

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

180-Day Exp. Date: December 16, 2012

October 26, 2012

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

REGARDING: Conservation District Use Application (CDUA) HA-3630
For the Queen Ka`ahumanu Highway Frontage Road
Hulikoa Drive to Kohanaiki Way and Subdivision of Land

**APPLICANT/
AGENT:** Kohanaiki Shores, LLC.
PBR Hawaii

LANDOWNER: Rutter/KW Kohanaiki, LLC.

LOCATION: Kohanaiki, North Kona, island of Hawai`i

TMK: Portion of (3) 7-3-009:018

SUBZONE: General

BACKGROUND:

The Kona Community Development Plan (CDP) calls for a frontage road makai of and parallel to Queen Kahumanu Hwy from the Airport to Honokohau Harbor as a secondary transit route. Future proposed uses would include bus transit stations. A multi-party Memorandum of Agreement (MOA) signed by Kohanaiki Shores, LLC commits to construction of the proposed project and the Department of Transportation agrees to design and construct intersection improvements.

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

The project area lies within a 16-acre site with the majority of the site within the General subzone of the Conservation District on TMK: (3) 7-3-009: 018. Kohanaiki or 'small barrenness' exists at Kekaha, North Kona on the island of Hawai`i.

At the project site, the northeast (ma uka) has been previously impacted by improvements associated with the Queen Ka`ahumanu Hwy. Land to the southeast and southwest are vacant. The Shores at Kohanaiki's access road is to the northwest.

According to the applicant, the semi-arid site is undeveloped and vacant with very little soil. Pahoehoe and a'a lava flows cover the site with sparse vegetation consisting of fountain grass, scattered kiawe and koa haole. A botanical and fauna survey has been completed. According to the applicant, no federal or state listed endangered, threatened or candidate flora or fauna species have been located in the subject area. There appears to be no unique habitat resources important to native species on site. Native plants located in the vicinity include uhaloa, ilima, naio and a species of concern, maiapilo.

Natural hazards of the site include lying within volcanic hazard zone 4 on a scale of 1 to 9 (high to low). The site is outside of the tsunami evacuation zone as it is about 4,000-feet from the shoreline. The Flood Insurance Rate Map (FIRM) has indicated that the site is located outside of the 500-year flood plain.

The Hawaii County General Plan does not identify any significant natural beauty sites in the vicinity. The line of site from Queen Ka'ahumanu Highway towards the ocean should not be affected as the site is lower in elevation than the Queen Ka'ahumanu Hwy.

An archaeological inventory survey and cultural impact assessment has been completed and is awaiting review by the State Historic Preservation Division. Two cairns and a portion of a foot trail are within the project area.

PROPOSED USE (EXHIBITS 5 & 6)

The proposed action involves the construction of the first portion of the frontage road envisioned in the Kona CDP. The project area extends from Hulikoa Drive to Kohanaiki Way and includes:

- Extending the Hulikoa Drive right of way ma kai to a new intersection with the frontage road;
- Creating a new intersection connecting the makai portion of Hulikoa Drive to the frontage road; and
- Constructing the frontage road from the new intersection to the existing Kohanaiki Way.

The Hulikoa Drive extension and the frontage road will both be two-lane collector roads with 60-ft to 80-ft right of ways. The Hulikoa Drive extension will be approximately (\approx) 511 feet to the intersection of the frontage road. The frontage road is \approx 1,065-feet from Hulikoa Drive to Kohanaiki Way. Typical road section designs are to have a multi-modal corridor (bike lanes and shoulders/swales for pedestrians), narrower travel lanes, a drainage system, and street lights at intersections.

The project may also include entry features for Kohanaiki Shores such as a wall, sign, lighting or landscaping in character and scale to other entry features in the vicinity. Proposed landscaping will include native species occurring in the area or that are suitable for the climate and soil conditions such as naio and maiapilo.

The improvements will become the access point to ma kai properties and the shoreline. Upon completion, the existing connection of Kohanaiki Way to Queen Kaahumanu Hwy will be closed. The project area will be subdivided and dedicated to the County of Hawaii. Kohahaiki Shores will execute a landscaping agreement with the County of Hawaii specifying that Kohanaiki Shores will maintain the project area landscaping.

The new roadway surfaces will increase the amount of impermeable area of the site. Drainage from the roadways will be diverted to swales along both sides of the roads, with excess flows directed to drywells. Due to the porous nature of the lavas underlying the site, it is expected that the majority of runoff will infiltrate within the swales. All runoff due to the project will be retained on-site in accordance with County standards.

Best Management Practices will be observed during construction. Non-potable water will be utilized for dust control. All ground altering activities will be conducted in accordance with the State and County regulations relating to erosion and sedimentation control. A National Pollution Discharge Elimination System (NPDES) permit will be procured to prevent storm water discharges from affecting coastal water quality.

Light from the project may disorientate sea birds. It is not anticipated that night time construction will be necessary; however all lighting (temporary construction and permanent street lights) will be in compliance with Hawaii County law regarding lighting that requires shielding of all outdoor lights, to ensure light pollution will not impact astronomical observatories on Mauna Kea.

The botanical survey notes that the road will reduce the area of “wild” land containing the native shrub maiapilo and that future development may further reduce the habitat for this shrub. Thus, the survey recommends that special consideration be given to planting naio and maiapilo as part of the landscaping for the road.

SUMMARY OF COMMENTS

The Office of Conservation and Coastal Lands referred this application to the following agencies for review and comment: the State-Department of Health; the Office of Hawaiian Affairs; the Office of Environmental Quality Control; the Department of Land and Natural Resources Divisions of: Conservation and Resource Enforcement, Engineering, Forestry & Wildlife, Na Ala Hele, Hawaii District Land Office, and Historic Preservation; the Department of Transportation; the County of Hawaii Departments of Planning and Public Works. In addition, the CDUA was also sent to the nearest public library, the Kailua-Kona Public Library to make this information readily available to those who may wish to review it.

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

THE STATE

DEPARTMENT OF HEALTH

Environmental Planning Office

No comments

DEPARTMENT OF LAND AND NATURAL RESOURCES

Engineering

We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zone X. The Flood Insurance Program does not have any regulations for developments within Zone X.

Hawaii District Land Office (HDLO)

No comments

DEPARTMENT OF TRANSPORTATION

Highways Division

Please be informed that the DOT has executed a Memorandum of Agreement with interested developers/landowners, where the DOT will construct intersection improvements at the Queen Kaahumanu Highway and Hukiloa Drive intersection, as part of its proposed Queen Kaahumanu Highway widening to Kona International Airport. The Hukiloa Drive extension makai of the intersection and the remainder of the frontage roadway will be constructed by other parties to the agreement.

COUNTY OF HAWAII

PLANNING DEPARTMENT

The Leeward Planning Commission at its public hearing held on July 19, 2012 voted to approve the Special Management Area Use Permit (SMA 12-000050).

DEPARTMENT OF PUBLIC WORKS (DPW)

DRAINAGE

1. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
2. The applicant shall be informed that if they include drywells in the subject development, an Underground Injection control (UIC) permit may be required from the Department of Health, State of Hawaii.
3. A drainage study shall be prepared, and the recommended drainage system shall be constructed meeting with the approval of DPW.

EARTHWORK

1. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.
2. The applicant shall comply with Chapter 11-55, Water Pollution Control, HAR, Department of Health

Applicant's response

We note that the DPW's comments on the CDUA are the same as those provided on the SMA Use Permit. At its public hearing on July 19, 2012, the Leeward Planning Commission voted to approve the SMA Use Permit for the project. This approval is subject to the conditions noted in a letter from the Leeward Planning Commission dated August 21, 2012. Several of the SMA Use Permit conditions address the concerns of the DPW. The applicant will comply with all conditions of the SMA Use Permit.

FEDERAL

DEPARTMENT OF THE INTERIOR

Kaloko-Honokohau National Park Services

The National Park Service requests that the proposed use include appropriate mitigation measures to protect cultural and ecological aquatic resources from roadway associated non-point source pollution. These mitigation measures must include structural best management practices that are engineered to detain and filter pollutant-carrying first-flush storm water or spills (examples of filtering technology include Stormceptor, Bio Clean, and Contech).

These mitigation measures are necessary as:

1. The project is in an area of highly permeable lava;
2. Rain and runoff water carry pollutants quickly to groundwater, on to coastal anchialine pools and into the near shore waters;
3. This part of Kona has no streams or typical surface waters other than the anchialine pools, which are exposed groundwater hydrologically connected to the ocean;
4. While rainfall in the area averages 19-22 inches per year, rainfall accumulation is typically concentrated in a few, intense events, which can cause a pulse of pollution flushing to drainage systems; and
5. Currently, the Hawaii County Department of Public Works standards for drainage wells do not address protection of biological and cultural resources from non-point source pollution, but rather solely consider flood control and volume of runoff. The State DoH provides for regulation of underground injection wells, such as drywells, but these rules are in place only to protect drinking water, not the integrity of aquatic ecosystems.

The proposed project is located below (ma kai) the DOH's Underground Injection control line. Therefore, the underlying aquifer is not currently considered a drinking water source and the DOH rules for underground injection wells will not protect the ecological integrity of the sensitive aquatic ecosystems.

While the potential impacts to water quality from this one roadway may appear negligible, the National Park Service is concerned with the cumulative impacts of non-point source pollution from developments that are within close proximity to the park. Utilizing structural best management practices that are engineered to detain and filter pollutant-carrying first-flush storm water or spills is something we have asked all developments that are planned for areas adjacent to the park to include.

Applicant's response

We note that your comments are substantially similar to comments on the SMA permit. When the Leeward Planning Commission approved the permit, condition #8 requires that:

The applicant shall implement best management practices engineered to detain and filter pollutant-carrying first flush storm water or spills to supplement drywells (e.g. bioswales or similar measures), appropriate to the potential impact to anchialine ponds and the level of traffic, meeting with the approval of the Department of Public Works.

ANALYSIS

After reviewing the application, by correspondence dated June 21, 2012, the Department has found that:

1. The proposed uses are an identified land use in the General subzone of the Conservation District, pursuant to §13-5-22, Hawaii Administrative Rules (HAR), P-6 PUBLIC PURPOSE USES (D-1) Not for profit land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity, except that an independent non-governmental regulated public utility may be considered to be engaged in a public purpose use. Examples of public purposed uses may include but are not limited to public roads, marinas, harbors, airports, trails, water systems and other utilities, energy generation from renewable sources, communication systems, flood or erosion control projects, recreational facilities, community centers, and other public purposed uses, intended to benefit the public in accordance with public policy and the purpose of the conservation district and P-10 SUBDIVISION OF PROPERTY (D-1) Subdivision of property into two or more legal lots of record that serves a public purpose and is consistent with the objectives of the subzone. 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 is not required;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, the Final Environmental Assessment has been reviewed, accepted and a Finding of No Significant Impact has been determined by the County of Hawaii Planning Department. Notice was published in the March 8, 2012 issue of the Environmental Notice.

Notice of CDUA HA-3630 was published in the July 8, 2012 issue of the Environmental Notice. Special Management Area Permit (SMA 12-000050) was approved on July 19, 2012 to for the project.

CONSERVATION CRITERIA

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

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

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

There does not appear to be any listed species of concern or important habitat within the project site. Regarding historic resources, two sites were located within the project area according to the archeological survey. The survey awaits SHPD review. The cultural impact assessment concludes that no known cultural resources or cultural practices or places will be directly affected as a result of the project. No customary native Hawaiian rights are currently conducted in the project area.

The proposed use should not conflict with any of the above objectives. The proposed actions are for right of way purposes. Roadways contribute to maintaining public health, safety and welfare.

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

The objective of the General Subzone is to designate open space where specific conservation uses may not be defined, but where urban uses would be premature. The proposed use is an identified land use that would not significantly alter the existing open space.

The project will serve a public purpose by providing improved access. The project will not significantly detract from the existing open space characteristics of the site.

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

Staff believes the proposed use is consistent with Chapter 205A, HRS. The Leeward Planning Commission of the County of Hawaii issued SMA permit 12-000050 at its duly held public hearing on July 19, 2012 for the project.

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

There are no known rare, threatened or endangered species or sensitive natural habitats within the proposed access way. There are no surface streams or surface water bodies on or adjacent to the site. No impacts to coastal ecosystems are expected.

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

The proposed use will be compatible with the surrounding areas and appropriate to the physical conditions and capabilities of the vicinity.

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

The dominate landscape feature is black-grey pahoehoe lava sparsely covered with fountain grass. As the project area slightly slopes from the Queen Ka'ahumanu Highway, it is not anticipated to significantly alter the visual character of the area from the highway. Electrical lines will be placed underground for proposed street lights at intersections.

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

The proposed action will replace an existing roadway near a highway. Subdivision of the land for County of Hawaii dedication will support management of the right of way for public good.

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

Staff is of the opinion that the proposed improvements will not be materially detrimental to the public health, safety and welfare and may facilitate health, safety and welfare with the improved roadway.

CULTURAL IMPACT ANALYSIS

Haun & Associates prepared a Cultural Impact Assessment (CIA) to identify any culturally significant resources or traditional cultural practices associated with the project. This included archival research that focused on historical documents, previous archaeological studies and oral history interviews of former residents of Kohanaiki. Several individuals were also consulted regarding traditional cultural practices.

Based upon this research, it was concluded that 1) No known cultural resources, such as culturally significant sites, flora or fauna, or cultural practices or places will be directly affected as a result of the project and 2) No customary native Hawaiian rights/practices are currently conducted in the study area.

However, perceived indirect effects to marine resources as a result of increased shore access were mentioned during the course of interviews. Increased accessibility that is potentially detrimental to culturally important brine shrimp resources in anchialine ponds at the shore and fish availability to on-shore anglers was mentioned. According to the

applicant, the indirect effects are characterized as perceived because no additional significant increase in shoreline use is anticipated as a result of the project and mitigation efforts by Kohanaiki Shores, LLC over the past decade have been implemented to address shoreline and marine resource by the Kohanaiki `Ohana Committee.

The Committee is specifically responsible for management of the exercise of traditional and customary native Hawaiian rights on Kohanaiki Shores property and is composed of lineal descendants of the ahupua`a. The Committee unanimously supports the placement of the frontage road at the subject location.

As the property is not located on the shoreline, the proposed project will not be impacted by coastal hazard and beach erosion. There are no identified public accesses to the shoreline or mountains on the project site. Therefore to the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; it is believed that no action is necessary to protect these rights.

DISCUSSION

The project will be the first portion of the long-term plan envisioned in the Kona Community Development Plan for a frontage road makai of, and parallel to, Queen Ka`ahumanu Highway. The road will connect land uses mauka and makai and is one of the few planned intersections between the Airport and Kailua-Kona. Flora and fauna studies of the project site did identify a species of concern within the project site. It is recommended that special consideration be given to planting naio and maiapilo as part of the landscaping for the road.

The National Park Services has a concern regarding storm water drainage and the cumulative impact of development on the near shore anchialine ponds. Staff will rely on the County of Hawaii and the State Department of Health standards to mitigate the introduction of storm water runoff to these unique ponds.

Subdivision of the land for County of Hawaii dedication will support management of the right of way for public good.

RECOMMENDATION

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this application for the Queen Ka`ahumanu Highway Frontage Road at Hulikoa Drive to Kohanaiki Way and Subdivision of Land for County Road Dedication by Kohanaiki Shores, LLC. located at Kohanaiki, North Kona, island of Hawai`i, portion of TMK: (3) 7-3-009:018 subject to the following conditions:

- 1) The permittee shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Chapter 13-5, HAR;


- 2) The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The permittee shall comply with all applicable Department of Health administrative rules;
- 4) Before proceeding with any work authorized by the Board, the permittee shall submit four (4) copies of the construction 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 (3) of the copies will be returned to the permittee. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 5) Unless otherwise authorized, any work done 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, unless otherwise authorized, shall be completed within three (3) years of the approval. The permittee shall notify the Department in writing when construction activity is initiated and when it is completed;
- 6) All representations relative to mitigation set forth in the accepted environmental assessment for the proposed use are incorporated as conditions of the permit;
- 7) The permittee understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 8) In issuing this permit, the Department and Board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and the Department may, in addition, institute appropriate legal proceedings;
- 9) 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;
- 10) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 11) Obstruction of public road and trails, shall be minimized. If obstruction is unavoidable, the applicant shall provide roads or pathways acceptable to the department;

- 12) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
- 13) Native plantings shall be utilized with consideration given to naio and maiapilo as part of the landscaping for the road;
- 14) The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
- 15) The permittee acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- 16) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The Historic Preservation Division shall be contacted (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 17) The proposed work shall not be initiated prior to the completion of the State Historic Preservation Division's review and approval of the archeological survey for the project;
- 18) The permittee shall obtain the approval of the County of Hawaii for the subdivision and file the final subdivision plan with the OCCL;
- 19) Other terms and conditions as may be prescribed by the Chairperson; and
- 20) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,

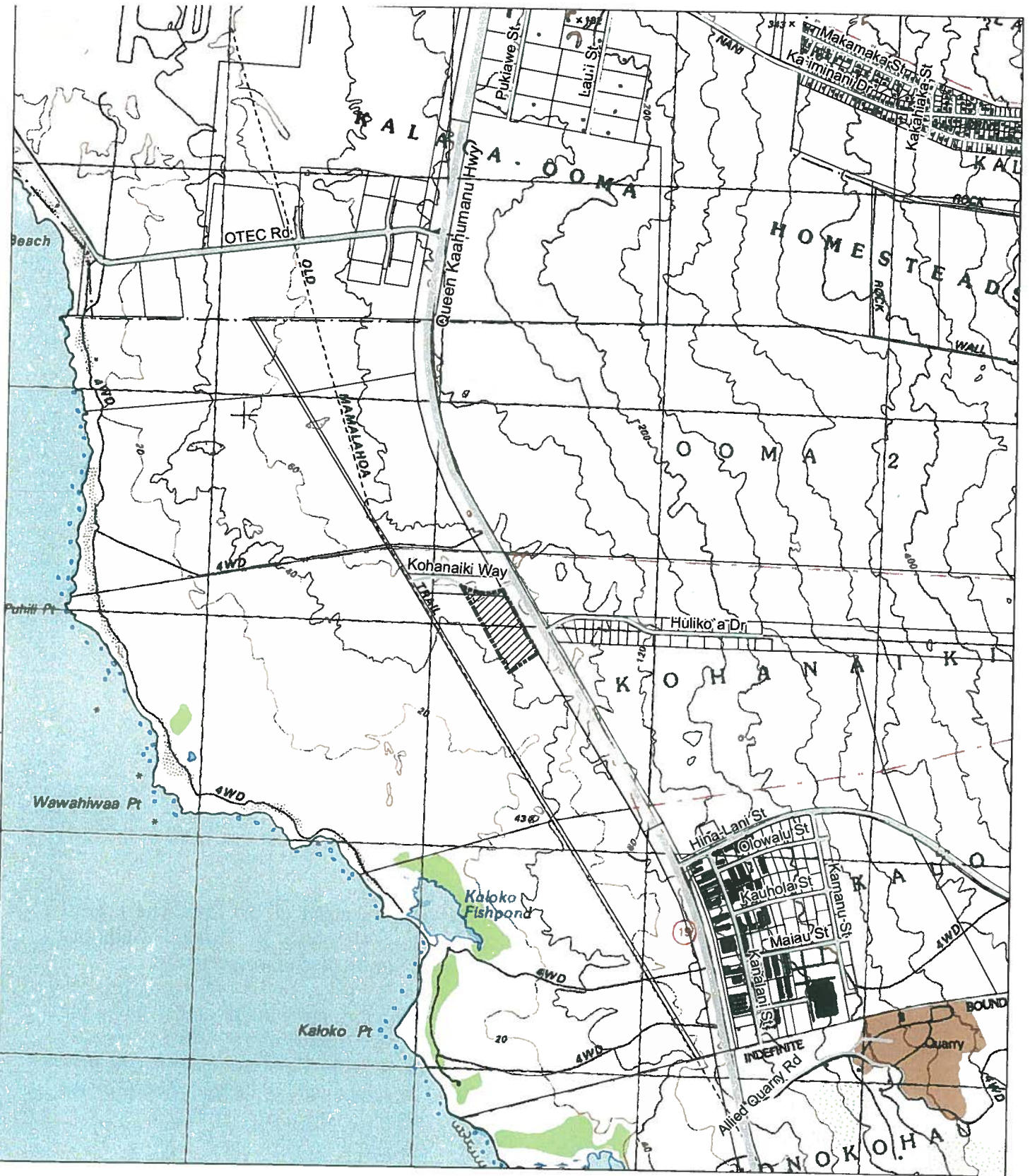


K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands



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

Path: Q:\Hawaii\Kohanaiki Shores Road Alignment\GIS\Project\Figure 2 - Location Map.mxd



LEGEND

-  Study Area
-  Hawaii County TMK Parcels
-  Roads



Regional Location Map
Queen Ka'ahumanu Highway Frontage Road

Kohanaiki Shores, LLC
 North

Island of Hawaii

Linear Scale (feet)
 0 1,000 2,000


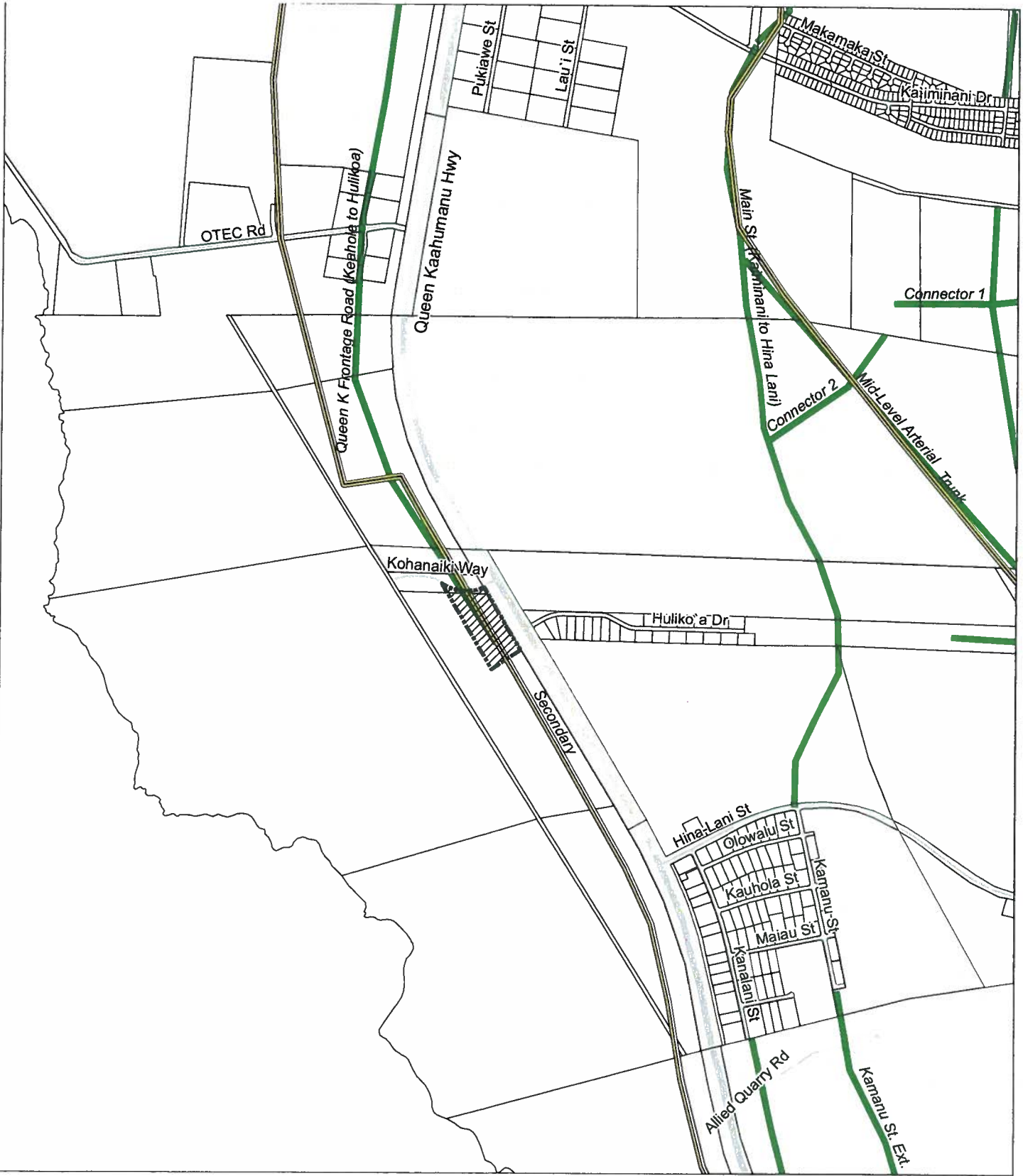


EXHIBIT 1

Source: U.S. Geological Survey (2004)

Disclaimer: This Graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.



LEGEND






-  Study Area
-  Roads
-  Hawaii County TMK Parcels
-  Proposed Transit Line, Secondary
-  Proposed Roads, GP Collector, Major

EXHIBIT 2

Kona CDP Official Transportation Network Map: Proposed Roads and Transit Facilities

Queen Ka'ahumanu Highway Frontage Road

Kohanaiki Shores, LLC

Island of Hawai'i



Linear Scale (feet)





LEGEND








-  Study Area
-  Hawaii County TMK Parcels
-  Roads
-  G- General
-  P- Protected
-  R- Resource

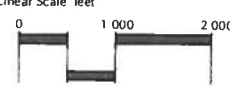
EXHIBIT 3

Conservation District Subzones
Queen Ka'ahumanu Highway Frontage Road

Kohanaiki Shores L. North



Linear Scale feet



Island of Hawaii




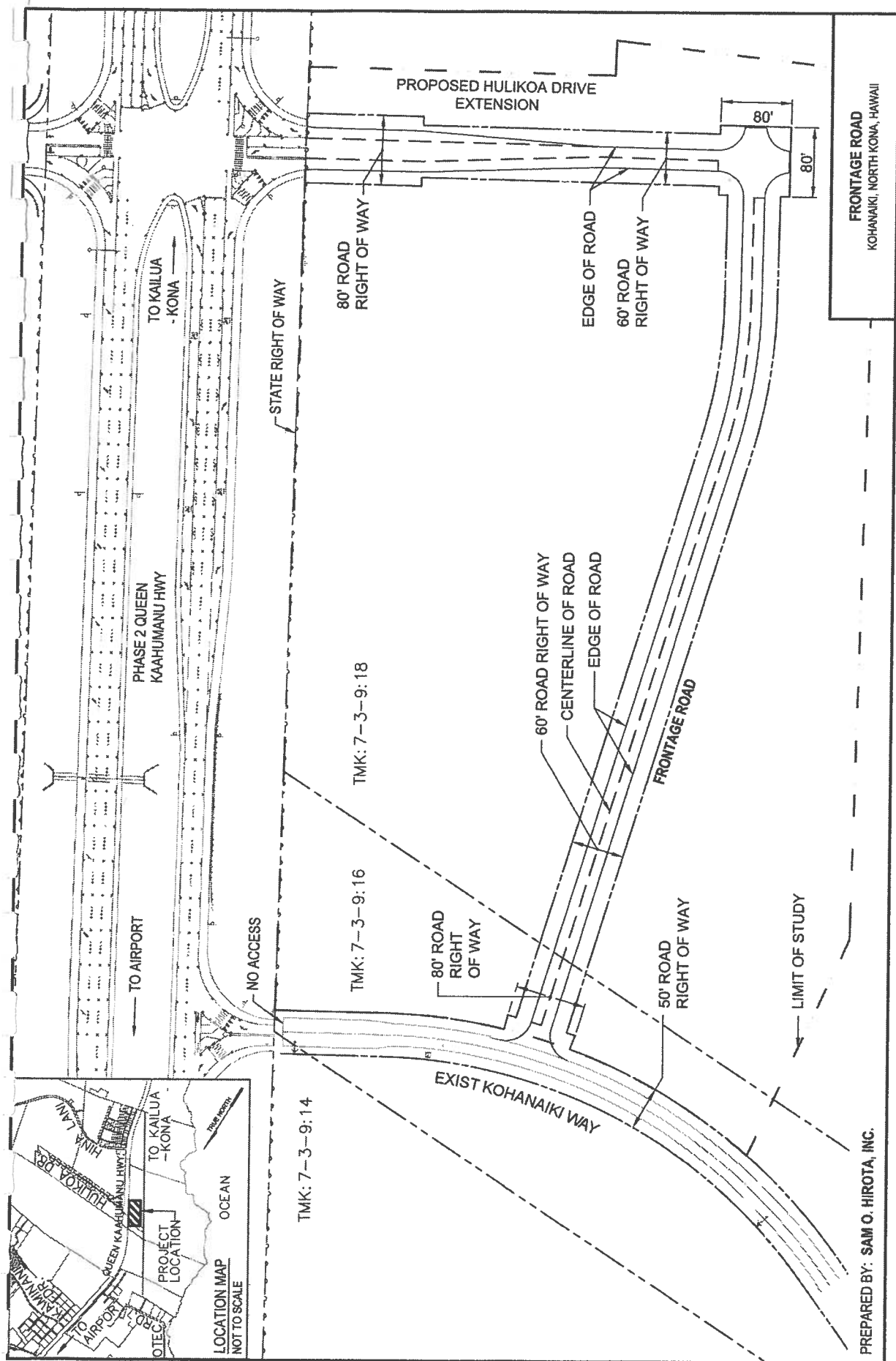
EXHIBIT 4



Google earth

From Kaishumaru Hwy Looking mo kai towards Site





FRONTAGE ROAD
KOHANAIKI, NORTH KONA, HAWAII

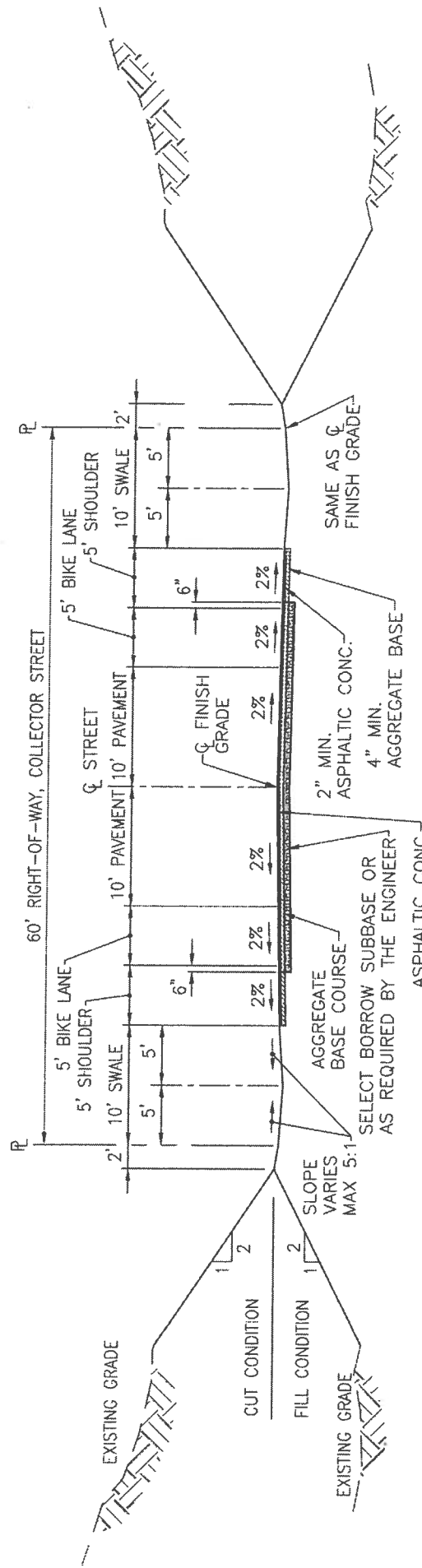
Frontage Road Hulikoa Drive to
Kohanaiki Way
Queen Ka'ahumanu Highway
Frontage Road

Island of Hawaii
Kohanaiki Shores, LLC
North

0 75 150

PREPARED BY: SAM O. HIROTA, INC.

Source: Prepared by Sam O. Hirota, Inc.
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60' RIGHT-OF-WAY, COLLECTOR STREET, TYPICAL SECTION
NOT TO SCALE

EXHIBIT 6

Typical Section

Queen Ka'ahumanu Highway
Frontage Road

Kohala Shores, LLC
Island of Hawaii
North
PBR HAWAII & ASSOCIATES, INC.



Not To Scale

Source: Prepared by Sam O. Hirota, Inc.
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