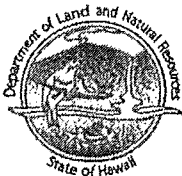
- Inquiry dated May 27, 2008 from DLNR, Land Division to County of Kauai, Planning Dept. re. Status of SMA (E) 97-03 (2 pages)
- Reply to DLNR, Land Division dated July 30, 2008 from County of Kauai, Planning Dept. re Status of SMA (E) 97-03 (2 pages)
- Ltr. dated Nov. 13, 2008 to County Planning Dept. re SMA (E) 97-03 and Collaborative Efforts of Impacted Parcel Owners to Monitor and Quantify Impacts of Sandbag Revetment (2 pages)
- Status Report dated March 10, 2009 to County Planning Dept. re SMA (E) 97-03 & Shoreline Monitoring Study (3 pages)
- Ltr. Response dated April 16, 2009 from County Planning Dept. re SMA (E) 97-03 & Shoreline Monitoring Study (2 pages)
- Ltr. dated July 7, 2009 from County of Kauai Planning Dept. granting a time extension for SMA (E) 97-03 until December 31, 2009 and outlining permit conditions (3 pages)
- Interim Report of Beach Profile Surveys, dated June 18, 2009 from EKNA Services, Inc. for Sandbag Revetment fronting Parcels 23 to 27 (8 pages)



LINDA LINGLE  
GOVERNOR OF HAWAII



LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

May 27, 2008

Ref: KA-302

Mr. Ian K. Costa  
Director of Planning  
County of Kauai  
Planning Department  
4444 Rice Street  
Kapule Building, Suite A473  
Lihue, Kauai, Hawaii 96766-1326

Dear Mr. Costa,

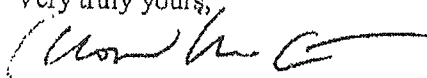
Subject: Sandbag revetment for property situated at 7820 Kuhio Highway, Hanalei, Kauai, TMK (4) 5-9-005:027, Catherine Bartmess Trust, Owner.

The Department of Land and Natural Resources (Department) requests your assistance in determining the status of the sandbag revetment, located seaward of the proposed certified shoreline. A recent application for shoreline certification on the subject parcel requires we confirm the status of the permits. On December 5, 1996, the County of Kauai issued an emergency SMA permit, SMA (E)-97-03, approving temporary shoreline protection for TMK's (4) 5-9-005:023-027 including the property described above. The Department is concerned that the subject structure has surpassed the temporary emergency nature and is concerned with the adherence to conditions 2, 5 and 7 of the emergency SMA related to the shoreline and the temporary nature of the structure. Based on this the Department concludes that the revetment is now unauthorized, due to the expiration of the temporary approval granted by the emergency SMA permit.

The Department requests that the County provide a determination on the validity of the subject revetment and the emergency SMA permit. If the Department does not receive a determination by June 15th, 2008, the permit will be presumed to be invalid and the revetment as unauthorized.

If you have any questions, please contact Ian Hirokawa, Project Development Specialist, at (808) 587-0420. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Morris M. Atta", with a long horizontal flourish extending to the right.

Morris M. Atta  
Administrator

cc: OCCL  
KDLO

**BILL "KAIPO" ASING**  
MAYOR



**IAN K. COSTA**  
DIRECTOR OF PLANNING

**GARY K. HEU**  
ADMINISTRATIVE ASSISTANT

**IMAIKALANI P. AIU**  
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUAI**  
PLANNING DEPARTMENT  
4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUAI, HAWAII 96786-1326

TELEPHONE: (808) 241-6677 FAX: (808) 241-6699

July 30, 2008

Mr. Morris M. Atta, Administrator  
State of Hawaii,  
DLNR, Land Division  
P.O. Box 621  
Honolulu, Hawaii 96809

**Subject: Special Management Area Emergency Permit SMA (E) 97-03  
and Shoreline Setback Variance  
Temporary Shoreline Protection Measures  
TMK 5-9-005:023 - 027  
Kuhio Highway, Haena, Kauai, Hawaii**

**Reference: DLNR, Land Div. letter dated May 27<sup>th</sup>, 2008 (ref: KA-302)**

Dear Mr. Atta,

Please be advised the Planning Department's position is that the referenced permits are and remain valid until a formal notice to rescind or revoke the permits is issued by our Department.

It is the Department' intent to put the applicants on notice that condition 5 (temporary until acceptable permanent measures...), condition 6 (temporary convert to permanent...) and/or condition 8 (... the applicant shall submit a report prepared by a qualified professional, containing an assessment of the projects effectiveness, impacts on the shoreline, and recommendations for additional action.) be addressed and submitted to the Department for review and processing, which may also require approval by the Kauai Planning Commission.

As for condition 2 (placement inland of shoreline), the applicant is responsible, as indicated in condition 9, to secure all necessary permits from other agencies, as required. If the toe of the sand bags extended seaward of the shoreline, it may have been due to the site conditions/slope design circumstances and DLNR should have been notified by the owner/applicant for proper authority/permits. A site inspection was conducted by Planning Dept. staff on June 13, 1997 and noted the sand bag placement had been completed to the specifications of the approved permit documents.

AN EQUAL OPPORTUNITY EMPLOYER

Mr. Morris M. Atta, Administrator  
Page 2  
July 30, 2008

Please feel free to contact Leslie Milnes (CZM Inspector), or Lisa-Ellen Smith (CZM Planner) at 241-6677, should you have any further questions.

Malama Pono,



IAN K. COSTA  
Planning Director

cc. Office of the Mayor  
~~Leslie P. Milnes, CZM Planning Inspector~~  
Ms. Mary M. Cooke, Etal

Sharon Carroll  
Robert Downs  
16350 Matilija Drive  
Los Gatos, CA 95030  
408-399-1527

November 13, 2008

Ian K. Costa  
Planning Director  
County of Kaua'i  
Kapule Building, Suite A473  
4444 Rice Street  
Lihu'e, Hawai'i 96766-1326

Re: Special Management Area Emergency Permit SMA (E) 97-03 and Shoreline Setback Variance; TMK Nos.: 5-9-005: 023 through 027

Dear Mr. Costa:

I have volunteered to coordinate the efforts of the owners of the five oceanfront parcels in Haena identified as Tax Map Key Numbers 5-9-005: 023, 024, 025, 026, and 027 to address the issues and concerns relative to the sand bag revetment on the makai portions of these lots. As you are aware, the placement of these sand bags was authorized by the above-referenced SMA Emergency Permit and Shoreline Setback Variance and by a related right of entry from the State.

In your letter of August 11, 2008, you asked the owners to address certain conditions in the SMAEP and SSV. Because the sand bags form a continuous revetment along the makai portions of the five lots, we believe a coordinated approach to these issues is preferable. Further, we believe that our responses to your inquiries and our efforts to address the concerns you raise should be guided by a more specific and complete assessment of the effectiveness of the sand bags and any impacts on the shoreline and coastal environment. We intend to develop this information with the assistance of qualified professionals.

To this end, we have retained Elaine Tamaye of EKNA Services, Inc., and Ron Wagner, a professional surveyor, to conduct an assessment of the shoreline environment to determine what effects, if any, the sand bags may have had on beach processes. We have been advised that the assessment we request will require measurements at different seasons and \$15,900 dollars for a baseline study. Our consultants have also recommended follow-up assessments every year to assess the potential impact of the sandbags on the beach. Our consultants will give us their assessment and recommendations for action once their study reaches the point where they have some confidence in the results.

We request an extension of time to April 30, 2009, to submit our consultants' initial assessment and recommendation. This assessment should meet the requirements of Condition 8.

Based on the results of the consultants' assessments, we can evaluate how best to proceed with Conditions 5 and 6. In other words, the results of the assessments will help us determine what shoreline protection measures are appropriate in the longer term. This will, in turn, guide us in determining what permits are required.

With respect to Condition 7, what we have done in the past to protect and maintain the shoreline protection measures is to periodically cover the sand bags with sand. This action shields the bags from harmful solar radiation and from vandalism. We would like to continue this maintenance activity and hereby request that we be authorized to re-cover the bags.


Our house and the one on parcel 26 were legally built more than fifty years ago. These houses would be put at risk if the sandbags were removed.

We note that your department has concluded that the permits are in full force and effect unless and until formal action is taken by the County to rescind or revoke the permits (your letter to Morris Atta dated July 30, 2008). We request that you allow us to conduct appropriate professional assessments and to make requests and applications based on the results of these studies.

Please contact me if you have questions.

Sincerely,

Robert Downs and Sharon Carroll  
(Owners of Parcel 24)

By  \_\_\_\_\_  
Robert Downs

cc: Heather and Jonathan Ive (Parcel 23)  
Judy and Matt Malerich (Parcel 25)  
Troy Eckert (Parcel 26)  
Catherine and Russ Bartmess (Parcel 27)

Ian K. Costa

Sharon Carroll  
Robert Downs  
16350 Matilija Drive  
Los Gatos, CA 95030  
408-399-1527

March 10, 2009

Ian K. Costa  
Planning Director  
County of Kaua'i  
Kapule Building, Suite A473  
4444 Rice Street  
Lihu'e, Hawai'i 96766-1326

Re: Special Management Area Emergency Permit SMA (E) 97-03 and Shoreline  
Setback Variance; TMK Nos.: 5-9-005: 023 through 027

Dear Mr. Costa:

This letter will follow up on my letter to you dated November 13, 2008. Please consider this an interim status report under SMA (3) 97-03.

As stated in the November 13, 2008, letter, the owners of the five parcels which have the sandbag revetment along the makai portions of the lots have retained professional surveyor Ron Wagner and coastal engineer Elaine Tamaye of EKNA Services. We have paid both consultants and they have commenced work.

Ms. Tamaye is recommending that seven (7) separate beach profiles be surveyed three (3) times a year. Three (3) of the profiles will span the five subject properties and two (2) profiles each on the east and west sides, about equidistance apart. Profiles 1 and 2 are on opposite sides of Manoa Stream. The profiles will extend from the top of the escarpment to the toe of the beach. We will keep you informed of the progress and results of this work.

Two of the parcels have changed ownership. The new owners are:

TMK 5-9-005: 023

Formerly: Jonathan and Heather Ive  
Now: Neal A. Norman

TMK 5-9-005: 025

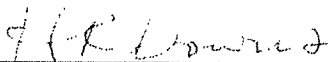
Formerly: Sally Ann Moragne Mist Trust  
Now: Matthew M. and Judith E. Malerich Trust

It remains our hope that we will be able to develop scientific data to assist the owners and the responsible agencies in deciding how best to proceed.

Please contact me if you have questions.

Sincerely,

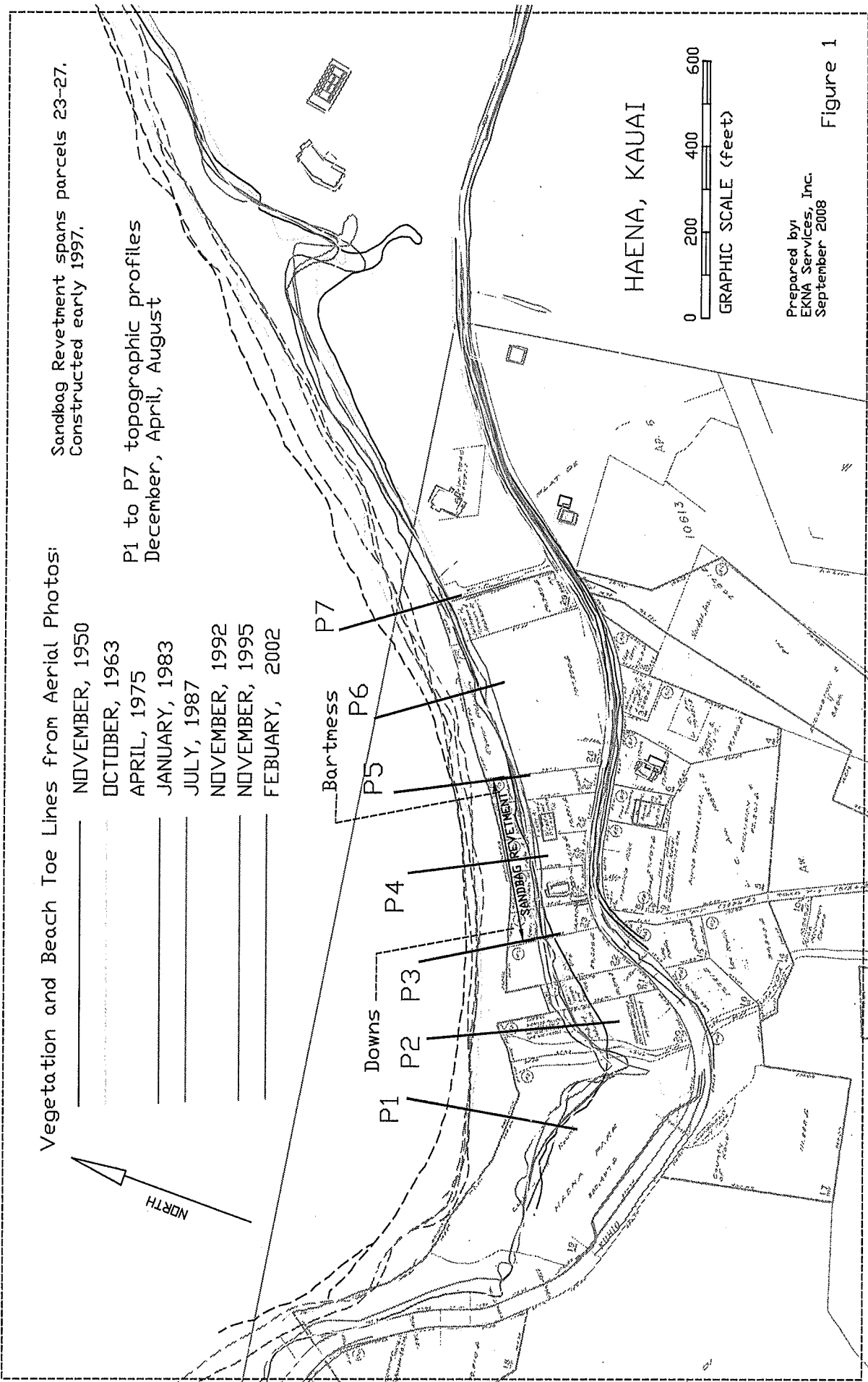
Robert Downs and Sharon Carroll  
(Owners of Parcel 24)

By   
Robert Downs

cc: Neal A. Norman (Parcel 23)  
Judy and Matt Malerich (Parcel 25)  
Troy Eckert (Parcel 26)  
Catherine and Russ Bartmess (Parcel 27)

Attch: Nov 13, 2008 Letter





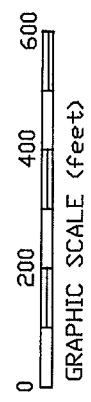
Vegetation and Beach Toe Lines from Aerial Photos:

- \_\_\_\_\_ NOVEMBER, 1950
- \_\_\_\_\_ OCTOBER, 1963
- \_\_\_\_\_ APRIL, 1975
- \_\_\_\_\_ JANUARY, 1983
- \_\_\_\_\_ JULY, 1987
- \_\_\_\_\_ NOVEMBER, 1992
- \_\_\_\_\_ NOVEMBER, 1995
- \_\_\_\_\_ FEBRUARY, 2002

Sandbag Revetment spans parcels 23-27.  
Constructed early 1997.

P1 to P7 topographic profiles  
December, April, August

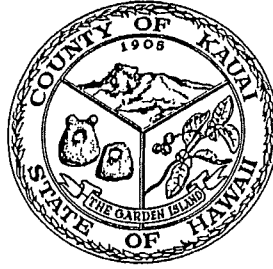
HAENA, KAUAI



Prepared by  
EKNA Services, Inc.  
September 2008

Figure 1

**BERNARD P. CARVALHO, JR.**  
MAYOR



**IAN K. COSTA**  
DIRECTOR OF PLANNING

**GARY K. HEU**  
ADMINISTRATIVE ASSISTANT

**IMAIKALANI P. AIU**  
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUA'I  
PLANNING DEPARTMENT**  
4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUA'I, HAWAII 96766-1326

TEL (808) 241-6677 FAX (808) 241-6699

April 16, 2009

Robert Downs and Sharon Carroll  
16350 Matilija Drive  
Los Gatos, CA 95939

Subject: Special Management Area Emergency Permit SMA (E) 97-03 and Shoreline  
Setback Variance; Tax Map Key 5-9-005:023 through 027  
Ha'ena, Kaua'i

RE: Status letter received

Dear Mr. Downs and Ms. Carroll,

Thank you for your undated letter, received by the Planning Department November 13, 2008. We recognize your need to conduct professional assessments so that you may meet the conditions of your emergency permit issued in 1997 and grant your request for an extension of time until June 30, 2009; this additional time is to address all of the conditions of the permit highlighted in the Department letter of August 8, 2008 and submit applications for permit(s).

The Department looks forward to receiving the assessment with recommendations by you or your consultant post June 30, 2009, but no later. A Letter of Authorization is necessary from all property owners confirming your stated efforts to coordinate and address the issues and concerns regarding the temporary permit.

Condition 1 a. of the permit can be used to address your periodic covering of the sandbags with a *legally approved source of beach compatible sand*. In an effort to maintain the revetment with a sand covering, ensure that a gradual shoreline is created on all sides including the flanking ends.

It was noted that maintenance, sometime in the past, has included pushing of sand by mechanical means in the beach front area in front of the temporary revetment. The Department of Land and Natural Resources, Office of Coastal and Conversation Lands has jurisdiction over all sand replenishment and/or redistribution of beach front sand. Your continued interaction with the DNLRL, OCCL is paramount to this process in either case of imported sand or beach sand redistribution.

Page 2

April 16, 2009

Robert Downs and Sharon Carroll

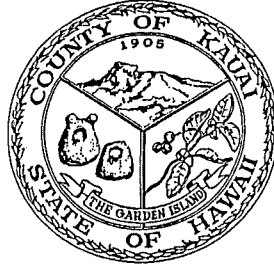
Please call Lisa Ellen Smith at (808) 241-6677, our assigned project planner to discuss any questions you have.

A handwritten signature in black ink, appearing to read 'IAN K. COSTA', written over a printed name.

IAN K. COSTA  
Planning Director

cc: IVE Revocable Trust 5-9-005-023  
Harold R. Downs 5-9-005-024  
Sally A. M. Mist Trust 5-9-005-25  
Troy Eckert 5-9-005-026  
Catherine M. Bartmess, Trustee 5-9-005-027  
Mary M. Cooke, et al.

**BERNARD P. CARVALHO, JR.**  
MAYOR



**IAN K. COSTA**  
DIRECTOR OF PLANNING

**GARY K. HEU**  
ADMINISTRATIVE ASSISTANT

**IMAICALANI P. AIU**  
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUA'I  
PLANNING DEPARTMENT**  
4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUA'I, HAWAII 96766-1326

TEL (808) 241-6677 FAX (808) 241-6699

July 7, 2009

Robert Downs and Sharon Carroll  
16350 Matilija Drive  
Los Gatos, CA 95939

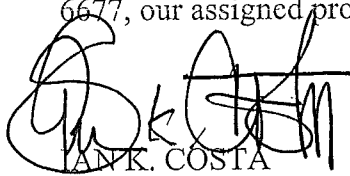
Subject: Special Management Area Emergency Permit SMA (E) 97-03 and Shoreline  
Setback Variance; Tax Map Key 5-9-005:023 through 027  
Ha'ena, Kaua'i

RE: Status letter update received

Dear Mr. Downs and Ms. Carroll,

Thank you for your letter dated May 25, 2009, received by the Planning Department May 27, 2009. Again, we recognize your need to conduct professional assessments so that you may meet the conditions of your emergency permit issued in 1997. We therefore grant your request for an extension of time until December 31, 2009.

The department has attached a list of the permit conditions that must be addressed in your submission, along with any necessary applications. Please call Lisa Ellen Smith at (808) 241-6677, our assigned project planner to discuss any questions you have.

  
IAN K. COSTA  
Planning Director

cc: IVE Revocable Trust 5-9-005-023  
Harold R. Downs 5-9-005-024  
Sally A. M. Mist Trust 5-9-005-025  
Troy Eckert 5-9-005-026  
Catherine M. Bartmess, Trustee 5-9-005-027  
Mary M. Cooke, et al.

**Permit Conditions**  
Mary M. Cooke, et al.

Status of SMA Permit Requirements  
SMA (E)-97-03 and Shoreline Variance

CONDITION	STATUS			COMMENTS
	Met	Not Met	N/A	
<p><b>Condition No. 1.</b> The project site is located along a popular recreational beach in close proximity to a heavily used County Beach Park and other significant cultural and recreational sites. Materials and plantings used for the projection measures shall be compatible with the visual, cultural, and ecological characteristics of the area.</p> <ol style="list-style-type: none"> <li>a. Sand used in the sea bags and on the slopes shall be obtained from a legally approved source, and shall be a coral type sand with characteristics similar to, and compatible with sand currently present at the site. Sand used for the measure shall not be obtained from adjacent or nearby beaches or dunes.</li> <li>b. Biodegradable materials which do not pose a threat to marine life or the environment shall be used for the temporary protective measures. Sea bags shall be of a color and texture compatible with the shoreline environment.</li> <li>c. If material is to be placed on the outside face of the bluff slope, it shall be made of natural material compatible with the characteristics of the sand dune, and bluff such as jute or burlap.</li> <li>d. Plantings used for slope stabilization shall consist of native species, or species common to the area.</li> </ol>				
<p><b>Condition No. 2</b> The emergency shoreline protection structure shall be located as far mauka as possible, but in no case shall the structure extend beyond the shoreline as defined in HRS 205A.</p>				
<p><b>Condition No. 3</b> The applicant shall have on call a qualified archaeologist who shall be consulted should archaeological or cultural resources be discovered during project construction. Should human burial or other archaeological, cultural or historic resources be discovered during construction, work shall cease and the area of the archaeological resource shall cease and the Planning Department and the Department of Land and Natural Resources-Historic Preservation Division shall be contacted at (808) 587-0047.</p>				

**Permit Conditions**  
 Mary M. Cooke, et al.  
 Status of SMA Permit Requirements  
 SMA (E)-97-03 and Shoreline Variance

CONDITION	STATUS			COMMENTS
	Met	Not Met	N/A	
<p><b><u>Condition No. 4</u></b>                      The applicant/contractor shall insure that construction activities are conducted at a time and in manner such that sediments, debris and other pollutants do not enter coastal waters, taking into account weather and tide conditions, and use of erosion control mechanisms.</p>				
<p><b><u>Condition No. 5</u></b>                      The emergency shoreline protection measures shall be temporary until acceptable permanent measures, which may include relocation of structures, are approved through normal permitting procedures by the Planning Commission/Department, and other appropriate agencies.</p>				
<p><b><u>Condition No. 6</u></b>                      Should the applicant determine that the current measures are to be permanent; an application shall be submitted for SMA and Shoreline Setback Variance Permits through the normal permitting process.</p>				
<p><b><u>Condition No. 7</u></b>                      The applicant shall be responsible for inspection and maintenance of the shoreline protective measures. Should the measures result in adverse impacts on the shoreline or SMA resources, corrective action, which may include removal or destruction of the sea bags, shall be implemented immediately.</p>				
<p><b><u>Condition No. 8</u></b>                      Within one year of the date of this approval, the applicant shall submit a report prepared by a qualified professional, containing an assessment of the projects effectiveness, impacts on the shoreline, and recommendations for additional action. Should the measure be found to have adversely impacted the shoreline or other SMA resources corrective action shall be identified and implemented, which may involve the removal or destruction of the sea bags.</p>				
<p><b><u>Condition No. 9</u></b>                      The applicant shall be responsible for obtaining all necessary permits and approvals from other applicable agencies including the Department of Land and Natural Resources - Land Division, the State Department of Health, and the County Department of Public Works.</p>				



EKNA Services, Inc.

CN 2664

June 18, 2009

Bob Downs  
16350 Matilija Drive  
Los Gatos, California 95030

Subject: Beach Monitoring for Haena Properties, Kauai  
Sandbag Revetment fronting Parcels 23 to 27  
Interim Report on Profile Surveys - February & June 2009

Dear Mr. Downs,

This interim report summarizes the results of the beach profile surveys conducted February 5, 2009 and June 9/11, 2009 by Wagner Engineering Services, Inc. The purpose of the beach profile surveying is to document the changes in beach sand volume on a seasonal and annual basis. This beach monitoring was undertaken at your request, to address the concerns of the Department of Land and Natural Resources (DLNR) and the County of Kauai regarding the possible impacts of the sandbag revetment fronting the five (5) parcels in Haena. The attached "Sheet 1 of 2" from Wagner Engineering shows the locations of seven (7) profiles, three (3) of which span the subject properties with the sandbags, and two (2) each on the east and west side. The profiles are spaced about 200 feet apart along the shoreline. It is intended that the profiles will be surveyed 3 times a year to document the seasonal movement of sand on this beach area, and over multiple years to document the long-term changes. The attached "Sheet 2 of 2" from Wagner Engineering plots the vertical elevations along the profiles from the first two surveys.

#### Overview of Shoreline Condition:

Figure 1 is an aerial photo showing the project area in Haena Bay, and Figure 2 shows the survey area superposed on the aerial photo. The shoreline and beach within Haena Bay is exposed to the winter North Pacific swell and predominant tradewind-generated waves during the summer months. The expansive reef flat offshore Haena Point provides significant shelter from the direct impacts of large tradewind-generated waves, but offers little protection to the subject shoreline reach from North Pacific swell. The 5 properties (*Properties*) that are protected by the sandbag revetment are located close to Haena Park and the Manoa Stream mouth, where the shallow reef flat is non-existent. The narrow reef margin that extends from Haena Point toward Manoa Stream becomes discontinuous fronting the *Properties*. Immediately beyond this reef margin, the water depth drops to greater than 50 feet to the expansive sand-bottomed interior of the embayment. The near-vertical wall face of the shoreline reef margin is etched with arches and

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Construction  
Consultants  
  
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caves, presumably created by the percolation of groundwater. This feature of the area has lent itself to the local naming of the beach as "Tunnels". The complex nearshore reef system and variable seasonal wave characteristics result in complex wave and current patterns along the shore which result in equally dynamic patterns of sand movement and beach changes. The discharge characteristics of Manoa Stream also play a part in the highly dynamic beach and shoreline changes.

It goes without saying that the beach and shoreline in the vicinity of the *Properties* is most susceptible to erosion damage during winter months due to large North Pacific swell, including storm waves generated by passing frontal systems, and high discharge flows from Manoa Stream. The severe winter storm in November 1996 caused extensive erosion damage to the beach and shoreline at the *Properties*, prompting the five (5) contiguous property owners to apply for emergency authorization to install the sandbag revetment. The erosion caused by the storm system resulted in loss of the fronting beach and collapse of the shoreline escarpment, leaving 25 foot high near-vertical sand cliffs and two houses on the brink of collapsing into the sea. The porch of the house on Lot 36 (TMK parcel 26) did partially collapse, but the house was saved by the emergency restoration and construction of the sandbag revetment. The revetment was completed in early 1997, and there have been four (4) authorized sand pushing/scraping activities (2000, 2002, 2003, 2006) to cover the exposed sandbags with sand by using a dozer to push sand from the fronting beach to the shoreline embankment in order to bury the revetment.

#### Beach Profile and Volume Changes:

Elevation points along each of the profiles extends from the top of the shoreline escarpment, across the beach to the water's edge (or as close to the beach toe as possible). During the first survey in February 2009, the high water levels and surf did not allow the surveyors to obtain data below approximately elevation +5 feet MSL. During the June 2009 survey, the lower water levels and calmer seas allowed the surveyors to obtain data to approximately 0.0 MSL elevation. For the volume calculations, it is assumed that the beach slope seaward of the last point taken on the February survey is the same as the slope during the June survey (see Figure 3).

For all profiles, the June (summer) beach position was seaward of the February (winter) position. Changes in the beach profile occurred below elevation 15 feet on all profiles (below the visible sandbag revetment for profiles 3, 4, 5). The summer beach berm elevation (the horizontal beach area between the foreshore slope and the backshore escarpment slope) is approximately at elevation 7 feet, except for profile 5 which had no discernable berm and profile 7 which had a berm at about 4 - 5 feet elevation. The following table summarizes the profile changes and beach volume change. The beach volume change is estimated by multiplying the average change in profile area (averaged between adjacent profiles) between the two survey dates, by the distance between the profiles.

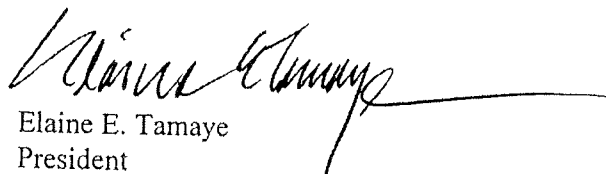


Profile #	<1> X-section Change Between Survey Dates (square feet)	Avg Change Between Adjacent Profiles (square feet)	<2> Distance Between Profiles (feet)	<3> Volume Change Between Survey Dates	
				(cubic feet)	(cubic yards)
P1	+2,573				
P2	+1,307	+1,940	227	440,380	16,310
P3	+45	+676	190	128,440	4,757
P4	+1,229	+637	160	101,920	3,775
P5	+1,312	+1,270	195	247,650	9,172
P6	+2,017	+1,664	217	361,088	13,374
P7	+2,706	+2,361	214	506,254	18,713
TOTAL			1,203	1,785,732	66,101
<1> Net increase (+) in cross-sectional area or decrease (-) from February 2009 to June 2009.					
<2> Distance between profiles measured at Station 1+50.					
<3> Volume change = (average x-section change between adjacent profiles) x (distance between adjacent profiles)					

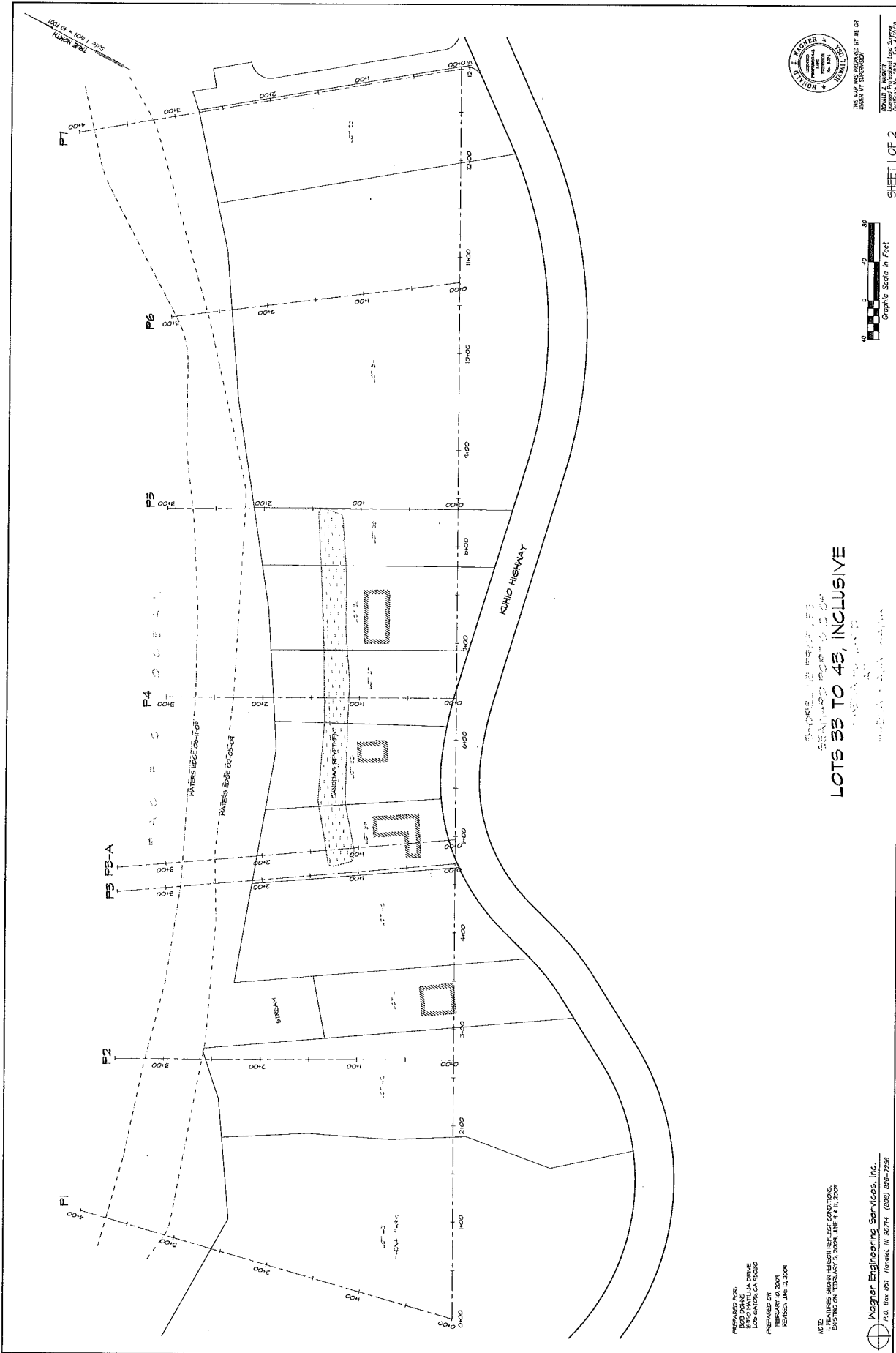
Summary:

The beach profile changes reflect the expected accretionary pattern with the transition from winter storm waves to summer tradewind waves. The average accretion along this 1,200 linear feet of shoreline is about 55 cubic yards per linear foot. The wave runoff activity on the beach slope appears to be confined below elevation 15 feet, as reflected by the changes to the beach profiles that occurred during this time period. It is expected that the next survey, scheduled for October, may show a wider beach berm in the absence of any early winter storms.

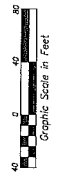
Very truly yours,

  
Elaine E. Tamaye  
President

enclosures



THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION  
 I AM A LICENSED PROFESSIONAL ENGINEER  
 License No. 51974 State of California  
 Certificate No. 5281 Exp. 12/31/76  
 Project No. 4428



SHEET 1 OF 2

**LOTS 33 TO 43, INCLUSIVE**

PREPARED FOR:  
 L. K. KONG  
 3850 SANTA LILIA DRIVE  
 LOS ANGELES, CA 90030  
 PREPARED BY:  
 KONG & ASSOCIATES  
 12000 JUNE 23, 2001

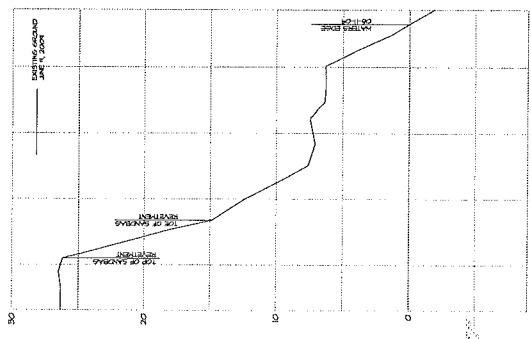
NOTE:  
 1. FEATURES SHOWN HEREON SUBJECT TO CONDITIONS,  
 EXISTING ON FEBRUARY 5, 2001, LINE 11, II, 2004

**Kong Engineering Services, Inc.**  
 P.O. Box 851 Honolulu, HI 96714 (808) 838-7256  
 The Kong Group 5-8-2001-10-28

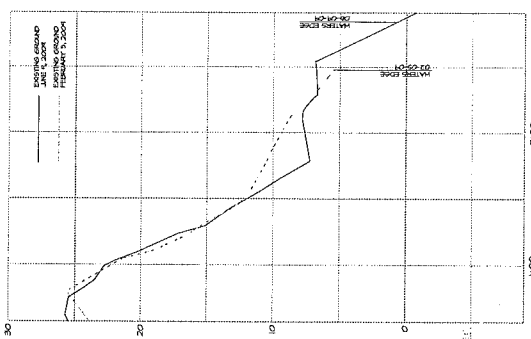


THIS MAP HAS BEEN PREPARED BY ME OR UNDER MY SUPERVISION  
RONALD J. WOOD  
LICENSE NO. 40802  
MECHANICAL ENGINEERING  
STATE OF MICHIGAN  
EXPIRES 12/31/10

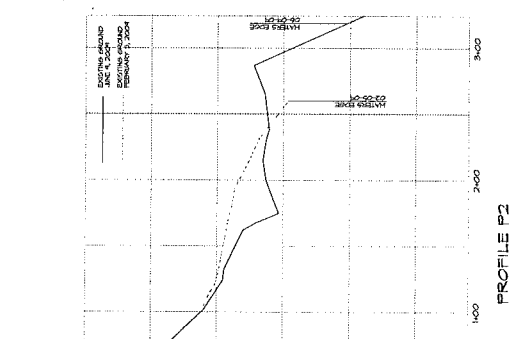
SHEET 2 OF 2



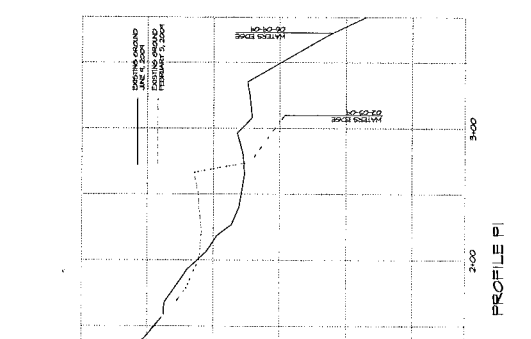
PROFILE P3-A



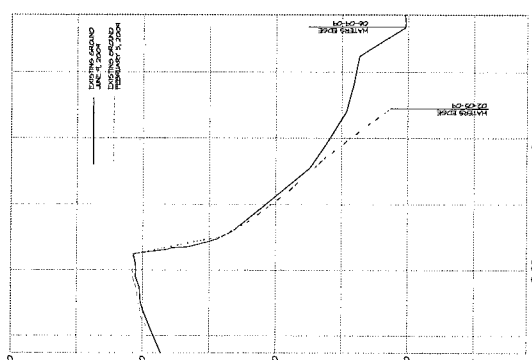
PROFILE P3



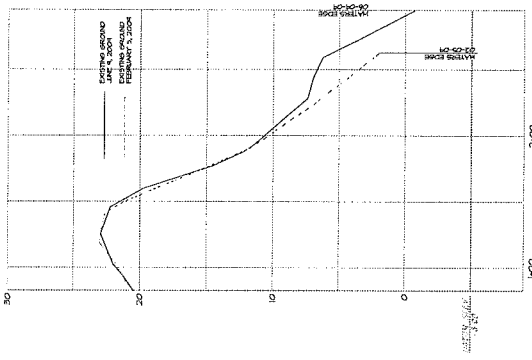
PROFILE P2



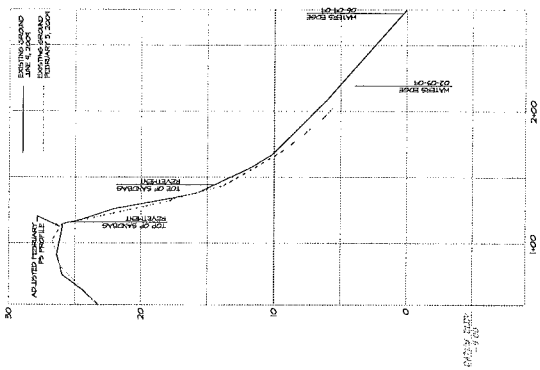
PROFILE P1



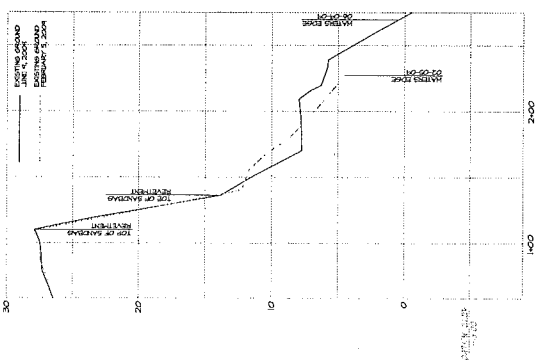
PROFILE P7



PROFILE P6



PROFILE P5



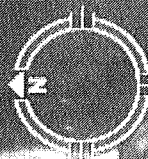
PROFILE P4

LOTS 33 TO 43, INCLUSIVE

PROPOSED LOT PROFILES  
FOR LOTS 33 TO 43, INCLUSIVE

PREPARED AND  
CHECKED BY  
BOB COVINO  
1505 SANDY LAKE DRIVE  
ANN ARBOR, MI 48106  
PREPARED ON  
FEBRUARY 10, 2004  
REVISED ON  
MAY 12, 2004  
MAGNER Engineering Services, Inc.  
P.O. Box 85714, Detroit, MI 48274 (800) 455-7256  
10-Map-Arch-3-10-04-10-20

NOTE: THESE LOTS ARE SUBJECT TO THE 65% COVENANTS  
ENTERING ON FEBRUARY 3, 2004, LOTS 4, 11, 20, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.



Haena, HI

Project Area

560

Google™

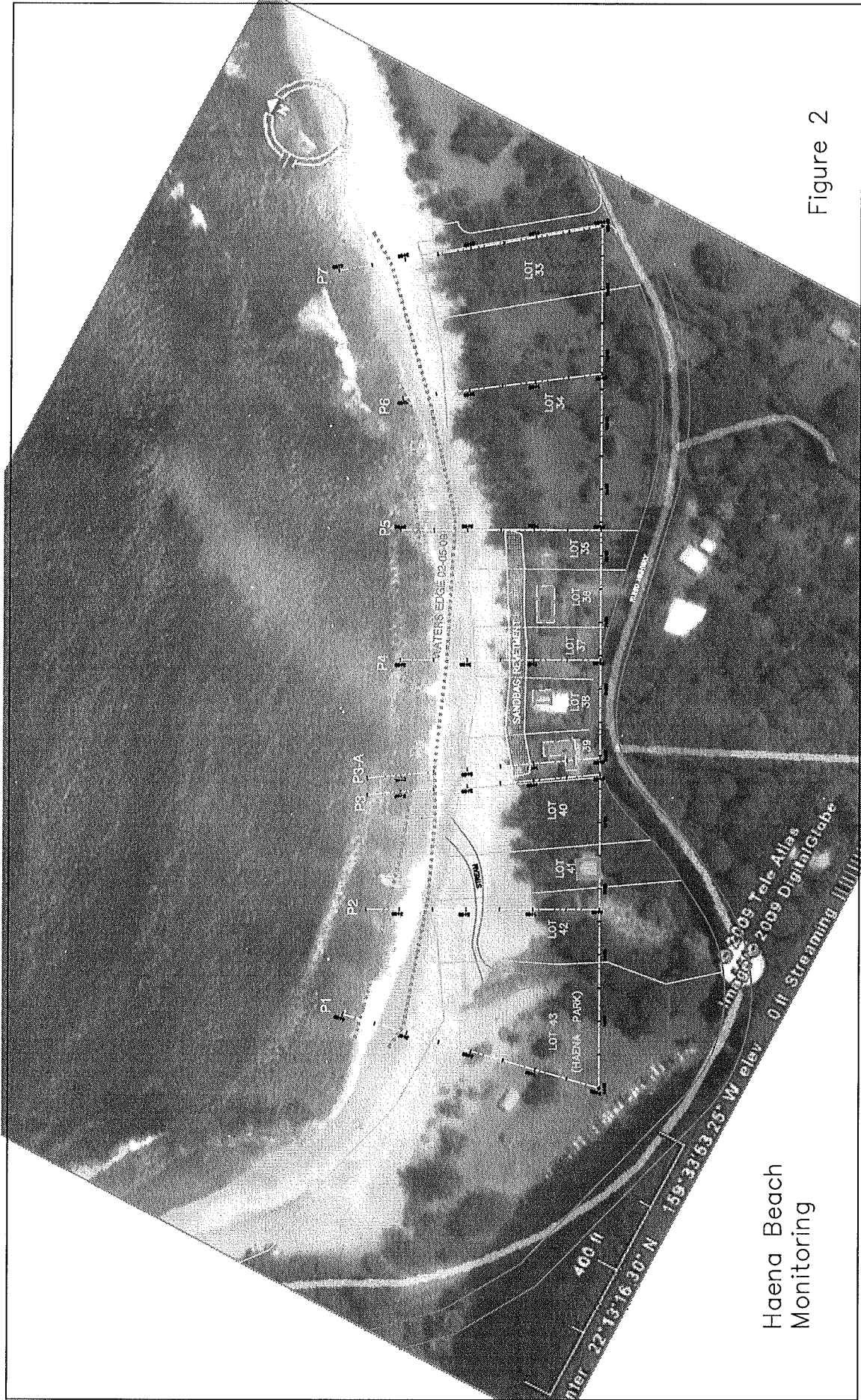
© 2009 Tele Atlas  
Image © 2009 DigitalGlobe

1204 ft

Eye alt 4927 ft

Figure 1

Pointer 22°13'27.50" N 159°33'53.79" W elev 0 ft Streaming 100%



Haena Beach Monitoring

Figure 2

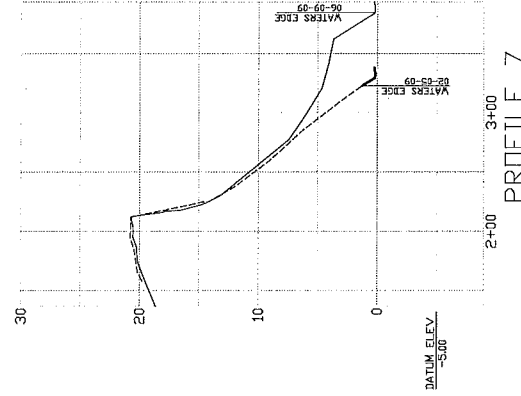
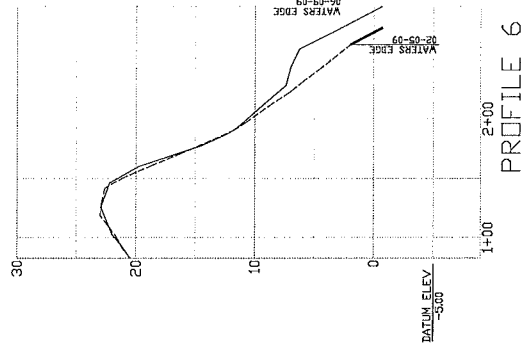
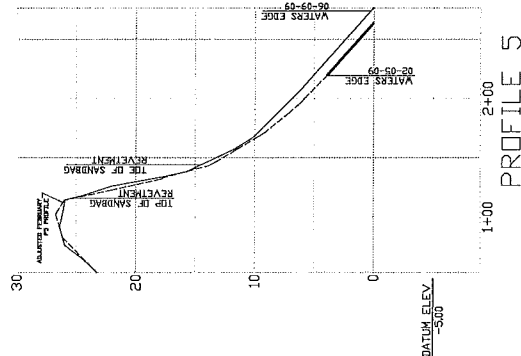
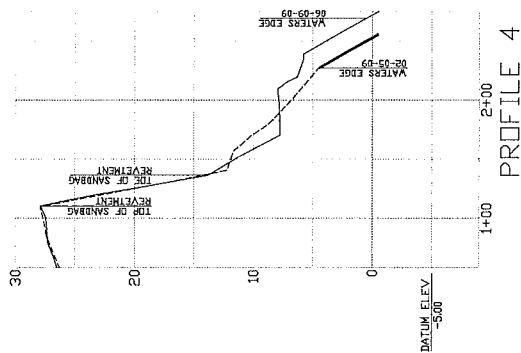
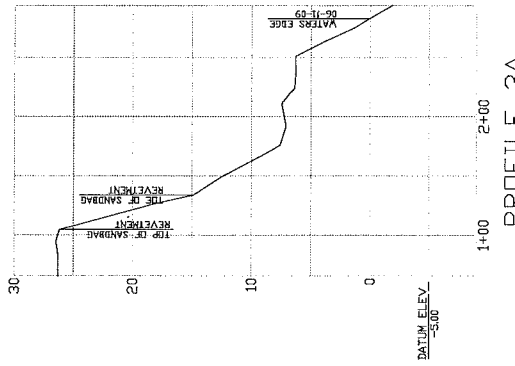
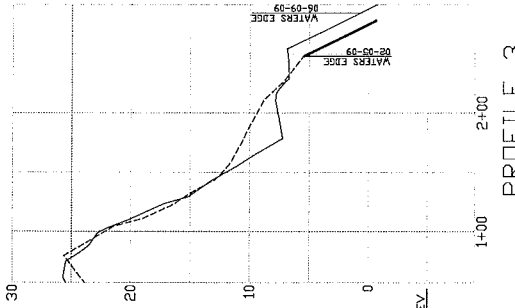
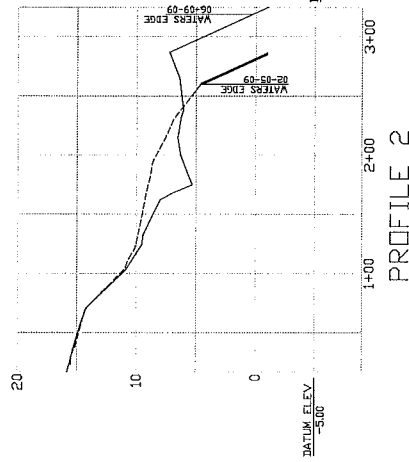
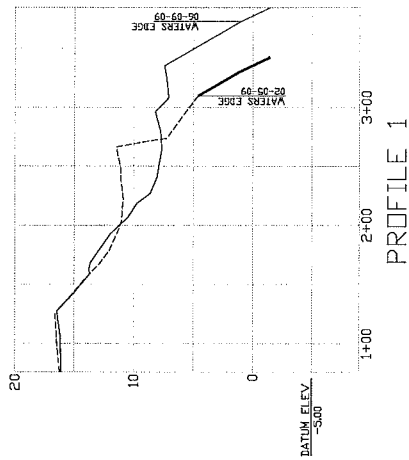
# HAENA BEACH MONITORING, KAUAI

LEGEND:  
 — EXISTING GROUND  
 — EXISTING GROUND  
 - - - EXISTING GROUND  
 — ASSUMED SLOPE

EXISTING GROUND  
 JUNE 9, 2009

EXISTING GROUND  
 FEBRUARY 5, 2009

ASSUMED SLOPE



Based on surveys by Wagner Engineering Services, Inc.

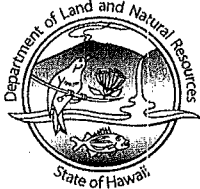
FIGURE 3

# **APPENDIX 6**

**Moragne/Bartmess Single Family Residence  
TMK (4) 5-9-05: 027**

**CDUA KA-3460 Approval Dated Aug. 13, 2008  
&  
Shoreline Certification Dated Sept. 29, 2008**

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVIYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:DH

FILE NO: CDUA KA-3460

Acceptance Date: April 3, 2008  
180-Day Exp. Date: September 3, 2008

Ben Welborn  
Landmark Consulting Services, Inc.  
P.O. Box 915  
Hanalei, Hawaii 96714

AUG 13 2008

Dear Mr. Welborn:

SUBJECT: Conservation District Use Application (CDUA) KA-3460 for the Catherine Moragne Bartmess and Russ Bartmess proposed Single Family Residence (SFR), Haena District, Island of Kauai, Subject Parcel TMK: (4) 5-9-005:027

This letter is to inform you that CDUA KA-3460 for the proposed Bartmess Single Family Residence, located in Haena District, Island of Kauai, has been approved by the Board of Land and Natural Resources on August 8, 2008, and was subject to the following terms and conditions:

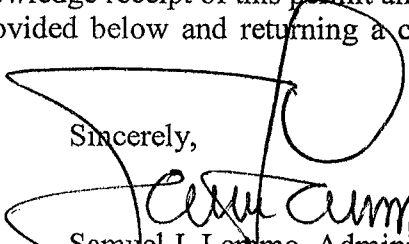
1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;
4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the



- applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
5. Any work or construction to be done on the land shall be initiated within one and a half years of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction must be completed within three and a half years of the approval;
  6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
  7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
  8. The applicant will use Best Management Practices for the proposed project;
  9. The applicant will give preference towards using native plants for the remaining landscape work, and that prior to any construction the applicant will submit a landscape plan for the Office of Conservation and Coastal Land's approval;
  10. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
  11. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
  12. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
  13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
  14. That the applicant shall execute a waiver and indemnity prior to construction plan approval that is satisfactory to the Department;
  15. This action by the Board in no way legitimizes the sand bag groin located on the seaward side of the property, and the Department of Land and Natural Resources has the right to seek the removal of the structure, should the landowner fail to comply with the County of Kauai Emergency SMA Permit (E)-97-03 declarations, or if it is determined that the structure is causing harm to the public beach;

- 16. That the Board approve the request for a five foot Maximum Height Limit variance to meet Federal and County flood regulations, and a five foot variance from the minimum side yard setbacks to accommodate long-term erosion hazards;
- 17. That the Board of Land and Natural Resources will review the final proposed plans;
- 18. That the approval of CDUA KA-3460 is subject to full compliance with HRS, Chapter 343;
- 19. Other terms and conditions as may be prescribed by the Chairperson;
- 20. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void;
- 21. Artificial light from exterior lighting fixtures, including, but not necessarily limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes shall be prohibited of the light directly illuminates, or is directed to project across property boundaries toward the shoreline and ocean waters, except as permitted pursuant to Section 205A-71, HRS;
- 22. That the Single Family Dwelling shall not be used for rentals or any other commercial purposes unless approved by the Board; and
- 23. That the applicant will follow the Seabird Protection Protocol developed with the US Fish and Wildlife Service and Division of Forestry;

Should you have any questions, please contact Dawn Hegger of the Office of Conservation and Coastal Lands at 587-0380. Please acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the OCCL within thirty (30) days.

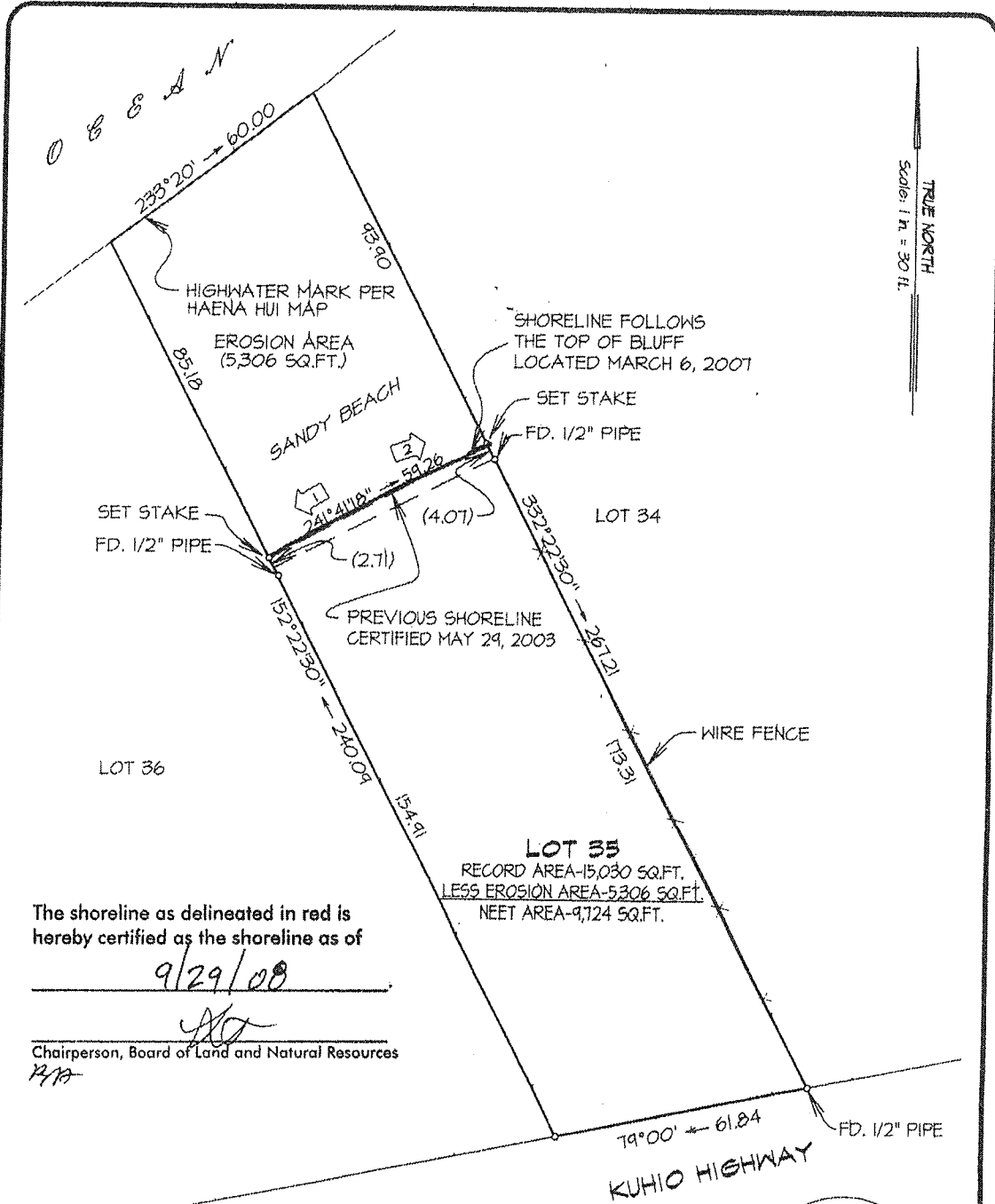
Sincerely,  
  
 Samuel J. Lemmo, Administrator  
 Office of Conservation and Coastal Lands

Receipt acknowledged:

\_\_\_\_\_

Date: \_\_\_\_\_

c: OHA/KDLO  
 County of Kauai Planning Department  
 Haena – Hanalei Community Association  
 Sierra Club Kauai Chapter



TRUE NORTH  
Scale: 1 in. = 30 ft.

The shoreline as delineated in red is hereby certified as the shoreline as of

9/29/08


*[Signature]*

Chairperson, Board of Land and Natural Resources

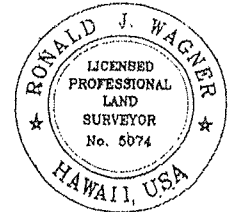
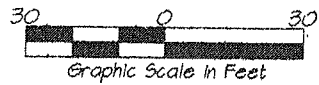
*[Signature]*

PREPARED FOR:  
CATHERINE M. BARTMESS, TRUSTEE  
356 MERIDIAN ST.  
CRYSTAL LAKE, IL. 60014

MAY 7, 2007


- NOTE:
1. FEATURES SHOWN HEREON REPRESENT CONDITIONS EXISTING ON MARCH 6, 2007
  2.  DENOTES POSITION AND NUMBER OF PHOTO TAKEN

SHORELINE CERTIFICATION MAP OF  
**LOT 35**  
HAENA HUI LANDS  
being a portion of  
R.P. 3546, I.C. Av. 10613, AP 6  
to A. PAKI  
AT HAENA, HALELEA, KAUAI, HAWAII



THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION

*[Signature]*  
RONALD J. WAGNER  
Licensed Professional Land Surveyor  
Certificate No. 5074 Exp. 4/30/08

 Wagner Engineering Services, Inc.  
P.O. Box 851 Hanalei, HI 96714 (808) 826-7256

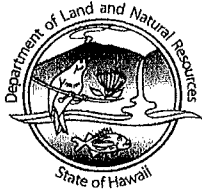
Tax Map Key: (4) 5-9-05.27

Project No. 3093-1

# **APPENDIX 7**

**Public & Agency Comments**  
**on**  
**Draft Environmental Assessment**  
**Proposed Malerich Single Family Residence**

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVIYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:DH

REF: Cдуа KA-3509

Acceptance Date: June 1, 2009  
180-Day Exp. Date: November 28, 2009

Matt Malerich  
P.O. Box 1649  
Hanalei, Hawaii 96714

AUG - 3 2009

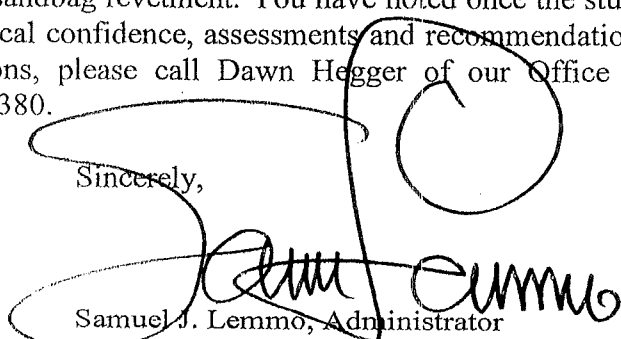
Dear Mr. Malerich,

SUBJECT: Conservation District Use Application (CDUA) KA-3509  
Malerich Proposed Single Family Residence (SFR), Subject Parcel TMK: (4) 5-9-005:025, Haena, Island of Kauai

This letter is regarding the processing of CDUA KA-3509. The public and agency comment period on your application has closed. Attached to this letter are copies of the comments received by the Office of Conservation and Coastal Lands (OCCL) regarding your CDUA. Please send copies of your responses to the questions raised in these letters directly to the authoring agency as well as to the OCCL. The OCCL notes provide a Site Plan with Single Family Residence (SFR) measurements, and a list of the area to be landscaped with native flora as exhibits in the FEA. The OCCL notes to please submit six paper copies of the Final EA (FEA) to us by August 20, 2009, so it can be submitted for the September 8, 2009 Environmental Notice. Also include an Office of Environmental Quality Control (OEQC) Publication Form for the Final EA, and if the project summary has changed a new summary on diskette. We also request that you include the entire CDUA with the Final EA on a compact disk for your submittal.

The OCCL notes that the department still has concerns regarding the survey of the four property owners whose properties are bounded by the sandbag revetment. You have noted once the study has gathered sufficient data to develop statistical confidence, assessments and recommendations will be proposed. Should you have questions, please call Dawn Hegger of our Office of Conservation and Coastal Lands staff at 587-0380.

Sincerely,

  
Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

c: KDLO  
County of Kauai Planning Department  
Haena - Hanalei Community Association



Hanalei-Ha'ena Community Association  
Post Office Box 789  
Hanalei, HI 96714

July 22, 2009

Ms. Dawn Hegger  
State of Hawaii  
DLNR, Office of Conservation and Coastal Lands  
P.O. Box 621  
Honolulu, HI 96813

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
2009 JUL 22 P 12:33  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Re: CDUA and Draft EA for Malerich Single Family Residence at TMK (4) 5-9-05:025

Aloha Ms. Hegger,

The following are the comments of the Hanalei-to-Ha'ena Community Association on the Draft Environmental Assessment (EA) and Conservation District Use Application (CDUA) for the proposed project at TMK 4-5-9-05:025.

1. The shoreline setback that is needed to adequately ensure public access along the shoreline in front of the proposed project cannot be legitimately determined until the temporary revetment that fronts the property has first been removed. Clearly, the revetment alters the natural erosion process, impedes the highest wash of the waves, and prevents the determination of the natural location of the true shoreline. Accepting the locations for the shoreline and the setback for the proposed structure that are proposed in the Draft EA and CDUA is tantamount to assuming that the temporary revetment will be made a permanent structure.

How can the Draft EA be considered adequate, and how can it lead to the conclusion that a Finding of No Significant Impact is warranted, when the Draft EA does not even acknowledge the existence of the revetment, let alone examine the consequences of making decisions based on the false shoreline established by the revetment?

Similarly, how can the CDU application be considered adequate for informed decision-making regarding the granting of a CDU Permit, when it also does not take into account the existence of the revetment and its ramifications upon public access, and therefore the appropriateness of granting the requested permit?

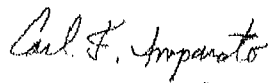
We believe that the resolution of the final status of the revetment and the determination of the appropriate conditions for a CDU Permit for the proposed structure are two issues that cannot be separated. They are intrinsically linked, as the former has major long-term, permanent implications for the latter. The consequences of proceeding with the CDUA process without first resolving the issue of the revetment could very likely include the permanent loss of public access along the stretch of coast that fronts the subject property.

Therefore, we urge the BLNR to first completely resolve the final status of the "temporary" revetment prior to giving any consideration to approval of a CDU Permit.

2. As we have stated in similar CDU application proceedings, we believe that the use of erosion-based setbacks, as the Office of Conservation and Coastal Lands and Hawaii Coastal Mitigation Guidebook recommend, should be required as a condition for granting a CDU Permit. The recently-published Kauai shoreline study erosion maps indicate that erosion fronting the subject parcel is greater than one foot per year. Clearly, a 50 foot setback (again, a setback from the true shoreline, to be established after the removal of the revetment) would be inadequate, as the formula specified in the Guidebook (40 feet plus 70 years multiplied by the erosion rate) would require that the setback for any structures be well in excess of 100 feet.
3. Finally, and predicated on the proper resolution of the two issues noted above, we believe that it is important that the following be explicitly stated as conditions for approval of a CDU Permit and that such conditions be explicitly included in the deed for the property, to be recorded with the Bureau of Conveyances:
  - (a) No shoreline hardening, sandbags or other structures will be allowed to artificially fix the shoreline during the life of the proposed structure and related development;
  - (b) Approval of the development is conditioned on providing and maintaining a public easement, whose boundaries may move mauka as the shoreline itself moves mauka, that will ensure safe lateral access for people traversing the beach in front of this property during the life of the proposed structure and related development;
  - (c) No fencing may be installed within 40 feet of the shoreline, consistent with the Kauai Shoreline Setback Ordinance;
  - (d) The portion of the property that is makai of the certified shoreline shall be kept clear of naupaka and any other salt-tolerant, artificially-induced plantings;
  - (e) No commercial uses, including transient vacation rentals, will be permitted on the property.

In closing, we wish to clearly state that the Hanalei-to-Ha'ena Community Association does not oppose the construction of a residence on the subject property; rather, we simply want to ensure that, consistent with the property's location in the Conservation District and the higher standards that must be met for development on Conservation District properties, any proposal for development will not result in the loss of public access along the shoreline.

Thank you for considering these comments.



Carl Imperato  
President, Hanalei-to-Ha'ena Community Association

August 31, 2009

Hanalei-to-Ha`ena Community Association  
P.O. Box 789  
Hanalei, HI 96714

**Re:       Comments on Draft Environmental Assessment (DEA)  
          Conservation District Use Application (CDUA) KA-3509  
          Proposed Malerich Single Family Residence  
          TMK (4) 5-9-05: 025  
          Ha`ena, Kaua`i, Hawai`i**

Dear Mr. Imparato and members of the HHCA,

This is in response to your letter dated July 22<sup>nd</sup>, 2009 regarding the Draft Environmental Assessment associated with our CDUA proposal to construct a 3 bedroom, 2 bath residence on our beachfront property in Ha`ena. I will address each of your comments in turn:

1. **Sandbag Revetment and Associated Environmental Impacts** – The history, context and current status of the sandbag revetment is prominently and extensively addressed in section VI. A. of the CDUA. The CDUA and Environmental Assessment are associated documents, submitted simultaneously in a single application for review by the State Office of Conservation and Coastal Lands (OCCL), the HHCA and other agencies. Agency correspondence relative to the sandbag revetment is included in Appendix 5 of the CDUA and Draft EA.

Our application clearly states that our proposal for the construction of a new single-family residence on the property adequately setback from the shoreline, does not address nor does it seek to justify the retention (or removal) of the sandbag revetment. As set forth in our application, permitting matters and associated environmental impacts relative to the revetment are currently being studied and addressed collectively by the five (5) impacted property owners with input from the State, County and community.

According to our legal counsel, and by example of the recently approved Bartmess shoreline certification, a shoreline may be certified if it is associated with a permitted shoreline structure. By letter dated July 30, 2008, Ian Costa Planning Director for the County of Kauai stated that the Special Management Area Emergency Permit SMA (E) 97-03 and Shoreline Setback Variance for the sandbag revetment "*remain valid until a formal notice to rescind or revoke the permits is issued by our Department*".

2. **Shoreline Setback Distance** - In our application, we propose to set our new residence 50-feet back from the certified shoreline. This setback is in compliance with the County of Kauai Shoreline Setback and Coastal Protection Ordinance No. 863 and was determined by applying the lot-depth formula contained in the ordinance. With adherence to the setback ordinance, we feel that it is justified to construct a new residence on the parcel even if the outcome of the sandbag revetment has not yet been determined. The proposed 50-foot setback is adequate to protect our home, the public resources and the natural environment from negative impacts. Public access along the beach is adequately preserved.



### 3. Proposed Conditions of CDUA Permit Approval

- a) **Shoreline Hardening** - we do not object to a CDUA condition of approval that states that shoreline hardening shall not be allowed to protect the proposed structure from loss if such hardening is proven detrimental to public resources.
- b) **Lateral Beach Access & Public Easement** – a significant deeded portion of our property is located makai of the proposed shoreline survey. This area of our parcel has been and will continue to be available for public use, including but not limited to public access traversing the beach. We do not believe therefore, that it is necessary or appropriate to grant a public access easement over that portion of the property which is mauka of the shoreline.
- c) **Fencing** – our application clearly states that all proposed fencing would be held back a minimum of 40 feet from the certified shoreline.
- d) **Naupaka and Salt Tolerant Plants** – we are of the opinion that naturally occurring vegetation along the shoreline should be allowed to remain even if it is located makai of the certified shoreline. Acceptable landscaping protocols for the shoreline interface should be determined as part of the sandbag revetment permitting process.
- e) **Commercial Use** - It is our understanding that the Board of Land & Natural Resources (BLNR) typically prohibits commercial use, including transient vacation rental use, as a condition of CDUA permit approval. We will defer to the Board's decision in such matters.

While we appreciate the HHCA's expressed concerns, we feel that for the most part, said concerns are grossly overstated and do not accurately respond to the content of the CDUA and Draft Environmental Assessment. The proposed project, which is for the development of a single-family residence, does not have any significant detrimental environmental impacts. The shoreline setback of 50 feet is adequate and takes into consideration the shallow depth of the property. The nature of our project and the associated impact mitigations are similar to those of recently permitted residential developments in Ha`ena.

Sincerely,

COPY

Matt Malerich

Cc: DLNR, Office of Conservation and Coastal Lands

Please Review



**SIERRA CLUB** Kaua'i Group of the Hawai'i Chapter  
Post Office Box 3412, Lihue, Kauai, Hawai'i, 96766

DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

2009 JUL 22 A 8:08

RECEIVED  
OFFICE OF CONSERVATION AND COASTAL LANDS

July 21, 2009

Ms. Dawn Hegger  
State of Hawaii  
DLNR, Office of Conservation and Coastal Lands  
P.O. Box 621  
Honolulu, HI 96813

Re: CDUA and Draft EA for Malerich Single Family Residence, TMK (4) 5-9-05:025

Aloha Ms. Hegger,

Thank you for the opportunity to comment on the Draft Environmental Assessment (EA) and Conservation District Use Application (CDUA) for this project. Our primary concerns with regard to this project are the negative impacts that it would impose on public resources and the public's access to and along the beach that fronts the subject property, if the project is allowed to move forward without first removing the temporary sandbag revetment that fronts the property and allowing the true shoreline to be determined and used as the basis for an appropriate setback.

**1. The Draft EA Is Seriously Deficient and the Proposed FONSI Is Not Justifiable.**

We strongly believe that the Draft EA for this project is seriously flawed and that as a result there is no justifiable basis for the "anticipated" Finding of No Significant Impact.

- The makai frontage of parcel 4-5-9-05:025 has been shored up for more than 12 years by a temporary sandbag revetment. The *raison d'etre* for that revetment is to artificially fix the shoreline and to prevent the shoreline - which had been eroding prior to the installation of the temporary revetment - from continuing its mauka movement.
- In fact, the Kauai Shoreline Study Erosion Map for the area (located online at [ftp://soest.hawaii.edu/coastal/webftp/Kauai/posters/Haena\\_ST72dpi.jpg](ftp://soest.hawaii.edu/coastal/webftp/Kauai/posters/Haena_ST72dpi.jpg)) shows the shoreline erosion rate in the vicinity of parcel 4-5-9-05:025 to be greater than 1 foot/year.
- Thus, it is extremely unlikely that, absent the existing temporary shoreline armoring, the shoreline would today be located at the revetment. It is far more likely that, absent the shoreline revetment, the shoreline would be much further mauka.
- The true, natural location of the shoreline has clearly been masked by the sandbag revetment. The true location of the shoreline - and therefore, the location from which the shoreline setback must be measured - can only be found by first removing the temporary revetment.
- Allowing the proposed structure to be sited without first removing the revetment

would virtually guarantee that, once the temporary revetment is removed, the shoreline will soon move to its natural location, more mauka than the artificial location that was fixed by the revetment. Without the revetment, the known erosion hazards present at the subject parcel virtually guarantee that the proposed structure will in fact be set back far less than proposed 50 feet from the shoreline. This virtually guarantees - based on the 1 foot per year Shoreline Study erosion rate for the subject area - that safe lateral public access along the shore makai of the proposed structure will soon be lost.

Yet, remarkably, the Draft EA makes absolutely no mention of the shoreline armoring provided by this temporary sandbag revetment or of the related impacts and consequences outlined above. That significant omission results in an incomplete environmental review and leads to a drastic misstatement of the relationships of the proposed project to the Chapter 200-Title 11 significance criteria for evaluating the proposed impacts of an action on the environment. For example:

- Criterion 1 (Involves an irrevocable commitment to loss or destruction of any natural or cultural resources): The Draft EA states that the proposed action will not involve a loss or destruction of any natural or cultural resources. This statement is most likely incorrect, and is certainly not justifiable. Allowing the project to be constructed as proposed, with its location far too makai due to the use of an artificial shoreline based on the location of the revetment, would likely result, after the temporary revetment is ultimately removed, in the loss of important natural and cultural resources: the existing public beach and public access along the shore. Alternatively, allowing the project to be constructed as proposed would likely result, if the temporary revetment is not removed, in a similar loss of important natural and cultural resources. Thus, in either case, allowing the project to be constructed as proposed would likely result in the loss of important natural and cultural resources.
- Criterion 2 (Curtails the range of beneficial uses of the environment): The Draft EA states that the proposed action will not curtail the range of beneficial uses of the environment. This statement is most likely incorrect, and is certainly not justifiable. The loss of public access along the shoreline - which will very likely occur if the project is permitted without first removing the revetment and allowing the natural littoral processes to establish the natural location of the shoreline - would most certainly constitute a curtailment in beneficial uses of the environment.
- Criterion 7 (Involves a substantial degradation of the environmental quality): The Draft EA states that the proposed action is not anticipated to have a negative impact upon the environment. For the same reasons as noted above, this statement is most likely incorrect, and is certainly not justifiable. Loss of public beach and public access along the shore would certainly constitute a substantial degradation of environmental quality.
- Criterion 9 (Substantially affects a rare, threatened, or endangered species or habitat): The Draft EA incorrectly states that the project area is devoid of any rare, threatened or endangered species and that the project will not place any nearby habitat at risk. This is incorrect. The EA fails to address the environmental and cultural impacts of the revetment on the loss of habitat for the endangered Hawaiian Monk Seals, which frequent the area fronting the sandbag revetment. Year after year, beach sand has been pushed up to cover the sandbags, making an unnatural slope the monk seal cannot navigate to rest. This diminished beach area means loss of habitat.

Certainly, we can not assert that removal of the revetment would with absolute certainty result in the establishment of a shoreline that is further mauka, with a consequent requirement that the project be located further mauka. But the evidence (including the need to have built the temporary revetment in the first place, the continuing reinforcement of the revetment over the past twelve years, and the shoreline erosion rate at the parcel) certainly points to this being the most-likely outcome. And in any event, the evidence certainly does not support the counter-intuitive assertions in the Draft EA, and it certainly can not justify the "anticipated" FONSI.

## **2. The Mitigation Measures in the Draft EA Are Clearly Insufficient to Protect the Public Interest.**

As noted above, allowing the proposed structure to be sited based on the artificial shoreline created by the temporary sandbag revetment would very likely result in serious impacts on public resources and the public use of the shore. Thus, allowing the project to proceed without first resolving the revetment issue would have significant effects on the quality of the environment in Ha'ena and would be contrary to the state's environmental policies.

We therefore believe that the only justifiable course of action is to deny the requested CDU Permit until after the revetment issue is completely resolved - that is: (i) the revetment is removed, (ii) the true location of the shoreline is re-established by natural processes, and (iii) a building setback is established based on that location.

Endnote 1 provides additional comments on the need to resolve the revetment issue before considering the CDUA.

However, if a decision is made to consider the CDU Application prior to the resolution of the revetment issue, such consideration should be done only based upon a revised EA that fully takes into account the issues outlined above, and only with the imposition of a set of mitigation measures that would address those impacts. Specifically, the following four mitigation conditions should be imposed:

### **Mitigation Condition 1: Removal of the Revetment**

*If a CDU Permit is granted, any construction should be conditioned upon first:*

- Removing the temporary sandbag revetment
- Allowing natural littoral processes sufficient time to re-establish the location of the shoreline
- Certifying that location and determining the shoreline setback from that location.

No construction should be allowed until after all of the above requirements have been demonstrated to have been completely satisfied.

### **Mitigation Condition 2: Use of Erosion-Based Setback**

Both the request for the temporary revetment and the need to replenish it annually make it clear that extremely high wave energy and unstable conditions front this Conservation District parcel. It is also clear from the published shoreline erosion map for the location that there is a known high shoreline erosion rate along the makai side of this parcel.

Therefore, if a CDU Permit is granted, the public interest must be protected by requiring the use of the erosion-based setback formula specified in the *Hawaii Coastal Hazard Mitigation Guidebook* (70 \* annual erosion rate + 40 feet). This requirement would be consistent with the OCCL practice of requiring erosion-based setbacks for the safe siting of structures.

#### Mitigation Condition 3: Dynamic Shoreline Easement

If a CDU Permit is granted, in light of the known high shoreline erosion rate at the subject parcel, the permit should be conditioned on the provision and maintenance of a perpetual public easement from the shoreline landward to allow the natural migration of habitat that is necessary to allow safe lateral access for people traversing the beach in front of the subject property. The boundaries of such a perpetual "dynamic" or "rolling coastal conservation" easement would move mauka as the shoreline moves mauka, providing perpetual public access.

#### Mitigation Condition 4: Prohibition Against Shoreline Armoring

If a CDU Permit is granted, the permit should include a requirement that no shoreline hardening, revetments, seawalls, sandbags or other structures will be allowed to artificially fix the shoreline during the life of the permitted structure and any subsequent development.

The history of erosion events at the subject parcel (including the need to armor the shoreline with the temporary revetment 12 years ago, the continuing reliance on the temporary revetment 12 years later, and the published shoreline erosion rate at the parcel) all point to the likelihood that long-term armoring will be required to protect the proposed structure if it is built at its proposed location. Such armoring would, of course, result in the loss of the beach and public access. Thus, protection of the public interest requires that it be made clear up-front, at the time of issuance of any CDU Permit, that any such armoring will be expressly prohibited.

The four mitigation conditions above are feasible, reasonable and within the authority of the BLNR, and no CDU Permit should be granted without them. Indeed, Section III.C (Summary of Mitigative Measures) states that the applicant "agrees to adhere to any additional measures that the Board may recommend to insure against environmental degradation."

### **3. The CDUA Mischaracterizes the Project Site and Project Impacts by Ignoring the Sandbag Revetment.**

An incomplete, disingenuous and misleading physical description of the site is used throughout the CDUA. For example, page 9, Section E (Topography) states: "the topography of the subject parcel rises fairly abruptly along its seaward edge to the top of what appears to be an old sand dune formation. The proposed shoreline is situated near the top of this dune formation, a conservative distance back from the leading edge of vegetation." The description fails to mention the sandbag revetment that is present and currently altering the natural coastal processes, nor that the vegetation described was intentionally planted and irrigated on top of the revetment, and does not represent natural vegetation.

The CDUA 's failure to acknowledge the sandbag revetment (which is located within the deeded title of this parcel) and to address the impacts of allowing the sandbag revetment to determine the location of the proposed structure, renders the CDUA application inconsistent with HAR, Chapter 13-5-1, whose purpose is to *"regulate land use within the Conservation District for the purpose of conserving, protecting, and preserving the important natural resources of the state through appropriate management and use to promote their long term sustainability and the public health, safety and welfare."*

The sandbag revetment, which is currently an integral part of the subject parcel, creates significant environmental impacts that are germane to and inextricably related to the request for a Conservation District Use Permit. Therefore, the revetment, its impacts, and its future status can not be ignored in the CDUA.

- The "temporary emergency revetment" interferes with normal wave run up and has "fixed" the shoreline.
- The revetment interferes with the natural littoral processes resulting in diminution of natural resources.
- The revetment, due to its location, results in the loss of unobstructed lateral access during high tides and the winter months.
- Portions of the revetment have failed, are broken apart, and are now lodged in the reef and in the rocks and buried in the ocean at this conservation beach.
- The sandbags themselves are a physical impediment and block safe lateral public access across the beach during high surf.
- The loss of beach that has resulted from the sandbag armoring of the coastline results in the loss of quiet enjoyment of the beach by the public during high surf and tides.
- Traditional spiritual and cultural practices, activities, and subsistence fishing practices of this community are lost due to the lack of lateral beach access where the revetment is located.
- Alterations to the natural shoreline environment (i.e., the sand bag revetment) have diminished the natural characteristics of the shoreline area.
- Every year or two, sand has been taken from the public beach in conservation land and pushed up to cover the sandbags, creating a steep slope and changing the beach profile.
- At the state's recent shoreline site visit to the property, irrigation lines were observed on the sandbag revetment (seaward of the proposed shoreline), along with planted salt tolerant naupaka.

The applicant asserts that the status and impacts of the sandbag revetment should not be considered as part of the CDUA. But the practical reality is that certifying the shoreline based on the existence of the temporary emergency revetment and siting the proposed residence based on the existence of the revetment would result in tremendous economic pressures to permanently armor the shoreline in order to protect the expensive structure that is proposed in the CDUA, effectively foreclosing the option of removing the temporary revetment and thereby causing permanent losses of public coastal resources.

For all of the reasons above, the reality is that the revetment and the CDUA are

inextricably linked and the removal of the revetment must be addressed as part of the CDU permitting process.

**4. The Location of the Shoreline Cannot be Certified while the Temporary Revetment Is in Place.**

The CDUA was accepted without an approved certified shoreline. The sandbag revetment has seemingly "fixed" the shoreline location in place, as the upper reaches of the wash of the waves pursuant to HRS 205A can not truly be located due to the sandbag revetment. The revetment must therefore be removed prior to certification of the shoreline.

**5. The CDUA's Assessment of Historical and Cultural Impacts Is Inadequate and Deficient.**

Page 13 of the Cultural Impact Assessment states: *"To our knowledge, the project area has not been used for traditional cultural purposes within recent times. Based on historical research and no response from the above listed contacts, it is reasonable to conclude that Hawaiian rights related to gathering, access or other customary activities within the project area will not be effected and there will be no direct adverse effects upon cultural practices or beliefs."* This statement is in conflict with the actual uses of this area and with the state of Hawaii's legislative mandate that designated Ha'ena as a Hawaiian Community Subsistence Fishing Area.

The Cultural Impact statement is also silent regarding impacts upon local fishermen and fishing. The Cultural Assessment concludes with the statement: "Because there were no cultural activities identified within the project area, there are no adverse effects." Yet Appendix II, page 7, of the Bartmess Cultural Impact Assessment recognizes that *"Ha'ena was known for its excellent fishing as it contained the only lagoon on Kauai."*

Development abutting Class AA waters must be evaluated with protection of the resource in mind. The impacts of the failing sandbag structure on the fishery - a structure that fronts the proposed new construction, a structure that is part of the parcel, a structure whose permanent approval will likely be sought in order to protect the newly-constructed residence that is the subject of the CDUA - can not be ignored in the CDUA.

**6. Additional Conditions that Should Be Placed on Any Approvals**

In addition to the four mitigation conditions outlined in Section 2 above, the following conditions should be attached to any CDU Permit approval.

- The portion of the property that is makai of the certified shoreline shall be kept cleared of naupaka and any other salt-tolerant, artificially-induced plantings.
- No commercial uses, including transient vacation rentals, will be permitted on the property.
- The conditions cited above will be incorporated into the conditions for project approval and the deed for the property, and will be recorded with the Bureau of

Conveyances.

**Conclusion**

The proposed structure and the existing revetment are intimately connected and cannot be analyzed separately. Because of the high shoreline erosion rate in the vicinity of the subject parcel, the retention or removal of the temporary revetment will have significant impacts on the location of the certified shoreline, on the appropriate setback and location of the proposed structure, and therefore, on whether or not the public resource will be protected in the long-run.

Both the CDUA and the EA must acknowledge that the existing revetment is a temporary structure, that no permanent structures will be allowed to harden the shoreline in order to protect the proposed development, and that removal of the revetment must precede the determination of the location of the shoreline and any consideration of the CDUA.

Public access and public resources, as well as the proposed development, can only be protected by following the proper procedures:

- Removing the temporary sandbag revetment;
- Allowing the natural littoral processes sufficient time to re-establish the location of the shoreline;
- Certifying that location and determining the shoreline setback from that location, consistent with the state and county shoreline setback requirements.

We agree with the OCCL that *"there has been sufficient time since the authorization of the issuance of the permits by the County of Kauai to develop an alternative erosion control strategy... The OCCL notes you should remove the temporary structure, or apply for a CDUA for permanent shore protection so this matter can be resolved."*



Caren Diamond, on behalf of the Kauai Group of the Sierra Club

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Endnote 1

The temporary sandbag revetment that fronts parcel 4-5-9-05:025, which has been in place since 1996, has prevented the natural littoral processes from establishing the natural shoreline for 12 years and has affected the adjacent public beach. For the reasons that are outlined below, we believe that the revetment issue must be resolved before any CDUA can be considered.

1. The sandbag revetment that fronts this parcel has exceeded its authorized life.

The County of Kaua'i issued SMA Emergency Permit (SMA (E)-97-03) on Dec. 5, 1996 for the installation of a sandbag revetment at parcels (4) 5-9-005:023-027 in the State Conservation District of Ha'ena. Condition #5 of that permit states that "[t]he emergency shoreline protection measures shall be temporary [emphasis added] until acceptable permanent measures, which may include relocation of the structures, are approved through normal permitting procedures..."

The State of Hawai'i issued a permit one week later, on Dec 12, 1996, for the same parcels. The pertinent condition of that permit states that "[t]he expiration date shall be December 12, 1997; The permittee during the one year timeframe for this authorization shall prepare a shoreline survey and work to resolve the shoreline emergency through the appropriate permitting process."

2. The sandbag revetment that fronts this parcel is detrimental to the public interest.

Instead of being removed after one year, the sandbag revetment, which was constructed seaward of the May 24, 1984 certified shoreline, has repeatedly been reinforced over the past 12 years through sand pushing. The large amounts of sand that have been pushed from the lower areas of the beach to reinforce the revetment have increased the steepness of the beach and have diminished the size of the beach, leading to a lack of lateral access during high tides and surf.

Allowing the sandbag revetment to remain would also lead to further beach loss and would lead to an unacceptable loss of public access along the Ha'ena shoreline, one of the community's and state's most valuable resources.

The DLNR has correctly recognized the problem created by this temporary, emergency revetment. In its July 28, 2008 correspondence (CORR: KA-08-248) to neighboring property owners Carroll and Downs, the DLNR denied the request for another round of sand pushing for this revetment. The DLNR noted that "sand pushing/scraping can destabilize the beach profile and actually increase beach loss and coastal land loss. This can, in some cases increase the steepness of the beach profile and accelerate erosion processes."

In addition, the project area is used by endangered Hawaiian monk seals, which rely on this area's habitat for survival. The temporary sand bag revetment interferes with that critical habitat. The beach fronting the revetment has narrowed since the sandbag revetment has been in place, with the beach profile becoming steeper and steeper, making it impossible for monk seals to haul out and rest in what has been traditional monk seal habitat.

3. The true location of the shoreline is masked by the sandbag revetment, to the detriment of the public beach.

The removal of the existing temporary revetment must be a precondition for the approval of any permits and any shoreline certification, as the natural shoreline needs to be established in the absence of the revetment, prior to siting any development.

No new permanent structure, including your proposed development, can be properly sited as long as the temporary revetment is in place. A shoreline setback based on a shoreline certification in the presence of that revetment would not achieve its purpose of providing an adequate buffer

zone against future erosion, as it would be predicated on a false shoreline that is unnaturally seaward due to the armoring of the shoreline and likely would lead to the need for permanent armoring resulting in beach loss. We believe that the public interest in protecting public access along Ha'ena's beaches will inevitably require that the community take a firm stand against any proposals for permanent hardening (revetments, seawalls, etc.) of the shoreline.

The Final Environmental Assessment for the neighboring Bartmess property states that "*the fact that the sandbags are exposed on a regular basis during the winter season demonstrates that the sandbags (or other form of shoreline protection) are necessary to prevent the high shoreline embankment from suffering erosion damage and collapse.*"

In fact, portions of the revetment broke up during last winter's winter swells, with sandbags dislodged from the revetment and trapped within the reef and rocks resulting in environmental degradation of Ha'ena's Conservation District.

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Caren Diamond For the  
Kaua Group of Hs. Sierra Club

August 31, 2009

Caren Diamond  
Sierra Club - - Kaua'i Group of the Hawai'i Chapter  
P.O. Box 3412  
Lihu'e, HI 96766

**Re:       Comments on Draft Environmental Assessment (DEA)  
          Conservation District Use Application (CDUA) KA-3509  
          Proposed Malerich Single Family Residence  
          TMK (4) 5-9-05: 025  
          Ha`ena, Kaua`i, Hawai`i**

Dear Ms. Diamond and Member of the Kaua'i Chapter of the Sierra Club,

This is in response to your letter dated July 21<sup>st</sup> 2009 regarding the Draft Environmental Assessment (DEA) associated with our CDUA proposal to construct a 3 bedroom, 2 bath residence on our beachfront property in Ha`ena. While we appreciate your input, we feel that your concerns are grossly overstated and do not accurately respond to the content of the CDUA and DEA. The proposed project, which is for the development of a single-family residence, does not result in significant negative environmental impacts. As is stated in the application, the Environmental Assessment for this project does not seek to justify retention of the existing sandbag revetment nor does it assess the environmental impacts of the permitted shoreline revetment. Given the "average lot depth" of our parcel, the proposed shoreline setback of 50 feet is consistent with the County of Kauai shoreline setback and coastal protection ordinance No. 863. The nature of our project and the associated impact mitigations are similar to recently permitted residential developments along the shore in Ha`ena.

Following, below, I will attempt to address each of your comments in turn:

1. **Deficiency of Draft EA** – Your critical analysis of the Draft EA is focused almost entirely on the sandbag revetment and the associated shoreline certification. However, the CDUA and Draft EA neither establish the certified shoreline location nor do they seek to assess, permit or justify retention of the sandbag revetment. Our CDUA describes and assesses the proposed residential construction, which is to be setback 50 feet from the certified shoreline. As stated throughout our application, permitting matters and associated environmental impacts relative to the revetment are currently being studied and addressed collectively by the five (5) impacted property owners with input from the State and County.

The proposed construction of our residence is not, as you claim, contrary or inconsistent with the significance criteria contained in Chapter 200-Title 11. Our project does not involve an irrevocable commitment to the loss or destruction of any natural or cultural resources. Nor does it curtail the range of beneficial uses of the environment, involve a substantial degradation of environmental quality or substantially affect rare, threatened or endangered species or their habitat. When considering the nature of the residential development in question, your claims are not well supported. By example, it is hard to equate the loss of monk seal habitat with a home setback 50 feet from the certified shoreline.

2. **Proposed Mitigation Measures** – the mitigation measures, which you propose, are once again associated primarily with the sandbag revetment and are not justified for the residential construction addressed under the CDUA and Draft EA. The proposed shoreline setback of 50-feet provides adequate protection against the effects of cumulative shoreline erosion.

Your suggested removal the existing sandbag revetment, without the benefit of a complete statistical analysis of the beach dynamics of Ha`ena Bay and without site-specific evidence to validate that the sandbags are actually having a negative impact upon the beach environment is therefore premature and perhaps unnecessary. If it can be documented that the sandbag revetment is not contributing to a long-term, sustained narrowing of the beach, then there may be little if any justification for removing the sandbags. A statistical analysis is now underway to better understand these seasonal beach dynamics in order to inform decisions that will help to protect both the public interest and preserve the integrity of the impacted private properties.

3. **Characterization of the Project Site within the CDUA** – Section VI. A. of the CDUA clearly characterizes the sandbag revetment fronting the subject property.
4. **Shoreline Certification** - The Shoreline Certification process is handled by separate application. The CDUA and Draft EA simply state that the proposed residence will be setback 50 feet from the Certified Shoreline, wherever it is determined. According to our legal counsel, and by example of the recently approved Bartmess shoreline certification, a shoreline may be certified if it is associated with a permitted shoreline structure. By letter dated July 30, 2008, Ian Costa Planning Director for the County of Kauai stated that the Special Management Area Emergency Permit SMA (E) 97-03 and Shoreline Setback Variance for the sandbag revetment “*remain valid until a formal notice to rescind or revoke the permits is issued by our Department*”.
5. **Historical and Cultural Impacts** – The proposed residential development will not impact or curtail the use of Ha`ena as a Hawaiian Community Subsistence Fishing Area.
6. **Conditions of CDUA Approval**
  - a) **Naupaka and Salt Tolerant Plants** – we are of the opinion that naturally occurring vegetation along the shoreline should be allowed to remain even if it is located makai of the certified shoreline. Acceptable landscaping protocols for the shoreline interface will be discussed and determined as part of the sandbag revetment permitting process.
  - b) **Commercial Use** - It is our understanding that the Board of Land & Natural Resources (BLNR) typically prohibits commercial use, including transient vacation rental use, as a condition of CDUA permit approval. We will defer to the Board’s decision in such matters.

Sincerely,

COPY

Matt Malerich

Cc: DLNR, Office of Conservation and Coastal Lands

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 3378  
HONOLULU, HAWAII 96801

June 23, 2009

CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

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OFFICE OF CONSERVATION  
AND COASTAL LANDS

2009 JUN 24 A 8:19

In reply, please refer to:  
EMD / WB

DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII  
9 005 025

Mr. Samuel J. Lemmon, Administrator  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources  
Post Office Box 621  
Honolulu, Hawaii 96809

Dear Mr. Lemmon:


Subject: Request for Comments  
Conservation District Use Application (CDUA) KA-3509  
Malerich Proposed Single Family Residence (SFR), Subject Parcel  
05-7834 Kuhio Highway, Haena, Kauai, Hawaii TMK (4) 5-9-005: 025

Thank you for your allowing us to comment on the above mentioned project regarding the Malerich proposed single family residence which includes but is not limited to the construction of a three (3) bedroom two (2) bath single family residence on the 14,513 square foot parcel. We have the following comments to offer.

The subject project is located in the Critical Wastewater Disposal Area (CWDA) as determined by the Kauai County Wastewater Advisory Committee. As there is no existing County sewer system in the vicinity, construction and use of a treatment individual wastewater system (IWS) is required. As the property may be located within a 1000 feet of a public potable well, an aerobic treatment unit and absorption field may be required to be installed for the proposed single family residence.

All wastewater plans must conform to applicable provisions of the Department of Health's Administrative Rules, Chapter 11-62, "Wastewater Systems." We do reserve the right to review the detailed wastewater plans for conformance to applicable rules. Should you have any questions, please contact the Planning & Design Section of the Wastewater Branch at 586-4294.

Sincerely,

  
TOMAS S. SEE, P.E., CHIEF  
Wastewater Branch

c: DOH's Environmental Planning Office Mr. Jiakai Liu (EPO 09-084)  
DOH-WWB's Kauai Staff – Ms. Lori Vetter

August 31, 2009

Tomas S. See, P.E., Chief  
State Department of Health  
Wastewater Branch  
P.O. Box 3378  
Honolulu, HI 96801

**Re:       Comments on Draft Environmental Assessment (DEA)  
          Conservation District Use Application (CDUA) KA-3509  
          Proposed Malerich Single Family Residence  
          TMK (4) 5-9-05: 025  
          Ha`ena, Kaua`i, Hawai`i**

Dear Mr. See,

This is in response to your letter dated June 23, 2009 regarding the Draft Environmental Assessment (DEA) associated with our CDUA proposal to construct a 3 bedroom, 2 bath residence on our beachfront property in Ha`ena.

We are aware that our property is located in a Critical Wastewater Disposal Area (CWDA) and that the construction and use of an individual wastewater system (IWS) will be required for our residence. We are also aware that our property may be within less than 1,000 feet of a public potable well, and that an aerobic treatment unit and absorption field may be required to protect the public drinking water supply.

Once a CDUP is issued by the state, the Applicants will submit a wastewater plan in accordance with HAR, Chapter 11-62 "Wastewater Systems" to the DOH, Wastewater Branch for review and approval.

Sincerely,

**COPY**

Matt Malerich

Cc:   DLNR, Office of Conservation and Coastal Lands  
      Jiacai Liu, EPO  
      Lori Vetter, DOH-WWB, Kauai

PHONE (808) 594-1888



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OFFICE OF CONSERVATION  
AND COASTAL LANDS

FAX (808) 594-1865

2009 JUN 24 A 8:20

**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS** DEPT. OF LAND &  
711 KAPI'OLANI BOULEVARD, SUITE 500 NATURAL RESOURCES  
STATE OF HAWAII  
HONOLULU, HAWAII 96813

HRD09/4182B

June 16, 2009

Dawn Hegger  
Office of Conservation and Coastal Lands  
PO Box 621  
Honolulu, Hawai'i 96809

**RE: Request for comments on proposed single family residence and Conservation District Use Application (CDUA), Hā'ena, Kaua'i, TMK: 5-9-05:025.**

Aloha e Dawn Hegger,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated January 6, 2008. OHA has reviewed the project and offers the following comments.

OHA understands that the true shoreline location has not been determined yet and is awaiting certification by the state. We further understand that the natural shoreline is currently being impacted by a temporary structure in the form of a sandbag revetment permitted in 1997. OHA strongly urges that the shoreline determination be made without this retention structure in place.

Further, we understand that the applicant has submitted the Letter of Authorization to the County of Kauai Planning Department as requested by them on April 16, 2009 stating that the property owners in the area will coordinate their efforts regarding this temporary measure taken in 1997. OHA finds that the stakeholders involved with this permit have committed an absurdity in allowing a temporary permit to become a permanent fixture on this pristine shoreline for over 10 years. We advocate that no further extensions be granted regarding temporary permit (E) 97-3.

OHA understands that the current owner purchased this vacant property in October of 2008, and as such has essentially inherited the sandbag issue. However, we also point out that the applicant is seeking a variance from the Maximum Height Limit pursuant to Hawaii

Administrative Rules (HAR), Chapter 13-5-41(a), an adjustment to the minimum side setbacks as found in HAR, Chapter 13-5-41(a), has requested to be exempt from the Special Management Area Rules and Regulations of the County of Kauai because the proposal is a "non-development" (CDUA application, page two), and also has requested that this CDUA be strictly separated from the sandbag issue. (Invitation to Comment, page three)

According to *Purchasing Coastal Real Estate in Hawai'i*, which was sponsored by the University of Hawai'i Sea Grant College Program and supported by the Office of Conservation and Coastal Lands and the Coastal Zone Management Program for the State of Hawai'i on page one it states: "Before buying coastal property, it is important to have an understanding of the potential risks and consequences of living on the ocean's edge." As part of reasonable due diligence in buying this property the applicant should know that the subject property was burdened not only by the sandbag issue, but also is located in the State Land Use Conservation District, Limited subzone, in a high coastal hazard area, designated as a coastal flood area, and in the Coastal Zone Special Management Area. The applicant also has been visiting Kauai since 1967 and owns a condo there. (CDUA application, page one)

As such, OHA cannot view this applicant as being innocent to the issues from which they seek exemptions, variances, and adjustments. We recommend that the applicant consider finding design alternatives where they are available for their proposal rather than seeking considerations for it.

We do appreciate that a shoreline setback variance is not being sought at this time and point out that the applicant intends to build 50 feet back from the certified shoreline. Because the subject property is now vacant and undeveloped, OHA urges that the weathered and reduced sandbag revetment (see attachment A) be entirely removed so that the shoreline can naturally stabilize and consequently be determined before it is certified. OHA feels that the true location of the shoreline is being masked by the revetment and also note that it does so to the detriment of the public beach.

We also feel that it is reasonable and beneficial not to separate this CDUA from the sandbag issue. These issues are cumulative and still localized in the same immediate area. As such, it makes much more sense to treat the issues in this place comprehensively and in an inclusive manner. Segmenting the issues and trying to individualize responses is what has been done in the past, resulting in a derivation from the intent of the zoning and coastal zone management goals. It also created a sensitive tension between agencies that allowed for the shameful existence of a temporary permit for over 10 years to the detriment of the resource while still not resolving problems, as evidenced by this very CDUA.

Further, OHA recognizes that to narrowly focus on the proposed residence to the detriment of a long-term solution to the revetment issue would be done at the expense of the resource. It is unreasonable to expect that a long-term permitting solution be crafted with all the impacted parcel owners involved all the while allowing this public trust resource to be further



impacted and also to allow those same property owners to move forward with individual projects.

OHA notes that the revetment was designed as a single structure in this area and should be treated as it was originally designed. It was put in place to protect two older homes only (CDUA application, page five) threatened by storms in November of 1996 and permitted as a temporary structure. To now claim that all the property owners in the area should be consulted with now regarding this now permanent revetment is overly burdensome and unfair.

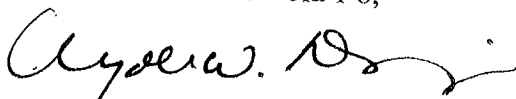
OHA is particularly watchful because many of our beneficiaries utilize this important cultural resource to exercise their constitutionally protected rights. This is so much the case that this area has been established as a community-based subsistence area on June 26, 2006 by Act 241, which amended Hawaii Revised Statutes Chapter 188-22.9. The legislature of the State of Hawai'i recognized the cultural importance of this area in Act 241, which reads, "The ahupua'a of Ha'ena and its offshore waters, since time immemorial, have been an important subsistence fishery resource for native Hawaiians and local families of the ahupua'a."

We also appreciate that if the project moves forward, and if any significant cultural deposits or human skeletal remains are encountered, work shall stop in the immediate vicinity and the State Historic Preservation Division shall be contacted and that the applicant proposes to use native plants for this proposal.

OHA is not opposed to the single family residence per se. However, the design, the method of construction, the care shown to this resource – these things are of concern for us and our beneficiaries. OHA urges that long-term permitting issues, jurisdictional disputes and property owners should all acquiesce in recognition of this beautiful resource.

Thank you for the opportunity to comment. We look forward to reviewing the forthcoming draft environmental assessment. If you have further questions, please contact Grant Arnold by phone at (808) 594-0263 or e-mail him at [granta@oha.org](mailto:granta@oha.org).

'O wau iho nō me ka 'oia'i'o,



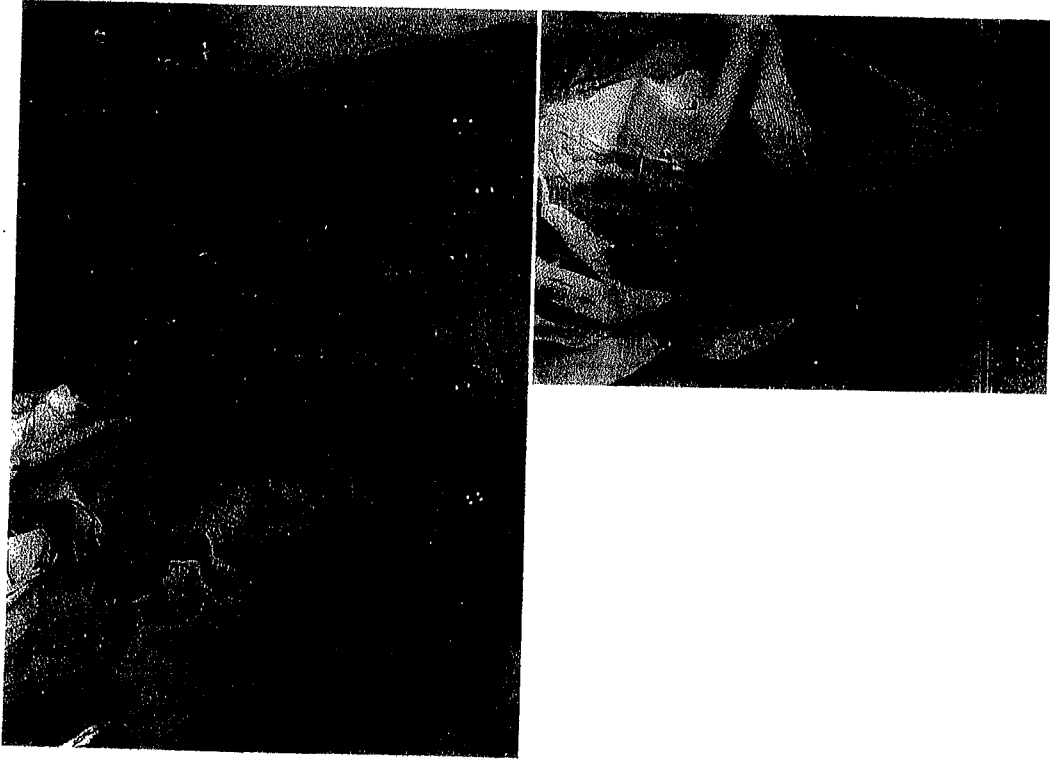
Clyde W. Nāmu'o  
Administrator

C: OHA CRC Kaua'i

Attachment A



Attachment A



August 31, 2009

Clyde W. Namu`o  
Administrator, Office of Hawaiian Affairs  
711 Kapi`olani Blvd., Suite 500  
Honolulu, HI 96813

**Re: Comments on Draft Environmental Assessment (DEA)  
Conservation District Use Application (CDUA) KA-3509  
Proposed Malerich Single Family Residence  
TMK (4) 5-9-05: 025  
Ha`ena, Kaua`i, Hawai`i**

Dear Mr. Namu`o

This is in response to your letter dated June 16, 2009 regarding the Draft Environmental Assessment (DEA) associated with our CDUA proposal to construct a 3 bedroom, 2 bath residence on our beachfront property in Ha`ena. I will address each of your comments in turn.

1. **Shoreline Certification** – As you are aware, the Shoreline Certification process is handled by separate application. The CDUA and Draft EA simply state that our proposed residence will be setback 50 feet from the Certified Shoreline, wherever it is determined. It is our understanding that a shoreline may be certified if it is associated with a permitted shoreline structure. By letter dated July 30, 2008, from Ian Costa, County of Kauai Planning Director, the Special Management Area Emergency Permit SMA (E) 97-03 for the existing sandbag revetment “*remains valid until a formal notice to rescind or revoke the permit is issued by our Department*”.
2. **Height Limit Variance** – The height limit variance requested in our application is consistent with and necessitated by the federal and county flood zone requirements of our property.
3. **Side-yard Setback Variance** – The side yard setback variance requested in our application is a reasonable and it facilitates a greater shoreline setback distance, which is a higher priority.
4. **Special Management Area Exemption** – it is our understanding that our proposed residence is exempt from obtaining a SMA Use Permit because it satisfies “non-development” criteria per Section 1.4, Paragraph H (2)(a) of the Special Management Area Rules and Regulations of the County of Kauai. The processing of a CDUA and Environmental Assessment affords the County Planning Department ample opportunity for review and input regarding the proposed project.
5. **Existing Sandbag Revetment** – Removal of the existing sandbag revetment, without the benefit of a complete statistical analysis of the beach dynamics of Ha`ena Bay and without site-specific evidence to validate that the sandbags are having a negative

impact upon the beach environment is premature and perhaps unnecessary. If it can be documented that the sandbag revetment is not contributing to a long-term, sustained narrowing of the beach, then there may be little if any justification for removing the sandbags. A statistical analysis is now underway to better understand the beach dynamics and to inform decisions that will help to protect both the public interest and preserve the integrity of the impacted private properties.

It is our sincere belief that our proposed residential development, setback an adequate distance from the certified shoreline, will not result in substantial negative impacts to the public resources nor will it negatively restrict the rights and resources of the native Hawaiian community.

Sincerely,

COPY

Matt Malerich

Cc: DLNR, Office of Conservation and Coastal Lands  
OHA, Kauai Office

LINDA LINGLE  
GOVERNOR OF HAWAII



LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

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2009 JUN 22 A 10:02

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
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ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:DH

FILE NO: CDUA KA-3509  
Acceptance Date: June 1, 2009  
180-Day Exp. Date: November 28, 2009  
SUSPENSE DATE: 21 Days from  
stamped date JUN - 1 2009

MEMORANDUM

TO: Division of Forestry and Wildlife, Historic Preservation Division, Kauai  
District Land Office, Division of Conservation and Resources Enforcement,  
State Parks Division, Engineering Division, Commission on Water Resource  
Management

FROM: Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

SUBJECT: REQUEST FOR COMMENTS  
Conservation District Use Application (CDUA) KA-3509 Malerich Proposed  
Single Family Residence (SFR)

APPLICANT: Matt Malerich, P.O. Box 1649, Hanalei, Hawaii 96714

TMK: (4) 5-9-005:025

LOCATION: Haena District, Island of Kauai

PUBLIC HEARING: YES NO

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NATURAL RESOURCES

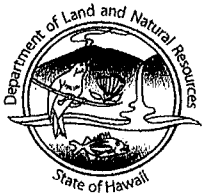
Please contact Dawn Hegger at 587-0380, should you have any questions on this matter.  
If no response is received by the suspense date, we will assume there are no comments.  
The suspense date starts from the date stamp.

- ( ) Comments Attached
- () No Comments

Signature  
June 19, 2009

Attachment(s) Date

LINDA LINGLE  
GOVERNOR OF HAWAII



LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
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STATE OF HAWAII 2009 JUN 12 A 11:45  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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HONOLULU, HAWAII 96809  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

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APPLICANT: Matt Malerich, P.O. Box 1649, Hanalei, Hawaii 96714

TMK: (4) 5-9-005:025

LOCATION: Haena District, Island of Kauai

PUBLIC HEARING: YES NO X

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( ) Comments Attached

No Comments

Attachment(s)

Date

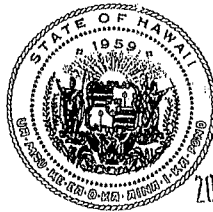
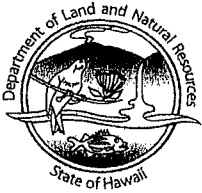
Signature

6/09/2009

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OLNR KELA ROAD

LINDA LINGLE  
GOVERNOR OF HAWAII



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Laura H. Thielen  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
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STATE OF HAWAII DEPT. OF LAND &  
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PUBLIC HEARING: YES NO X

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The suspense date starts from the date stamp.

Comments Attached  
 No Comments

Signature  
6-19-09

Attachment(s) Date



DEPARTMENT OF LAND AND NATURAL RESOURCES  
ENGINEERING DIVISION

OCCL/DawnHegger  
Ref.: CDUAKA-3509MalerichSFR  
Kauai.76

COMMENTS

- (X) We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Flood Zone VE. The National Flood Insurance Program does regulate developments within Zone VE as indicated in bold letters below.
  - ( ) Please take note that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zone \_\_\_\_.
  - ( ) Please note that the correct Flood Zone Designation for the project site according to the Flood Insurance Rate Map (FIRM) is \_\_\_\_.
  - (X) Please note that the project site must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. If there are any questions, please contact the State NFIP Coordinator, Ms. Carol Tyau-Beam, of the Department of Land and Natural Resources, Engineering Division at (808) 587-0267.
- Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards. If there are questions regarding the local flood ordinances, please contact the applicable County NFIP Coordinators below:
- ( ) Mr. Robert Sumitomo at (808) 768-8097 or Mr. Mario Siu Li at (808) 768-8098 of the City and County of Honolulu, Department of Planning and Permitting.
  - ( ) Mr. Kelly Gomes at (808) 961-8327 (Hilo) or Mr. Kiran Emler at (808) 327-3530 (Kona) of the County of Hawaii, Department of Public Works.
  - ( ) Mr. Francis Cerizo at (808) 270-7771 of the County of Maui, Department of Planning.
  - (X) Mr. Mario Antonio at (808) 241-6620 of the County of Kauai, Department of Public Works.
- ( ) The applicant should include project water demands and infrastructure required to meet water demands. Please note that the projects requiring water service from the Honolulu Board of Water Supply system will be required to pay a resource development charge, in addition to Water Facilities Charges for transmission and daily storage.
  - ( ) The applicant should provide the water demands and calculations to the Engineering Division so it can be included in the State Water Projects Plan Update.
  - ( ) Additional Comments: \_\_\_\_\_
  - ( ) Other: \_\_\_\_\_

Should you have any questions, please call Ms. Suzie S. Agraan the Planning Branch at 587-0258.

Signed: \_\_\_\_\_  
ERIC T. HIRANO, CHIEF ENGINEER

Date: \_\_\_\_\_