

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
Honolulu, Hawai'i**

**August 23, 2013**

**Board of Land and  
Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i**

**REGARDING:** Proposed Rule Amendment HA 13-02  
Request for Public Hearing and Small Business Impact  
Determination: Petition to Amend Title 13, Chapter 5,  
Hawaii Administrative Rules (13-5, HAR) to Redesignate  
Land That Lies Within the Limited Subzone into the  
General Subzone

**PETITIONER/  
LANDOWNER:** Frederick W. Gregg Jr.

**LOCATION:** Ho`okena, South Kona, Hawai'i County

**TMK:** (3) 8-6-013:009

**PETITION AREA:** Approximately ( $\approx$ ) 18,687-ft<sup>2</sup>/.429 acres

**SUBZONE:** Limited

**DESCRIPTION OF AREA AND CURRENT USE (Exhibit A, B, C, D, E & F)**

The vacant property is located on the west side of the island of Hawai'i in the village of Ho`okena, South Kona along Ho`okena Beach Road. There are a number of residences in the area on nearby kuleana parcels and also to the north at Kealia. Currently the County Beach Park is the dominant feature of the village.

A stacked rock wall demarcates the boundaries of the parcel and the property is surrounded by private property. The property is bordered by Ho`okena Beach Road to the north and east; a vacant parcel and a parcel with a residence to the south, and two vacant parcels to the west. The Ho`okena Beach Road to the north appears to demarcate the Agricultural/Conservation State Land Use boundary.

**Existing Land Use Classifications**

The property lies within the Limited subzone of the Conservation District (**Exhibit G**). Pursuant to §13-5-12, Hawaii Administrative rules (HAR), the objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human activities. This subzone shall encompass:

1. Land susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention, as determined by the county, state, or federal governments; and
2. Lands necessary for the protection of the health, safety, and welfare of the public by reason of the land's susceptibility to inundation by tsunami, flooding, volcanic activity or landslides, or which have a general slope of forty percent or more.

**Geologic and Soil Characteristics (Exhibit H & I)**

According to the information provided, the property is located on the lee side of Mauna Loa on a gently sloping plain less than a quarter-mile from the ocean. The surface soils are comprised primarily of eroded Pahoehoe flows. The USGS Lava Flow Hazard Zone Map has placed this region in Zone 2 on a scale of 1 to 9 where zone 1 is the area of greatest hazard and zone 9 of the least. Zone 2 are areas adjacent to and downslope of active rift zones. The surface of the property is porous, has a minimal grade of approximately 8% and ranges from 16-ft to 35-ft above sea level.

According to the Hawaii Statewide GIS Program, the property does not include any land classified as Agricultural Lands of Importance to the State of Hawaii (ALISH) as such there is no Land Evaluation and Site Assessment (LESA) for the property.

**Climatic Characteristics**

According to the petition, the weather is warm with temperatures ranging from 60°-90° F with daytime temperatures in the 70s or 80s. There are light land-sea breezes and moderate southerly winds occur most frequently between October and April. Although Hawai'i has excellent air quality, volcanic emissions from the on-going Kilauea eruption may affect the air quality of the vicinity.

**Hydrological Characteristics (Exhibit J)**

The mean annual rainfall has been noted as 32.6-inches which most likely results from a few large winter storm systems. The area is within the Ka`apuna aquifer system and is located in Zone X according to the Federal Emergency Management Area (FEMA) Flood Insurance Rate Maps (FIRM), areas to be determined to be outside 0.2% annual chance flood plain. No surface water features are situated on the property.

**Biological Characteristics**

The petition describes the property as predominantly disturbed land that supports mostly nonnative plant and animal species. Flora consists primarily of kiawe and an understory of shrub, grass and bare soil. No known candidate or endangered plant species appear to be present of the property.

Introduced fauna may include mongoose, feral cats, dogs, mice, rats and common birds such as Cardinals, Doves, Francolins, Mejiro, Myna and Finches. Two federally endangered, threatened or candidate species that may be present in the area are the Hawaiian Hawk and the Hawaiian Hoary Bat. Native birds that may also visit the property include the Kolea and Pueo.

**Archaeological and Historical Characteristics**

Ho'okena Village grew around the Kauhako Landing on the shoreline. At one time there were much more residents, a church, school, courthouse and stores. According to the petition, high surf and storms had destroyed the landing by the mid-1930's. The majority of residents abandoned the village to move closer to the mauka government road during that time also.

Rock walls border the property and other adjacent properties. The walls may be a historic feature however the walls have been restacked and concrete was used to stabilize the structure. The property appears to have been graded in the past.

**Scenic & Visual Resources**

Within the village, the property is screened from views by vegetation that is primarily kiawe trees. Due to the flat topography, views to the ocean from Ho'okena Beach Road are also obscured by neighboring residences and existing vegetation. Drivers on Mamalahoa Hwy are unable to see Ho'okena village due to its distance and lower elevation.

**Infrastructure Evaluation**

The property may be accessed by Ho'okena Beach Park Road also known as Old Government Road that is a County road. Residences in the area receive electricity via photovoltaic, generator or propane systems. Telephone service is delivered via overhead transmission lines. The area is outside the service area of the County water supply and sewer system.

**PROPOSED ACTIONS OF THE PETITIONER**

The petitioner is requesting that his property that lies within the Limited subzone be redesignated into the General subzone.

**Review of Property Characteristics in Relation to the Proposed Subzone Objectives**

As described in §13-5-13, HAR, the objective of the General Subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature. Specifically, the General Subzone shall encompass:

- Lands with topography, soils, climate, or other related environmental factors that may not be normally adaptable or presently needed for urban, rural, or agricultural use; and
- Lands suitable for farming, flower gardening, operation of nurseries or orchards, grazing; including facilities accessory to these uses when the facilities are compatible with the natural physical environment.

The petitioner believes the objectives relevant to the Limited subzone are not applicable to the property. The petition notes that reclassification to the General subzone would render the property eligible for an application to construct a single family residence. However at this time no improvements or secondary improvements are being proposed with this proposed subzone boundary amendment.

**STAFF ANALYSIS:**

Pursuant to the Hawaii Administrative Rules (HAR), §13-5-5, any change to Conservation District subzone boundaries must be made by amending Chapter 13-5, HAR. Statutes and rules that govern the process by which amendments of Chapter 13-5, HAR, may be made include:

- A. §91-2 through 91-7, Hawaii Revised Statutes (HRS);
- B. §2, Act 168, Session Laws of Hawaii 1998;
- C. §183C-4(e), HRS;
- D. Chapter 13-1, Subchapter 3, HAR; and
- E. §13-5-16, HAR.

Petitions to amend the administrative rules are reviewed by the Legislative Reference Bureau and the Department of the Attorney General. In general, in order to take effect, proposed rule amendments must obtain departmental and gubernatorial authorizations for both the public hearing and final approval.

Authorization for Public Hearing:

The first major step to amend the administrative rules is to hold a public hearing. The request for public hearing is the subject of this staff submittal. Should the Board of Land and Natural Resources (Board) approve the subject request, the Department would forward the request for public hearing to the Governor for approval. At the Board's discretion, the Board may modify the proposed rule change at this time.

Approval/Disapproval:

Should the Board approve this petition then the proposed rule change will be forwarded to the Governor for approval. Upon receiving the Board's approval, both the Legislative Reference Bureau and the Department of the Attorney General would review. With the Department of the Attorney General approval 'as to form', the proposed rule amendment shall be forwarded to the Governor for the final decision.

State Policies and Procedures:

Staff processed the petition in accordance to the Governors' Administrative Directive # 09-01 to guide policy and procedures for the adoption, amendment or repeal of administrative rules. The Governor directs that petitions for administrative rule changes address certain policy topic areas.

§2 of Act 168, Session Laws of Hawaii 1998, the Hawaii Small Business Regulatory Flexibility Act:

Staff is of the opinion that the proposed rule amendment will not impact or affect small business. Therefore, no "Small Business Statement" is required.

Chapter 343, HRS, Requirements:

Staff believes that due to the scope and nature of the proposed amendment, Chapter 343, Hawaii Revised Statutes (HRS), is not applicable at this time as no land use is proposed.

**DISCUSSION**

The purpose of this report is to take the proposed subzone redesignation rule amendment to public hearing and to determine that the proposed action would not have an effect on small business.

**RECOMMENDATION**

That the Board of Land and Natural Resources:

1. Approve the petitioner's request to process the subject petition to amend Chapter 13-5, Hawaii Administrative Rules;
2. Determine that the proposed rule amendment will not impact or affect small business;
3. Authorize the forwarding of a request for public hearing on the proposed rule amendment to the Governor;
4. Upon executive approval, publish the public hearing notice; and
5. Upon executive approval, appoint a representative of the Board of Land and Natural Resources as public hearing master for the proposed rule amendment's public hearing.

Respectfully submitted,

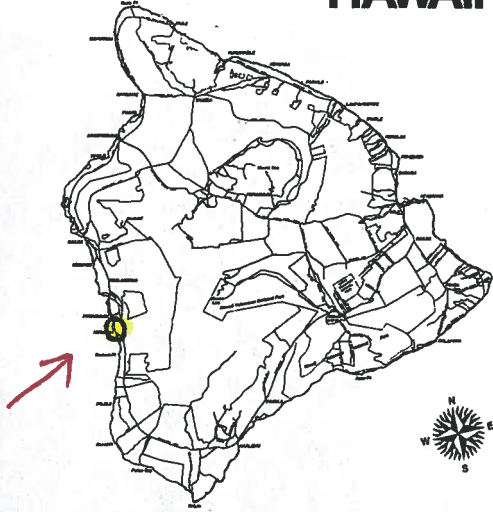


K. Tiger Mills, Staff Planner  
Office of Conservation and Coastal Lands

Approved for Submittal:



**WILLIAM J. AILA, JR.**, Chairperson  
Board of Land and Natural Resources



© 2013 Google  
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feet  
meters

Google earth

EXHIBIT A

Site Photo Index and  
Site Photos 1-11

PLAT  
(0-6-13-37  
Dropped into  
0-6-11-2)

0.40 Ac.

34

41

See Above

Co. - 1/3 - M/C  
1/2  
1/4  
1/8 - M/C

37

Gr. 9189:2  
0.103 Ac.

42

Aloysius K. Pasha

0.08 Ac.

Aloysius K. Pasha  
(Lorris P. Bush  
& Mt. Marion K. T/E) A/S

4

Photo 11

Photo 2

Photo 8

0.429 Ac.

Photo 9

Photo 3

Photo 4

Photo 5

Photo 10

L.C. AN. 7034:1  
0.2929 Ac.

49

100.00  
51.00

A.M.

D.W. Kanui Estate  
.15 Ac.

14

See below for  
Owners  
.29 ac.

Hookens H.  
(Donald E. Maschinger)

(.15 Ac.)  
L.C. AN. 7498:1

L.C. AN. 7

7

0.30

Robt. Nathe  
.14 Ac.  
Gilbert W. Lee  
L.C. AN. 7301:1

Charles A. Napa  
Und.  
Charles P. Kaili  
Und.

EXHIBIT B

37.00

8

Heirs of D.W. Kanui (dec'd.) & Charles P. Kaili

.10 Ac.

L.C. AN. 7037:1

EXHIBIT C

Photo 5

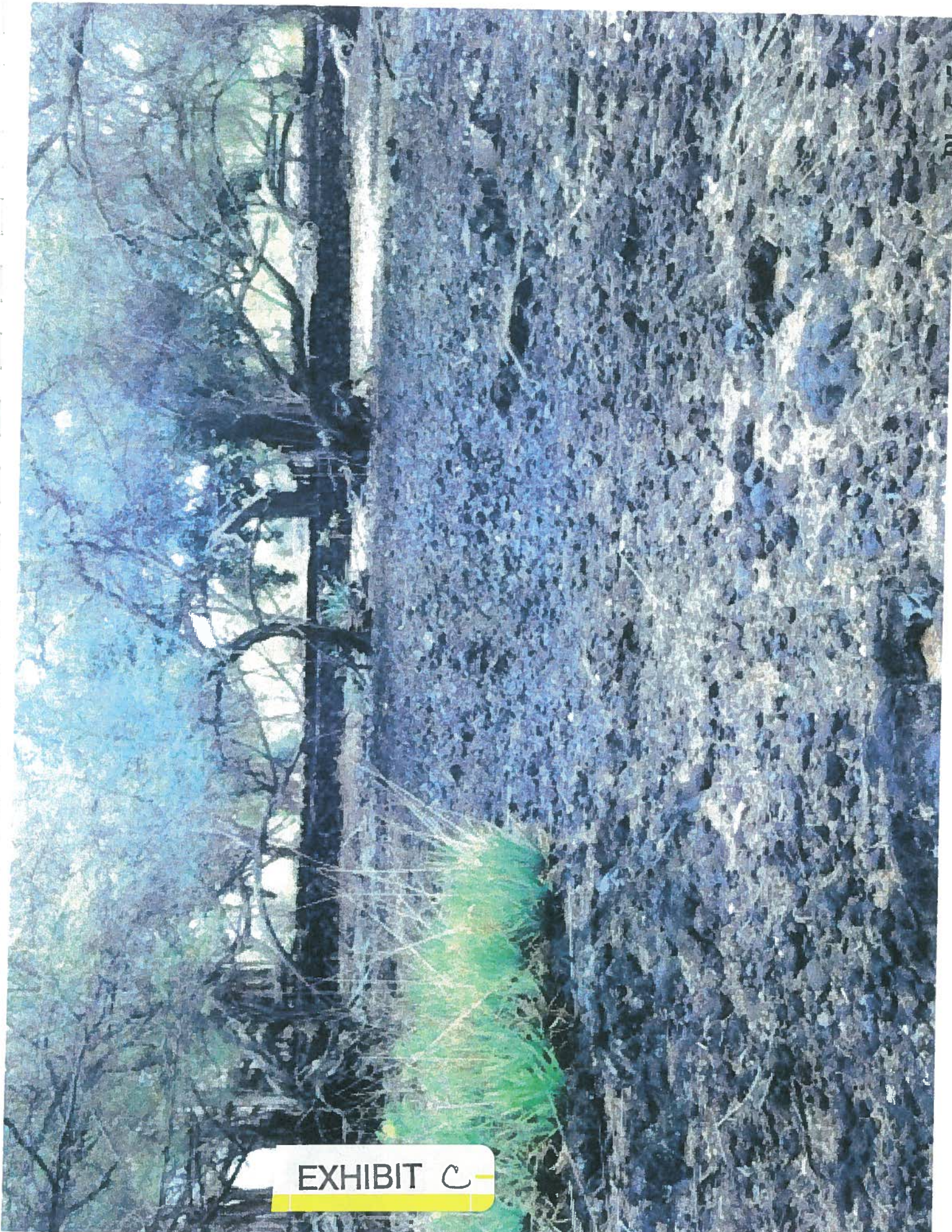




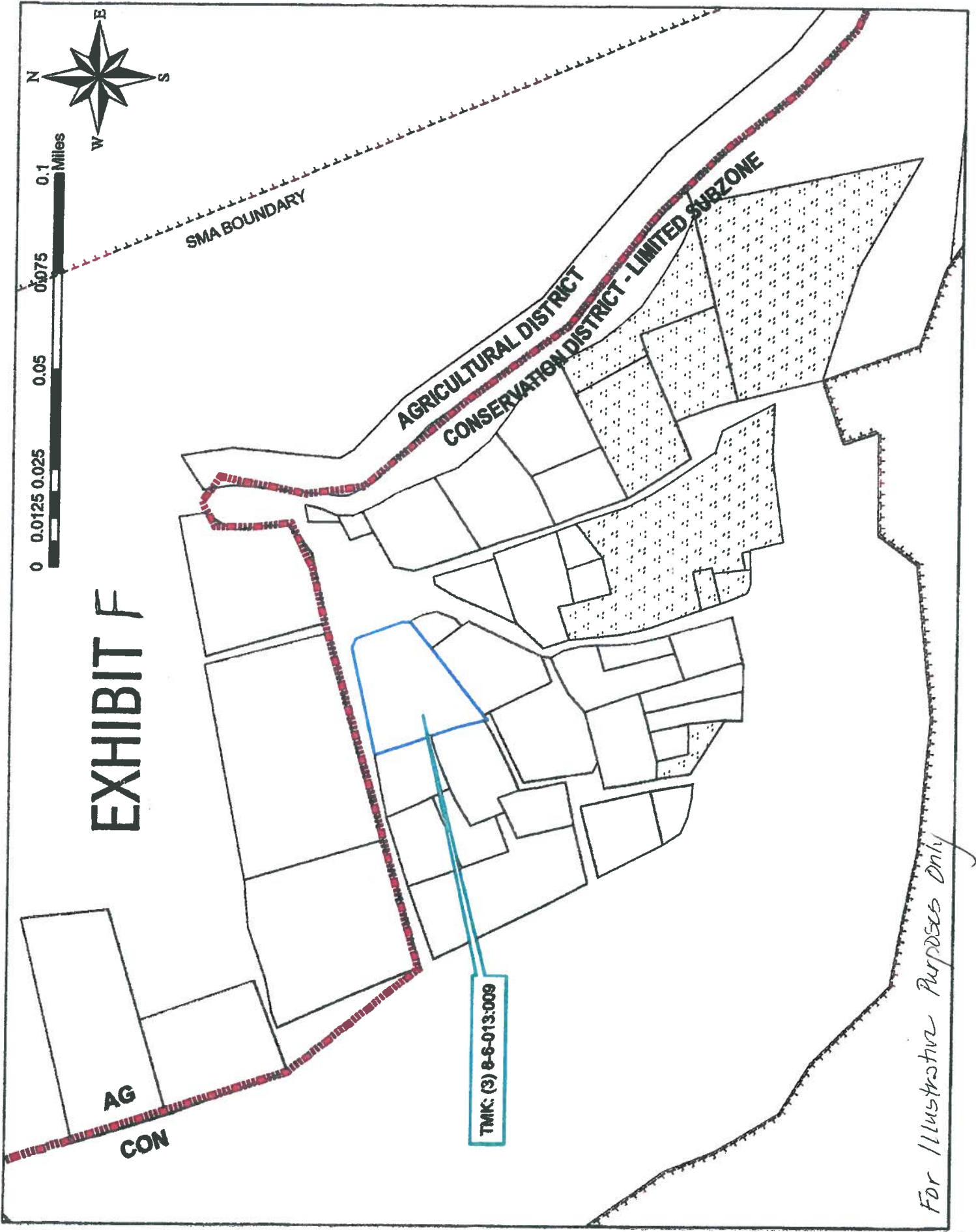


Photo 9

EXHIBIT D



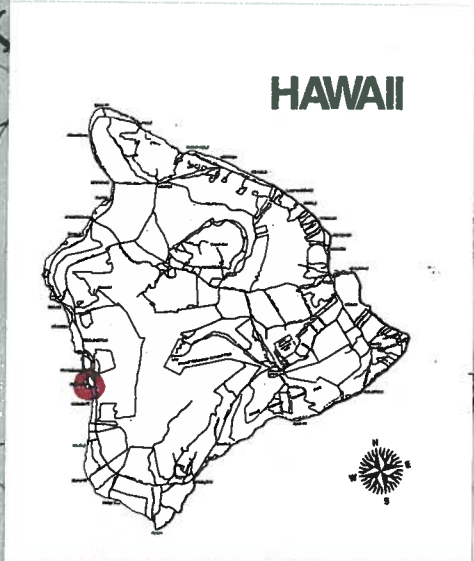
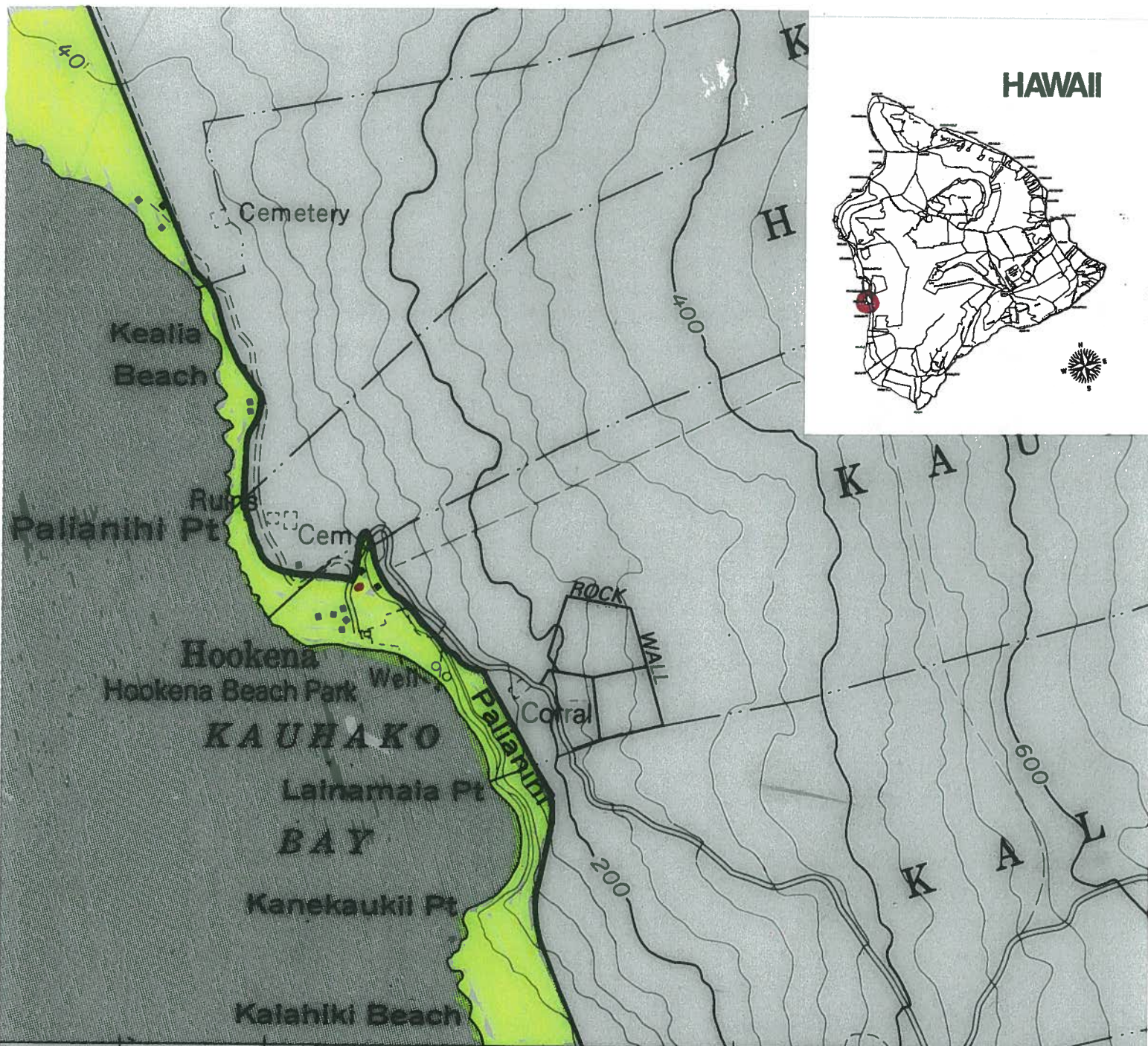
EXHIBIT E



# EXHIBIT F

*For Illustrative Purposes Only*

EXHIBIT F



- Vicinity
- Site
- Limited Subzone

ROAD

Medium-duty.....

Unimpro



EXHIBIT G

**Aerial Photo and  
Slope Analysis**

Peak elevation:  
35 feet

Subject Property

Minimum  
elevation:  
16 feet

Hockens Beach Pk

Imagery © 2013 DigitalGlobe  
© 2013 Google

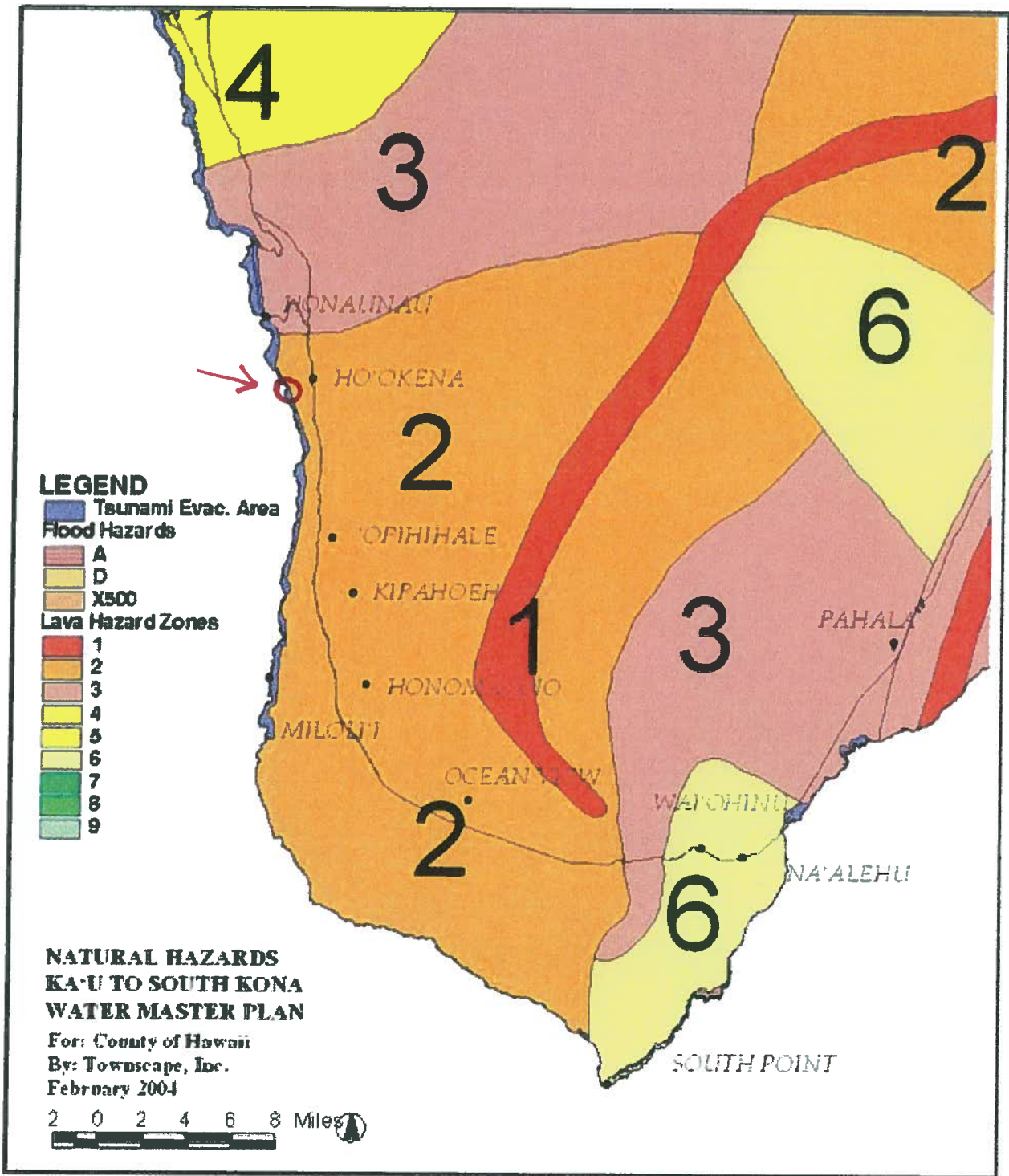
Google

Imagery Date: 3/9/2010 1972951.417 N 15855328.007 W 84W 50.7 84.827

Min: 16.000, Avg: 16.263, Max: 35.000  
Range: 19.000, Total: 208.000  
Elev Gain/Loss: 9.149, 20.110  
Max Slope: 86.42%  
Avg Slope: 0.43%

**EXHIBIT**



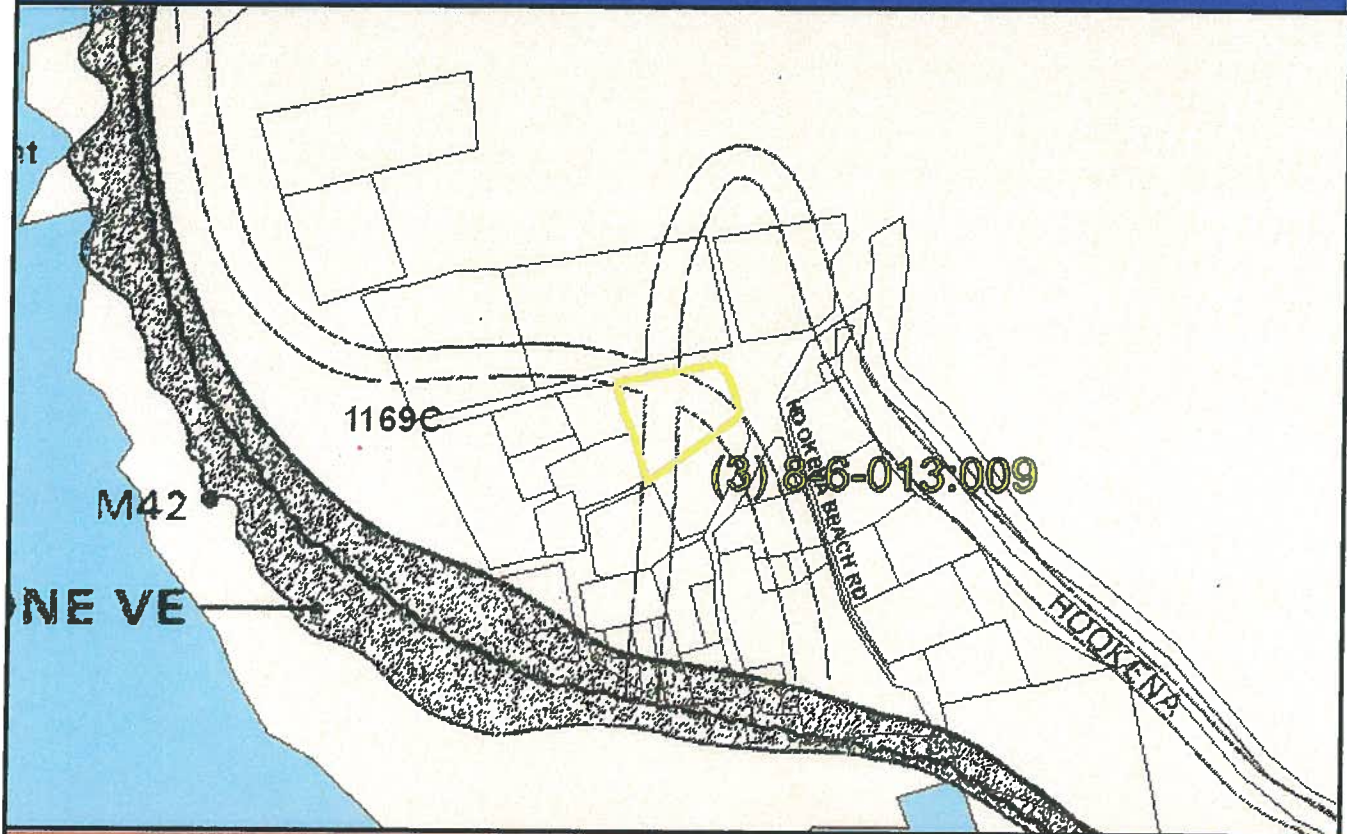


## EXHIBIT I

County of Hawaii Ka'u to South Kona Water Master Plan, displaying data from United States Geological Survey, Lava Flow Hazard Map for the Island of Hawaii.



# FLOOD HAZARD ASSESSMENT REPORT



## NATIONAL FLOOD INSURANCE PROGRAM

### FLOOD ZONE DEFINITIONS

**SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD** - The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zone A, AE, AH, AO, V, and VE. The Base Flood Elevation (BFE) is the water-surface elevation of the 1% annual chance flood. Mandatory flood insurance purchase applies in these zones:

- Zone A:** No BFE determined.
- Zone AE:** BFE determined.
- Zone AH:** Flood depths of 1 to 3 feet (usually areas of ponding); BFE determined.
- Zone AO:** Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined.
- Zone V:** Coastal flood zone with velocity hazard (wave action); no BFE determined.
- Zone VE:** Coastal flood zone with velocity hazard (wave action); BFE determined.
- Zone AEF:** Floodway areas in Zone AE. The floodway is the channel of stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without increasing the BFE.

**NON-SPECIAL FLOOD HAZARD AREA** - An area in a low-to-moderate risk flood zone. No mandatory flood insurance purchase requirements apply, but coverage is available in participating communities.

- Zone XS (X shaded):** Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.
- Zone X:** Areas determined to be outside the 0.2% annual chance floodplain.

### OTHER FLOOD AREAS

- Zone D:** Unstudied areas where flood hazards are undetermined, but flooding is possible. No mandatory flood insurance purchase requirements apply, but coverage is available in participating communities.

### PROPERTY INFORMATION

**COUNTY:** HAWAII  
**TMK NO:** (3) 8-6-013-009  
**PARCEL ADDRESS:**  
**FIRM INDEX DATE:** APRIL 02, 2004  
**LETTER OF MAP CHANGE(S):** NONE  
**FEMA FIRM PANEL(S):** 1551661169C  
**PANEL EFFECTIVE DATE:** SEPTEMBER 16, 1988

**PARCEL DATA FROM:** JULY 2011  
**IMAGERY DATA FROM:** MAY 2005

### IMPORTANT PHONE NUMBERS

County NFIP Coordinator  
 County of Hawaii  
 Frank DeMarco, CFM (808) 961-8042  
State NFIP Coordinator  
 Carol Tyau-Beam, P.E., CFM (808) 587-0267

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