

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

February 24, 2012

180-Day Exp. Date: March 14, 2012

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

REGARDING: Conservation District Use Application (CDUA) KA-3607 for a Single Family Residence (SFR) & Related Improvements Including an After the Fact Culvert Crossing on State Land

**APPLICANT/
LANDOWNER:
TMK:** Jason & Teresa Stanley
(4) 5-5-008:001

**LANDOWNER:
TMK:** State of Hawaii
(4) 5-5-008:002

LOCATION: Waioli, Hanalei, Island of Kauai

AREA OF PARCEL Approximately (\approx) 1.21-acres

USE: \approx 10,104-ft²

SUBZONE: Resource

BACKGROUND

Access improvements and mass grubbing and grading of this area occurred in October 1989 without authorization by a landowner that owned several parcels within Waioli valley. Due to these prior terraforming activities, historic features (lo'i terracing, rock walls) that once covered the property have been obliterated. In addition, other unauthorized actions by the former landowner included the construction of a culvert on adjacent State land.

Enforcement action was brought against the former landowner that was noncompliant with the Board imposed conditions and landownership in the valley changed. As violations run with the land and this matter was not resolved, on June 9, 2006 enforcement action was again brought before the Board of Land and Natural Resource (BLNR) to resolve the access road violation. The BLNR agreed to allow new landowners to apply for an easement for roadway access to their subject parcels, provided that an after the fact permit was executed for the unauthorized portions of the Waioli Access Road that were illegally improved, and provided the \$8,134.20 fine imposed on the former landowner was paid. The fine was paid in November 2006 by

neighboring landowners whom also gained after the fact authorization for portions of the access road.

DESCRIPTION OF AREA AND CURRENT USE (Exhibits 1, 2, 3, 4 & 5)

The subject locality is located in a river valley on the flanks of Waialeale within Hanalei on the north shore of Kauai in the ahupua'a of Waioli identified as TMKs: (4) 5-5-008:001 and 002 respectively. Parcel 002 is owned by the State. The project area lies within the Resource subzone of the Conservation District. The project site is a 1.21-acre parcel located at an elevation of 30-ft above sea level. The climate is mild and moist with 100-120 inches of rain fall with temperatures of 75° F. The Flood Insurance Rate Map shows the site to be in Zone X, outside the 100-year floodplain. Observation of two high rainfall events in the spring of 2008 saw no flooding of the property.

The property is surrounded by undeveloped land and is described as artificial rolling terrain. The property is adjacent and above Waioli stream that lies to the east with Hanalei beyond; to the south (mauka) and west of the parcel is State land and to the north is private property. The site is flat and the vegetation of the area has been previously disturbed by agricultural prehistorically and by the previous illegal grubbing and grading but since then, has become heavily grown with non-native flora.

Access from Kumu Road to the property is via a set of legal easements over State and private properties. There are no existing structures on the site. No utilities are available to this area of Waioli valley.

A small linear pond is located to the west upon State land. According to maps of the area the pond appears to be part of an auwai (irrigation ditch). The pond does not appear to have the flow characteristics of fresh, clear water that can support habitat for most native aquatic organisms aside from insects. Toads and possibly some non-native fish may exist in the pond that receives some flow from overland runoff and some from a trickling spring. The former landowner constructed a culvert that consists of a 30-inch corrugated metal pipe and fill to cross this pond to access the property.

According to the applicant vegetation on the parcel includes a patch of bamboo covering the southern third of the property. A hau thicket covers the central area of the parcel and several non-native trees and other small plants create a somewhat dense vegetation overgrowth. A biological survey of the project area was conducted in November 2008. The vegetation is dominated by non-native species such as bamboo, cat's claw, rose apple, guava, ginger and mango. Native plants observed include hala and hau. No listed, threatened or endangered plant species were observed.

Introduced fauna in the area include cats, dogs, rats and mice. The Hawaiian Hoary Bat, an endangered species may visit the site. Avifauna observed in the area was introduced species. No native forest birds are expected to be found in the area due to the lack of native forest habitat and mosquitoes. The endangered Hawaiian Duck and the Nene may utilize the nearby water resources. Other water bird species such as the Auku'u, Kolea and Wandering Tattler may also

visit the area. Several native vertebrate and invertebrate including fish, snails and insects may be present in the adjacent stream. This would include o'opu, hihiwai, and damselflies.

No gathering, access, cultural practices or other customary activities have been observed on the property. An Archaeological Inventory Survey (AIS) has been completed for the project area. Several sites formerly located on the property and adjacent properties have been destroyed as a result of the unauthorized grading and grubbing that took place several years ago.

However three sites of significance have been noted: Site 511-lo'i terracing and Sites 512 & 513-stone walls. The AIS has been submitted to the Historic Preservation Division for review. The project archaeologist recommends that the remnants of these sites be preserved and the landowner has accepted these findings and recommendation. A Preservation Plans will be prepared and implemented should Historic Preservation concur with these findings.

Based upon information included with the application, this parcel is considered a "kuleana parcel" even though it was awarded prior to the Mahele. Agricultural uses (loi cultivation and growth of kula crops) took place on the parcel.

PROPOSED USE (Exhibits 6, 7, 8 & 9)

The application proposes to construct a residence with associated improvements and is also requesting after the fact approval for the unauthorized existing culvert on State land.

The applicant is proposing a residence of a rectangular design totaling 2,544-ft² consisting of ≈ 1024-ft² of interior living space with a ≈ 320-ft² loft with a rooftop elevation less than 24-ft above the finished grade and ≈ 1,360-ft² of deck. Associated improvements include a cement track driveway, an individual wastewater treatment system, two water tanks, a roof-mounted photovoltaic system, a backup generator, and a roof-mounted solar hot water system. Solid waste will be disposed of in accordance with County regulations. A local cell phone company will provide phone service.

The proposed residence is of post and pier construction with two bedrooms, a bathroom, a kitchen, a living room, a loft storage area, a laundry area and wrap around deck. The pole house design has been proposed to minimize grading as the house will be placed on concrete piers rather than slab on grade. No grading or tree removal is proposed. Proposed landscaping will utilize native and Polynesian species.

According to the application, a Stream Channel Alteration Permit is also being processed by the Commission on Water Resource Management for the culvert. Should authorization for the culvert not be granted, the applicant is proposing a single-span bridge in the easement.

Mitigative Measures

The applicant has proposed a number of conditions and mitigative actions in the EA to minimize the potential impacts of construction and the completed residence to protect and improve the natural resources on the property.

The building contractor shall be required to perform all earthwork and grading in conformance with Kauai County Ordinances. Sound associated with the construction of the improvements

will be intermittent and shall be limited to daylight hours. According to the applicant, a Storm Water Pollution Prevention Plan will be prepared to properly manage storm water runoff. The SWPP will describe a number of best management practices to be implemented that will include measures to prevent sediment from entering the stream.

The home shall comply with Chapter 13-5, Hawaii Administrative Rules, Single Family Residential Standards, Exhibit 4.

In the event that archaeological resource or human remains are encountered during development activities within the applicant's property, work in the immediate area of the discovery shall be halted and SHPD shall be contacted.

The site is in an area historically used for agriculture and is dominated by introduced plant species. Clearing of vegetation for the residence and associated facilities would not impact important native vegetation or threatened or endangered plant species or native birds. Due to obstructing vegetation and distance, the residence and culvert would not be visible from Kuhio Hwy or any other public roadway or public vantage points.

Alternatives

No action- the lot would remain unused. The application states the applicant does not own or have authorization to build on any other property. Under this alternative, no approval would have occurred and the applicant would consider this undesirable and inequitable. Management or stewardship of the land most likely would not take place. No other alternatives were proposed.

SUMMARY OF COMMENTS

This application was referred to the following agencies for their review and comment: the **State**: Department of Health; Office of Hawaiian Affairs; Office of Environmental Quality Control; Department of Land and Natural Resources Divisions of: Aquatics, Conservation and Resource Enforcement, Engineering, Forestry and Wildlife, Kauai District Land Office, Historic Preservation, Water Resource Management; and the **County of Kauai**: Fire Department, Department of Planning and the Department of Public Works. In addition, this application was also sent to the nearest public library, the Hanalei State Library, to make this information readily available to those who may wish to review it.

Responses were received and have been summarized from the following agencies:

STATE OF HAWAII

DEPARTMENT OF HEALTH (DOH)

The project is located in the critical wastewater disposal area as determined by the Kauai Wastewater Advisory Committee. The Department of Health has no records of an individual wastewater system (IWS) for the property. The property is also not connected to the County sewer service system at this time.

We understand that an individual wastewater treatment system meeting the requirements of the DOH will be provided for the residence. All wastewater plans must conform to applicable provisions of the Department of Health's HAR, §11-62 Wastewater Systems. We do reserve the right to review the detailed wastewater plans for conformance to applicable rules.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Commission on Water Resource Management

An After the Fact Stream Channel Alteration Permit (SCAP) is required.

Applicant's response

Mr. Stanley is currently preparing the SCAP application. We apologize for the delay in applying for this permit, but it has been difficult to assess some characteristics of the culvert, which, as you are aware, was not constructed by or with the authorization of Mr. Stanley and is outside land that he owns.

Engineering

According to the Flood Insurance Rate Map (FIRM) the property is located in Zone X. The Flood Insurance Program does not have any regulations for developments within Zone X.

Applicant's response

We acknowledge the confirmation that the location of the project is in Flood Zone X.

Forestry and Wildlife

We have no objections to the proposed action. If any action results in unintentional runoff of silt and/or debris into any waterway that all work stops and the problem be addressed immediately. Work should not continue until all runoff issues have been resolved.

Applicant's response

Mr. Stanley understands and agrees to the DOFAW recommendation that if any action results in unintentional runoff of silt and/or debris into any waterway, all work shall stop and the problem be addressed immediately.

COUNTY OF KAUAI

Department of Public Works

1. The proposed project improvements need to maintain the existing drainage runoff volumes and flow patterns.
2. Based on the information provided, the parcel is situated in close proximity to Waioli stream. The draft EA states that an unpermitted 30-inch corrugated metal pipe culvert was installed for access purposes to the site. Due to evidence of existing natural drainage ways and swales, a drainage study and building setback lines need to be established to prevent structures from being built in flood-prone areas. The drainage study shall be prepared by a professional civil engineer licensed in the State and in accordance with the County's "Storm Water Runoff System Manual" dated July 2001. The study needs to establish drainage and building setback lines and these shall be shown on all permit

- applications. New structures shall not encroach within the established building setback areas or determined floodway limits.
3. In accordance with Ordinance # 831, all new construction and substantial improvements located within the flood fringe or floodway must comply with the requirements of §15-1.5(a) and (b).
 4. All new water and sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharge from the system into streams, drainage ways and swales. The septic system design and specifications shall be submitted to the Department of Health for review and approval.
 5. All electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and or located so as to prevent water from entering or accumulation within the components during the conditions of flooding.
 6. No machinery or equipment which service a building such as furnaces, air conditioners, heat pumps, hot water heaters, washers, dryers, elevator lift equipment, electrical junction and circuit breaker boxes, back-up generators and food freezers are permitted below the base flood elevation.
 7. Proposed improvements shall comply with the County's Sediment and Erosion Control Ordinance #808. A grubbing permit is required if construction activities involve removing vegetation via uprooting and exposing bare ground. A grubbing permit is required if the project site is greater than 1-acre and a grading permit is required if the proposed fill or excavation exceeds 100 cubic yards.
 8. A separate grading permit may be required for the disposal site receiving the excess wasted excavated material. The disposal site needs to be identified and must satisfy the requirements of the Sediment and Erosion Control Ordinance # 808.
 9. Best Management Practices (BMPs) shall be implemented at all times to the maximum extent practical to prevent damage by sedimentation, erosion, or dust to streams, watercourses, natural areas and the property of others. The permittee and the property owner shall be responsible to ensure that BMPs are satisfactorily implemented.
 10. The 30" culvert installation needs to be reviewed and approved by the DLNR and CWRM to determine if a Stream Channel Alteration Permit (SCAP) is required. The DLNR needs to be concerned with the culvert design and installation. If not sized, designed and installed properly, the culvert could back up the storm flows and increase the flooding limits upstream of the culvert crossing and flood existing structures. The DLNR needs to assist in the review and approval of the culvert design and installation since the culvert is on State lands. Additionally, the culvert concentrates the storm flows to the lower lands and could cause erosion problems. If the outlet velocity flows are erosive, mitigation of drainage measures needs to be provided.

Further comments, dated January 26, 2012

The primary issue is that the proposed project improvements need to maintain the existing drainage runoff volumes and flow patterns without causing adverse impacts to downstream or neighboring properties. The applicant needs to submit a hydrologic and hydraulic drainage study for the existing 30-inch culvert crossing to DLNR for review and approval. We have no comments if the state has approved the study. We would like a copy of the approved

hydrological and hydraulic study for our files.

Applicant's response

1. *Maintain existing drainage runoff volumes and flow patterns.* No aspect of the project will alter these.
2. *Drainage study.* The applicant understands and is ready to comply with applicable laws and regulations related to drainage studies as part of the approval process for the building plans for the home and associated facilities.
3. *Ordinance No. 831, Section 15-1.5 (a) and (b).* The applicant will abide by the ordinance.
4. *Septic system.* The septic system will be designed and located in accordance with all applicable laws and regulations. The design will be submitted to the Department of Health.
5. *Service facilities vulnerable to flooding.* Although there is no indication of flooding on the site chosen for the home, the design will follow the specifications you list.
6. *Facilities below the base flood elevation.* No facilities are planned within or near the area below the base flood elevation.
7. *Sediment and erosion control.* The applicant will apply for appropriate grading and grubbing permits and approvals as part of the approval process for the building plans for the home and associated facilities.
8. *Grading permit for potential disposal site.* The applicant appreciates being made aware of this requirement in the contingency of generating excess wasted excavated material, which is currently not anticipated.
9. *BMPs.* The applicant and his engineer understand the need to develop and implement these BMPs.
10. *Culvert.* The applicant is in the process of applying for a Stream Channel Alteration Permit and understands that the issues you list will be systematically considered by the Commission on Water Resources Management during the permit review process.

Fire Department

Fire protection for this proposal will be severely limited. The fire engine from the local station will probably not cross over the culvert if it is not engineered to support its weight. Water for fire protection will be limited to the amount of supply in the engine and truck, until other sources can be found.

Applicant's response

We acknowledge your comments indicating that Fire Protection for any proposed structure on the Stanley property would be severely limited, because the fire engine from the local station will probably not cross over the culvert if it is not engineered to support its weight. The owner will have a water catchment system on-site to accommodate household needs and firefighting capacity.

Hanalei-Haena Community Association

The draft EA does not acknowledge our comments particularly those related to the North Shore Development Plan Special Planning Area. The draft is incomplete and should not be accepted until the HHCA's concerns have been addressed. In addition, the cumulative impacts of all the recently approved CDUPs for structures in this area should be evaluated.

As represented, this CDUA is for a house to be occupied by the owners. As with all single family dwellings constructed in the Conservation District, we are concerned with the conversion to a short-term transient vacation rental. In accordance with the recently amended 13-5, HAR, no transient vacation rentals should be permitted in the Conservation District.

As tall trees would mitigate visual impacts, any CDUP should include restrictions against the removal of any trees that would allow the proposed house to be seen from Hanalei. Should this CDUA be granted a condition should be made that no existing trees can be removed or destroyed without first acquiring a permit.

Any lighting, especially at night should be kept to a minimum and directed downward to avoid interfering with flight patterns of endangered birds, especially shearwaters. Minimal night time lighting will also help to protect the rural nature of public views of the Waioli-Hanalei area.

The CDUA discusses the Kauai General Plan but does not cite or discuss the North Shore Development Plan (NSDP) Special Planning Area report or ordinance. Relevant to this application, the NSDP calls for the use of non-reflective materials in construction, that building heights are limited to 25-feet and recommend the use of earth-tone colors. The EA and CDUA should be amended to recognize and meet the requirements of the NSDP.

We support a condition that any archaeological sites currently identified or any sites found in the future shall not be altered or destroyed.

Regarding the after the fact culvert request, HHCA proposes that this request not be granted, and that the landowner be required to construct a bridge over the Waioli stream to prevent water pollution and erosion of the stream banks.

Applicant's response

1. *Single-family residence and vacation rentals.* The applicant understands that short-term, transient vacation rentals are not allowed and is prepared to accept conditions explicitly stating such.

2. *No removal of tall trees and lighting restrictions.* The applicant does not believe this is a reasonable condition, because any tall trees, not just those that exist on the site, can serve to shield the residence from view. It should also be noted that there are literally thousands of trees between the applicant's property and the settled area of Hanalei, which is about a mile away. The applicant would agree to a condition requiring maintenance of a row of trees in front of the house. The applicant is agreeable to restricting any outdoor lighting to be downward directed.

3. *North Shore Development Plan.* We have reviewed the objectives and pertinent requirements of the North Shore Development Plan. Most of the objectives in the Plan deal with guiding government functions or developments such as commercial complexes and residential subdivisions, and do not relate to construction of one home on in the Open District and State Land Use Conservation District. The building of the proposed Stanley home and accessory features as designed is not in any way inconsistent with the North Shore Development Plan. In

conformance with the Plan, the building of the home: would not affect the natural beauty, detract from rural charm or visually overwhelm the landscape; has involved a complete inventory of historic sites and will not affect any; and would not affect native species or ecosystems. In terms of standards applied to the home, the height would be 24 feet above finished grade (less than the permitted 25 feet), and setbacks will be conformant. No utility lines will be built, and access is by existing legal easements. A section has been added to the Final EA on this consistency.

4. *No removal of any trees without a permit.* This is not a reasonable or necessary condition for this kuleana parcel, which formerly supported agriculture and is now overgrown with primarily non-native vegetation.

5. *Archaeological sites.* No currently identified archaeological sites will be altered or destroyed by the proposed action, and the applicant understands in the unlikely event that additional archaeological resources are encountered during future development activities, work in the immediate area of the discovery will be halted and SHPD contacted. This mitigation measure is specified in the EA and would be reasonable to include in the CDUP.

Comment on culvert. We acknowledge your comment, but do not believe that the culvert, which has been in place for about 20 years and appears stable, contributes to water pollution and erosion of the stream bank. The applicant, who did not construct the culvert and whose land it is not on, would prefer to have the culvert left in place but is prepared to abide by the decision of the Commission on Water Resources Management. The applicant has agreed to file a SCAP with the Commission on Water Resource Management in conjunction with the Conservation District Use Permit. The applicant will not and cannot remove improvements on State land that he did not install.

ANALYSIS

After reviewing the application, by correspondence dated September 30, 2011, the Department has found that:

1. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to §13-5-24, Hawaii Administrative Rules (HAR), R-8, SINGLE FAMILY RESIDENCE, (D-1), "A single family residence that conforms to design standards as outlined in this chapter." Please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to §13-5-40 of the HAR, a Public Hearing will not be required; and
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact to the environment (FONSI) is anticipated for the proposed project.

Notice of the draft Environmental Assessment (EA) was published in the Office of Environmental Quality Control's *Environmental Notice* on October 8, 2011 and the final EA was published in the January 8, 2012 *Environmental Notice*.

Based upon review of maps on file at the County of Kauai Planning Department, it has been determined that the project site is outside of the Special Management Area (SMA) of the County of Kauai.

CONSERVATION CRITERIA

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

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

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

The proposed house site has been previously disturbed. The applicant will be constructing a residence on private property in compliance with applicable laws of the federal, state and county agencies. The applicant will be removing some non-native flora and replacing with native species. Thus staff believes that the property will be appropriately managed to conserve, protect and preserve the natural resources.

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

The objective of the Resource subzone is to develop with proper management, areas to ensure sustained use of the natural resources of those areas. A single family residence is an identified land use that could be applied for within the Resource subzone. The proposed dwelling shall be built to comply with all Federal, State and County regulations and shall be constructed in accordance with Chapter 13-5, HAR Exhibit 4 Single Family Residential Standards.

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

The proposal does not lie within the Special Management Area. Staff believes the proposed land use complies with applicable provisions and guidelines related to Coastal Zone Management. Staff notes that the applicant shall be replacing and increasing the native flora on the lot. Historic sites and cultural uses have been assessed.

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

Original historic features were obliterated twenty years ago by a former landowner. The land has been described as artificial rolling terrain. The site is in an area historically used for agriculture and is dominated by introduced plant species. Clearing of vegetation for the residence and associated facilities would not impact important native vegetation or threatened or endangered plant species or native birds. Due to obstructing vegetation and

distance, the residence and culvert would not be visible from Kuhio Hwy or any other public roadway or public vantage points.

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

The property has been previously disturbed. The proposed residence is a simple post on pier design with a wraparound deck. The residence will be self-sustaining as there are no utilities to the property.

The applicant shall conform to the design standard of Chapter 13-5, HAR single-family residential standards and has proposed appropriate landscaping.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

An onsite resident will allow for the management of the property to prevent illegal dumping and improve the native landscape.

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

No subdivision of land is proposed for this project.

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

There shall be short-term noise and it is expected that the public health, safety and welfare would most likely be unaffected by the construction and the use of the area as a residence. Potential impacts will be mitigated in accordance with the Department of Health regulations. There is no public access to the property.

The applicant is aware that the level of services here are poor. Should an emergency situation occur, the residents should not expect quick response as there are no utilities and the Fire Department has stated that fire protection is limited and emergency vehicles would not cross the culvert.

DISCUSSION

The applicant would like to construct a residence on his private land. Mitigation commitments contained in the CDUA and final Environmental Assessment, are to be incorporated into the project during design and construction. The proposed dwelling and related improvements shall be built to comply with all Federal, State and County regulations and shall be constructed in accordance with Chapter 13-5, Exhibit 4 Single Family Residential Standards.

Staff notes, no landscaping plan was included with the CDUA but the application has noted that proposed landscaping will utilize native and Polynesian species. A landscaping plan shall be submitted to the Department for approval.

The County of Kauai Department of Public Works has concerns regarding flooding and has stated that existing drainage runoff volumes and flow patterns must be maintained without causing adverse impacts to downstream or neighboring properties. The applicant has stated that they are ready to comply with applicable laws and regulations related to drainage studies as part of the approval process for the building plans for the home and associated facilities.

Staff further notes the Fire Department has stated that fire protection will be severely limited. The fire engine from the local station will probably not cross over the culvert if it is not engineered to support its weight. Water for fire protection will be limited to the amount of supply in the engine and truck, until other sources can be found. The applicant has stated that there will be a water catchment system on-site to accommodate household needs and firefighting capacity.

While staff shares the County's concerns regarding the location of the project, a river valley of the wettest spot on earth, Waialeale, and with the level of service in an isolated, dirt road no utility non-urban setting, staff is also aware that the freedom to choose off-grid living is an individual choice. According to the Flood Insurance Rate Map (FIRM) the property is located in Zone X. The Flood Insurance Program does not have any regulations for developments within Zone X. Nevertheless, staff is recommending that approval of the residence be condition that the landowner executes a waiver and indemnification agreement to be recorded with the deed prior to submitting construction plans for approval that is satisfactory to the Department.

Regarding the easements, upkeep and maintenance of the easement is a shared responsibility amongst its users. Transportation of construction material and equipment may cause wear and tear upon the easement road. The applicant shall be responsible for any persons acting for or on his behalf to keep the easement area or premises in a safe, neat, clean and sanitary condition.

Regarding the After the Fact Culvert, this land use should be conditioned dependent upon the Water Resource Commission determination concerning the Stream Alteration Permit and Land Division's disposition for use of State land. Staff is also recommending that 'as built' engineered stamp plans be submitted to the Department for the existing culvert. As it is unclear if the applicant will be able to acquire 'as built' engineered stamp plans, authorization for removal of the culvert and for a single-span bridge in the easement is also necessary.

RECOMMENDATION:

Staff recommends that the Board of Land and Natural Resources APPROVE this application for an after the fact culvert as identified in CDUA KA-3607 located at Waioli valley, Hanalei, Island of Kauai, TMK: (4) 5-5-008:002 subject to the following conditions:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;

2. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
3. The permittee shall obtain appropriate authorization from the department for the occupancy of state lands;
4. The permittee shall obtain an after the fact Stream Alteration Permit as determined by the Water Resource Commission;
5. The permittee shall submit 'as built' engineered stamp plans to the Department for the existing culvert; or
6. The permittee shall submit engineered stamped plans for a single-span bridge; and
7. In regards to the use of the easement for the transportation of construction material and equipment, the permittee shall be responsible for cleaning and restoring the easement area to its original condition or a condition satisfactory to the Department upon completion of the project.

Staff further recommends that the Board of Land and Natural Resources APPROVE this application for a Single Family Residence and related improvements as identified in CDUA KA-3607 located at Waioli valley, Hanalei, Island of Kauai, TMK: (4) 5-5-008:002 subject to the following conditions:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of Title 13-5 of the Hawaii Administrative Rules (HAR). The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of 13-5, HAR;
2. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
3. The permittee shall comply with all applicable department of health administrative rules;
4. The single family residence shall not be used for rental or any other commercial purposes unless approved by the board. Transient rentals are prohibited, with the exception of wilderness camps approved by the board;

5. The permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
6. Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;
7. Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use.
8. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
9. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
10. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
11. In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
12. When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the county department of water supply;
13. Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
14. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
15. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;

16. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
17. Cleared areas shall be revegetated, in accordance with landscaping guidelines provided in this chapter, within thirty days unless otherwise provided for in a plan on file with and approved by the department;
18. Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;
19. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
20. The applicant will minimize visual impacts using appropriate house color and landscaping;
21. The permittee shall submit a landscaping plan to the Department for approval. For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property;
22. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries. All exterior lighting shall be shielded to protect the night sky;
23. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and
24. The applicant/landowner shall execute a waiver and indemnity prior to submitting construction plans for approval that is satisfactory to the Department;
25. During construction, activities shall be in accordance with an approved plan by the State Historic Preservation Division (SHPD) as applicable;
26. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (808-692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
27. The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities.

Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;

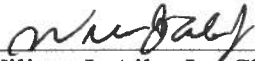
28. Other terms and conditions as may be prescribed by the Chairperson; and
29. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,



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

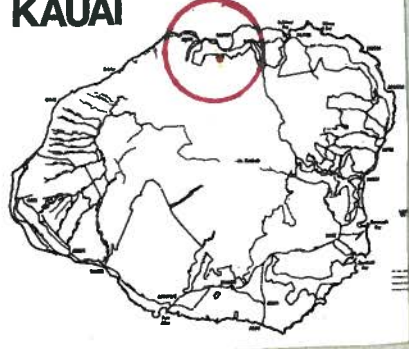
Approved for submittal:



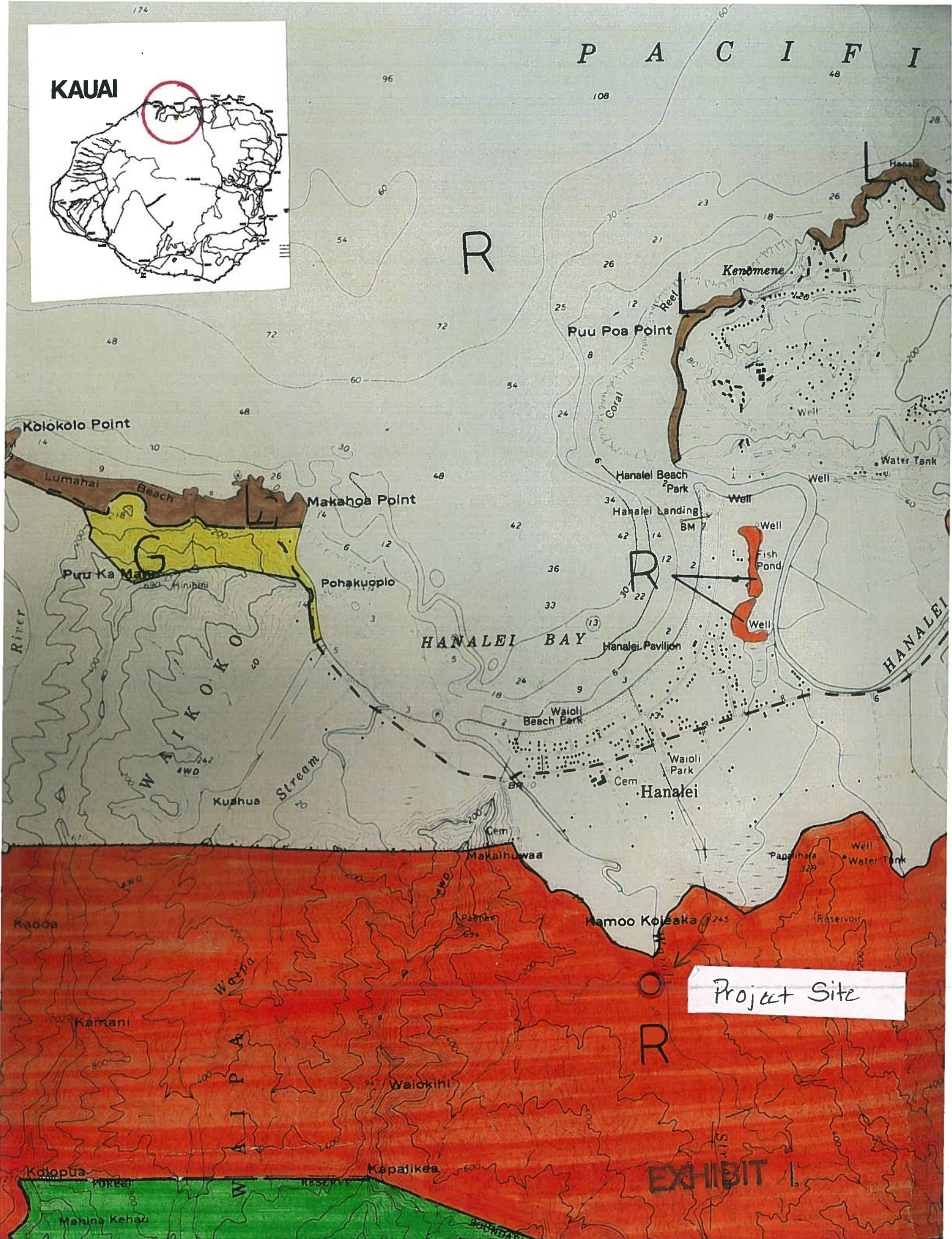
William J. Aila, Jr., Chairperson
Board of Land and Natural Resources

P A C I F I C

KAUAI



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Project Site

EXHIBIT I

UN	LN	Plat	L.C. Am. No.	Area	Ac.	Gr.	Notes
1	1	38	81242	1	0.22	1947	See left for Owners
2	2	38	81242	2	0.22	1947	See left for Owners
3	3	38	81242	3	0.22	1947	See left for Owners
4	4	38	81242	4	0.22	1947	See left for Owners
5	5	38	81242	5	0.22	1947	See left for Owners
6	6	38	81242	6	0.22	1947	See left for Owners
7	7	38	81242	7	0.22	1947	See left for Owners
8	8	38	81242	8	0.22	1947	See left for Owners
9	9	38	81242	9	0.22	1947	See left for Owners
10	10	38	81242	10	0.22	1947	See left for Owners
11	11	38	81242	11	0.22	1947	See left for Owners
12	12	38	81242	12	0.22	1947	See left for Owners
13	13	38	81242	13	0.22	1947	See left for Owners
14	14	38	81242	14	0.22	1947	See left for Owners
15	15	38	81242	15	0.22	1947	See left for Owners
16	16	38	81242	16	0.22	1947	See left for Owners
17	17	38	81242	17	0.22	1947	See left for Owners
18	18	38	81242	18	0.22	1947	See left for Owners
19	19	38	81242	19	0.22	1947	See left for Owners
20	20	38	81242	20	0.22	1947	See left for Owners
21	21	38	81242	21	0.22	1947	See left for Owners
22	22	38	81242	22	0.22	1947	See left for Owners
23	23	38	81242	23	0.22	1947	See left for Owners
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25	25	38	81242	25	0.22	1947	See left for Owners
26	26	38	81242	26	0.22	1947	See left for Owners
27	27	38	81242	27	0.22	1947	See left for Owners
28	28	38	81242	28	0.22	1947	See left for Owners
29	29	38	81242	29	0.22	1947	See left for Owners
30	30	38	81242	30	0.22	1947	See left for Owners

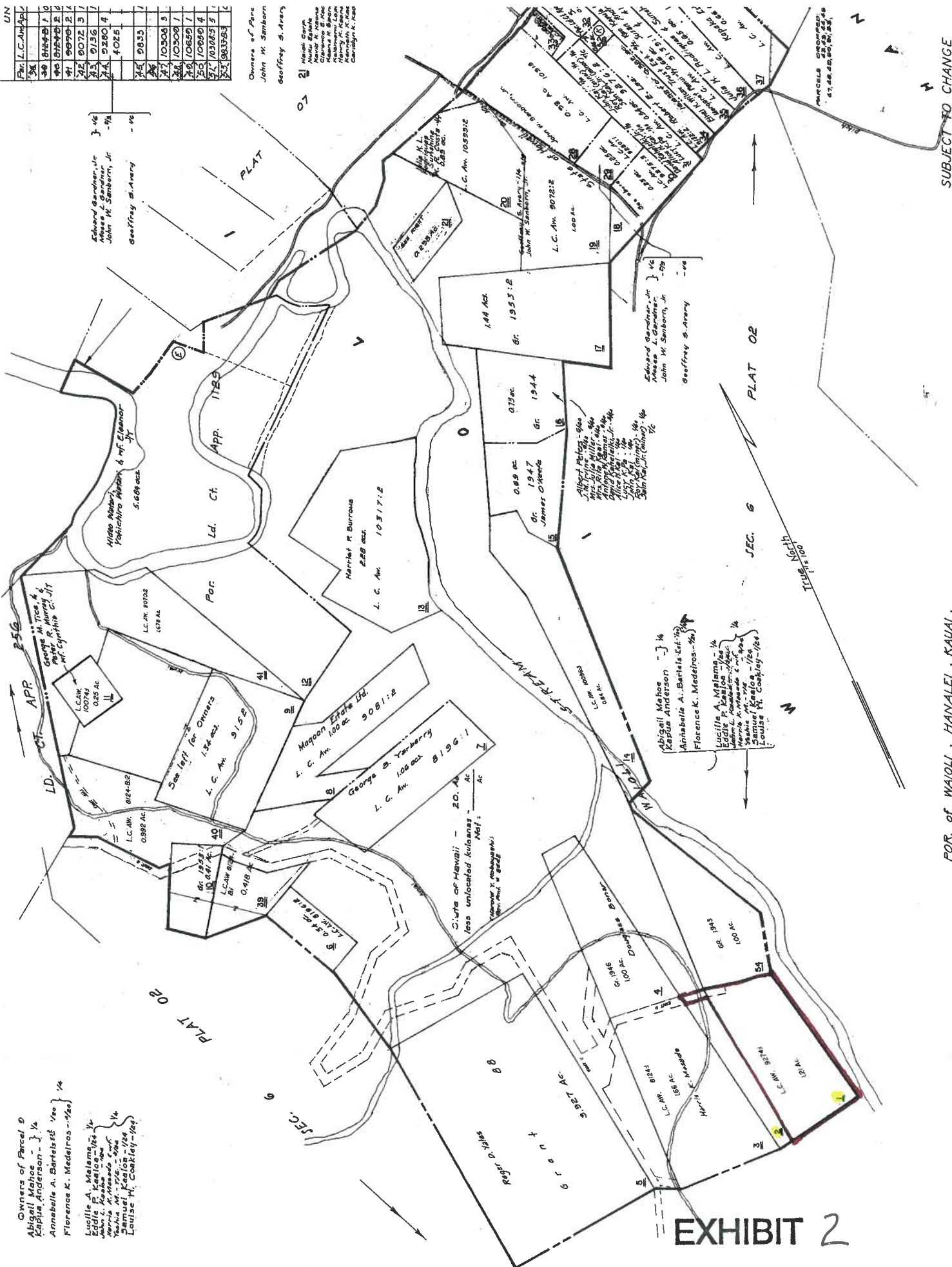


EXHIBIT 2

SUBJECT TO CHANGE

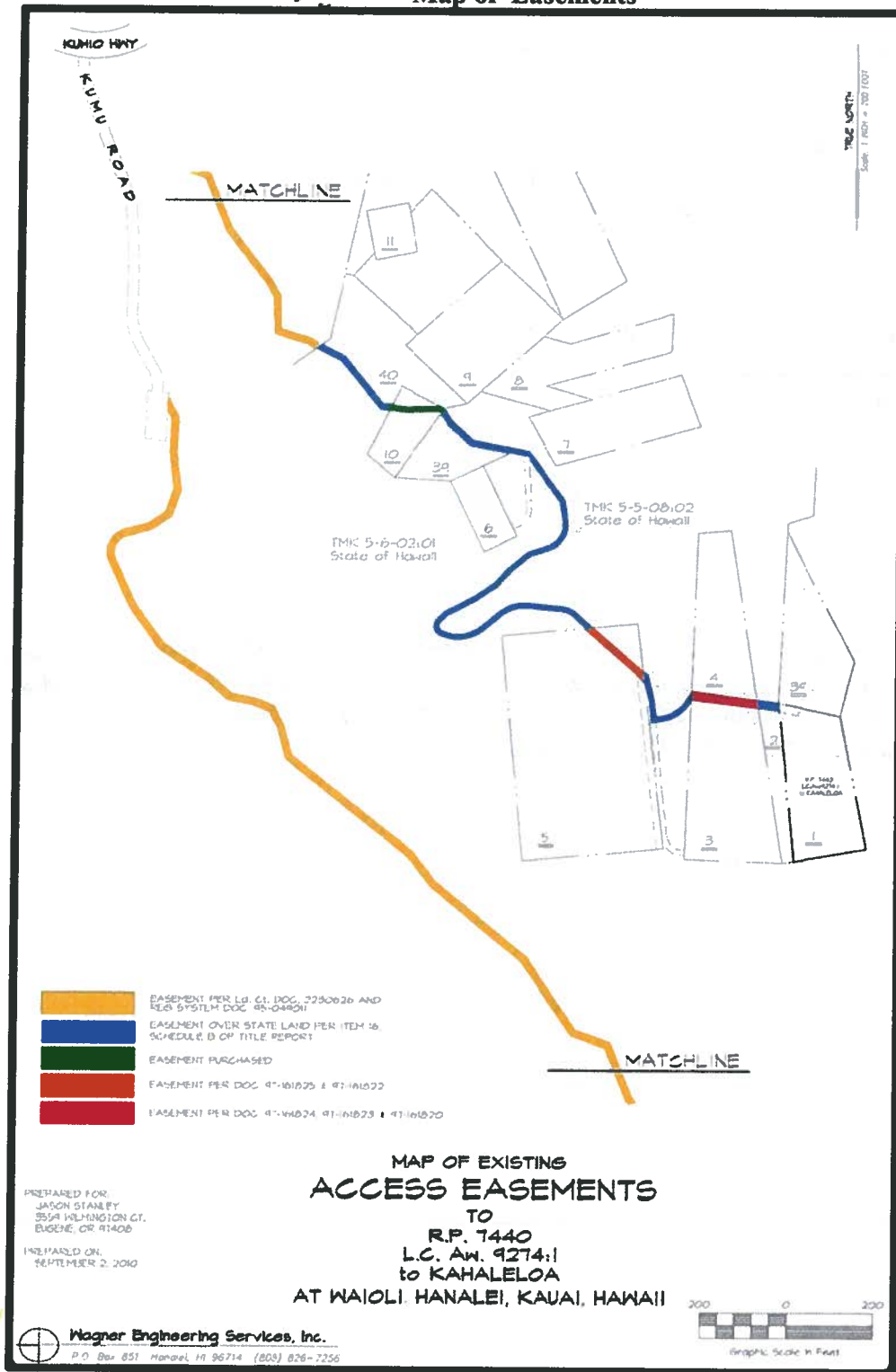
FOR OF WAIOLI, HANAIEI, KAUAI.

Figure 3 Project Site Photos

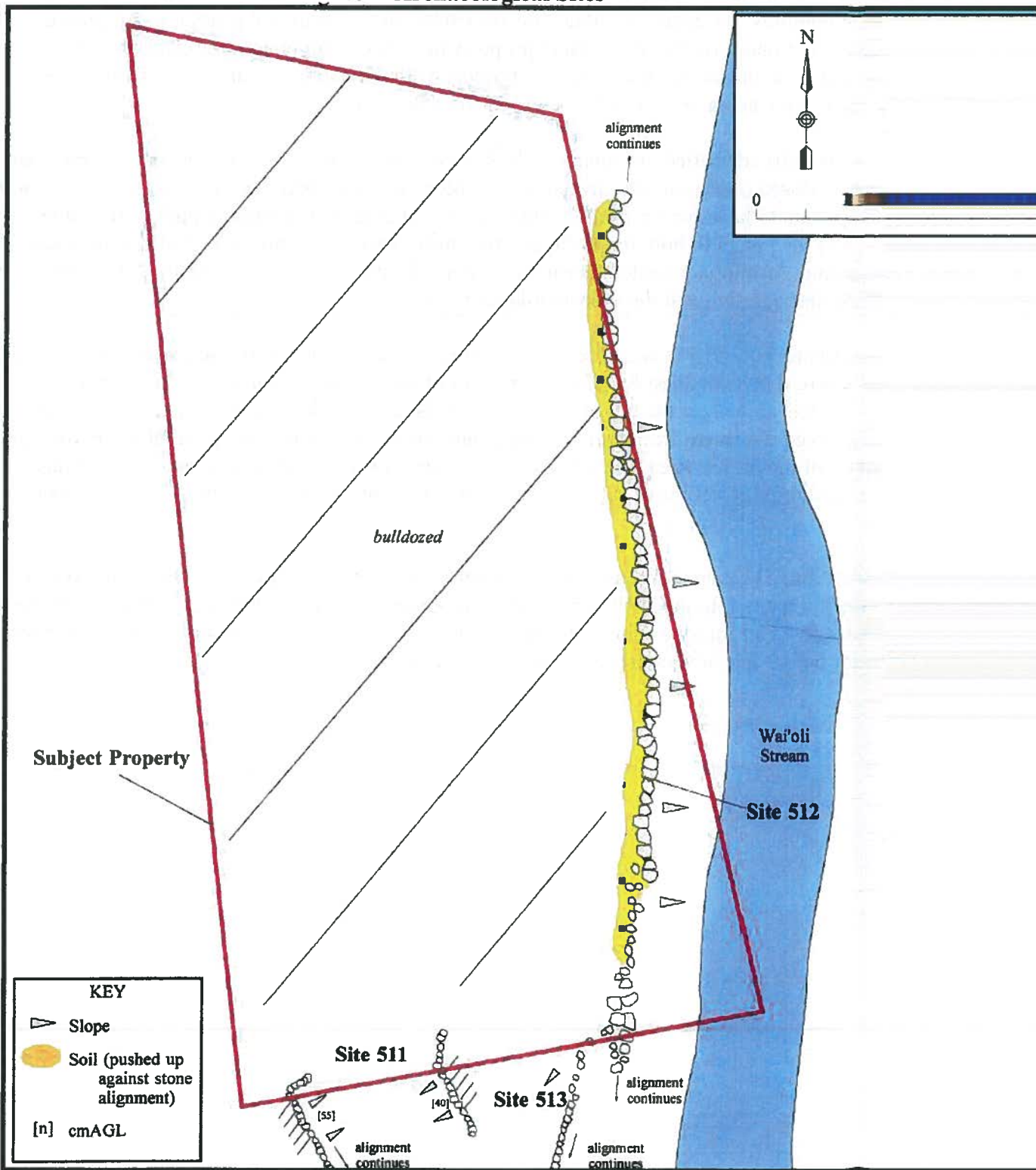


Top: View of lot; Middle: Wai'oli Stream to east of lot; Bottom: Culverted crossing of pond

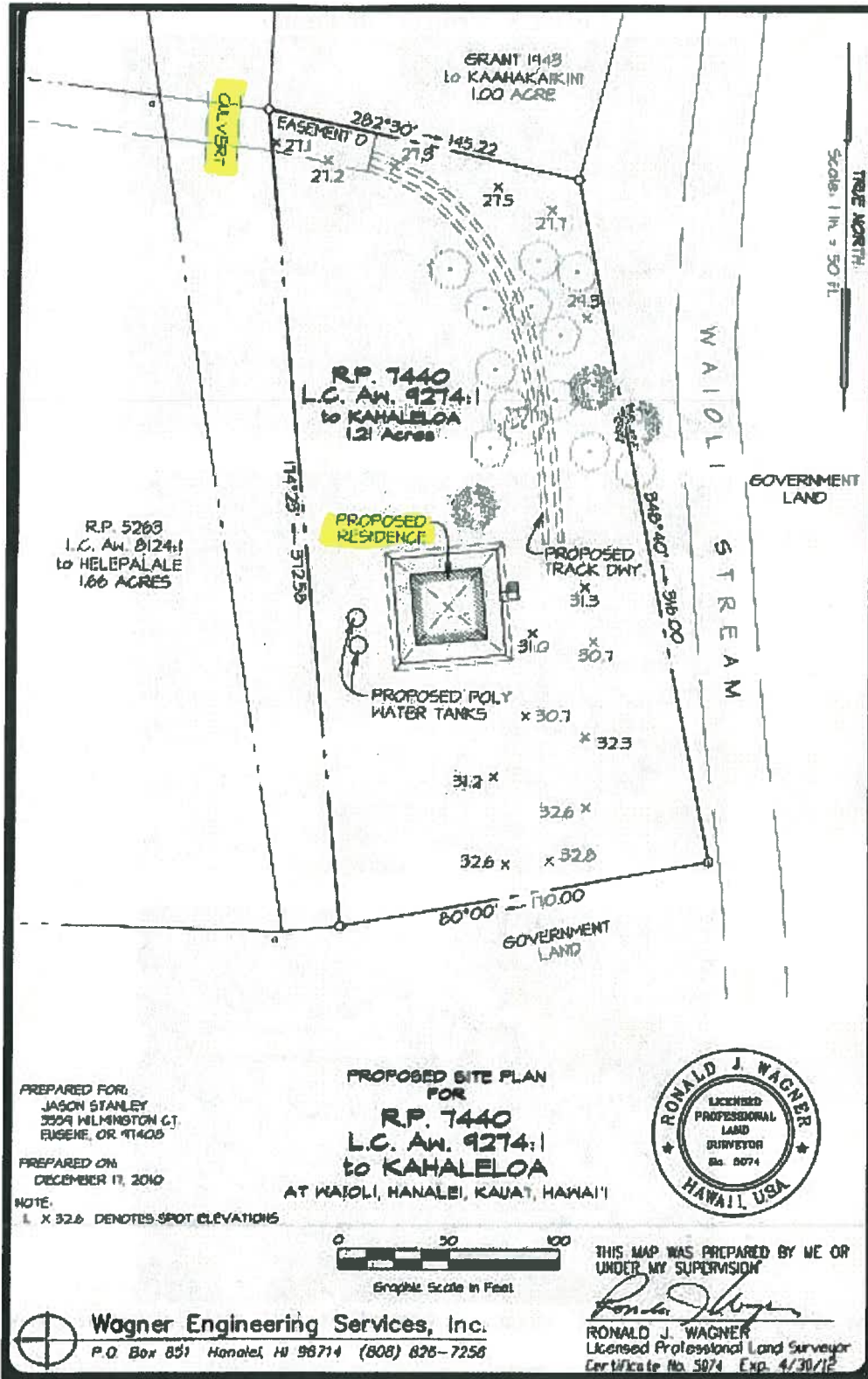
Map of Easements



Archaeological Sites



Lot Site Plan



House Design, Front Elevation

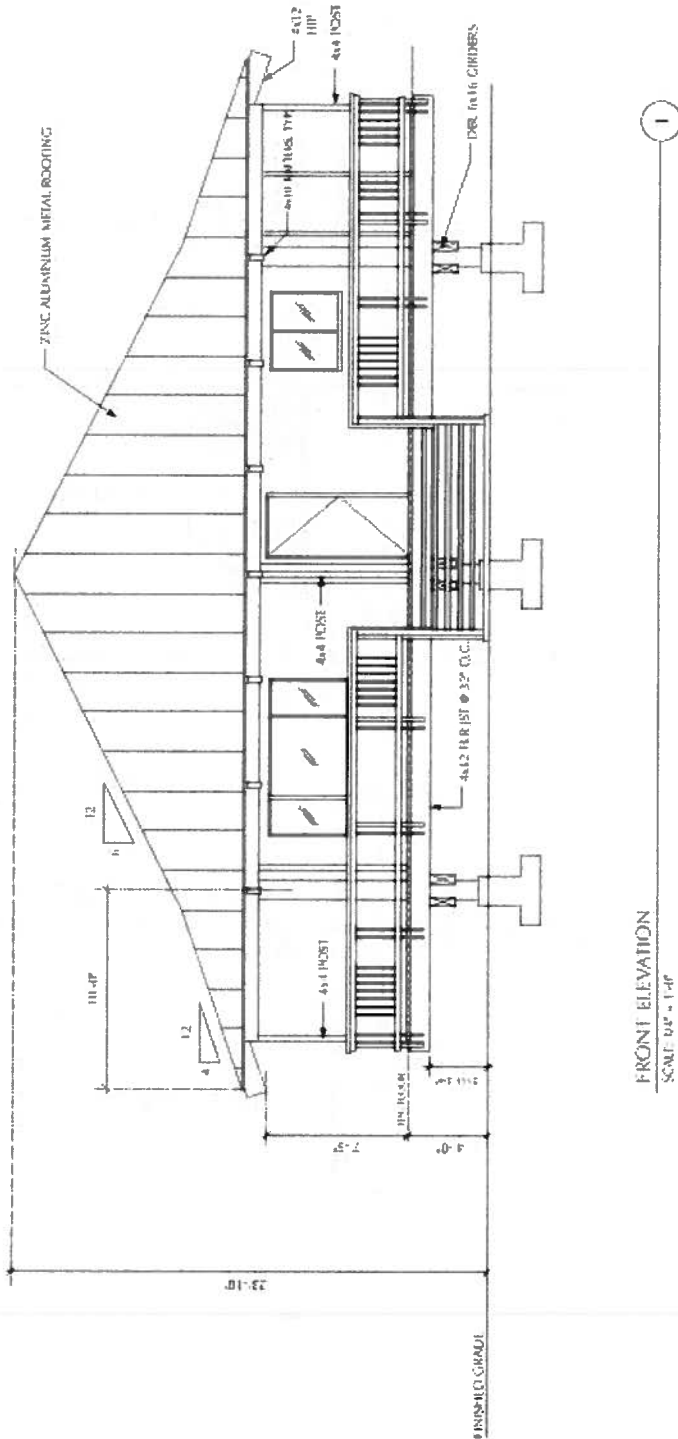


EXHIBIT 7

House Design, Plan View

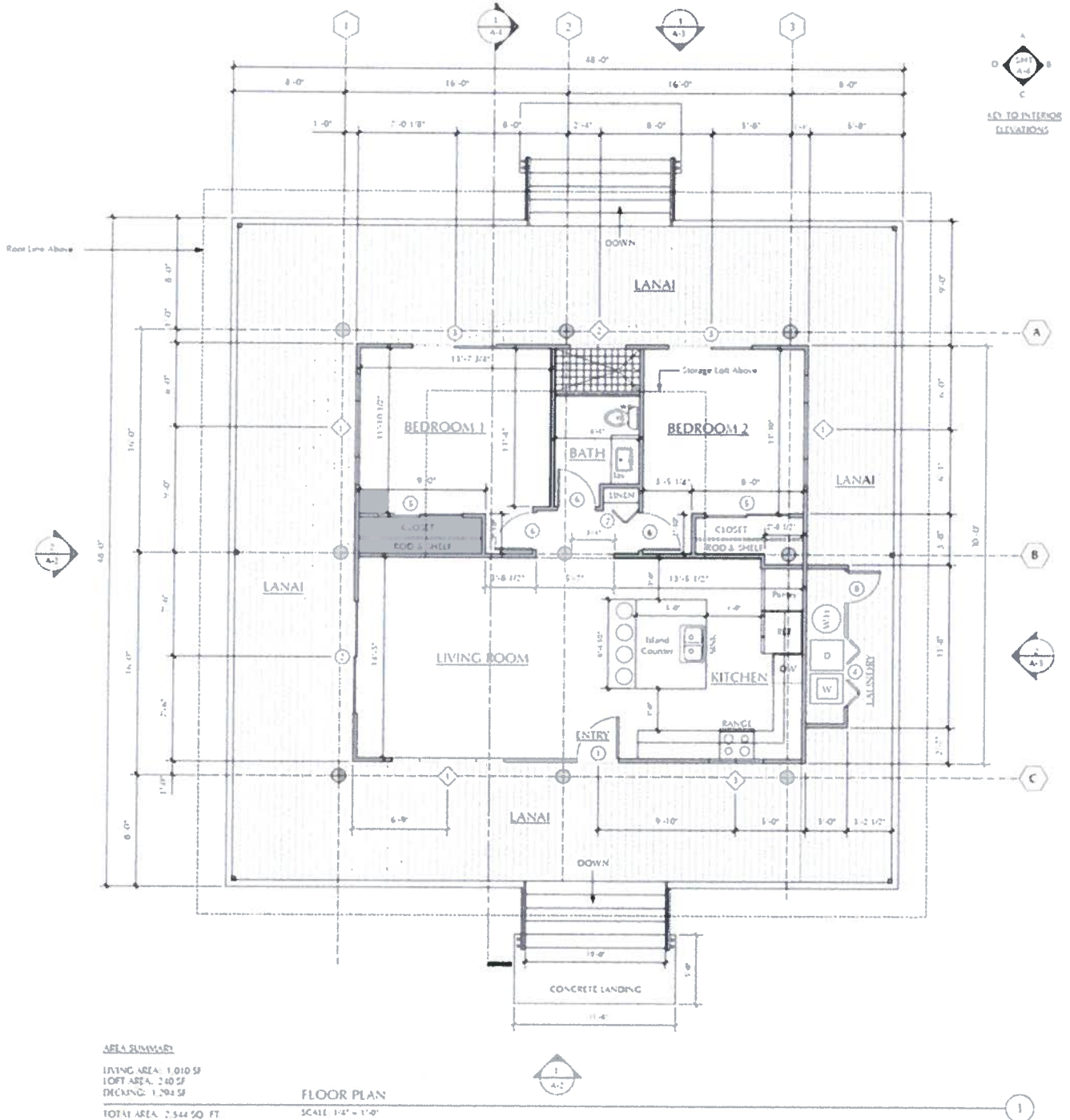


EXHIBIT 8