

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

August 22, 2014

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

REGARDING: Proposed Rule Amendment HA 13-02
Request to Amend Title 13, Chapter 5, Hawai'i
Administrative Rules (13-5, HAR) to Designate 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

Tax Map Key: (3) 8-6-013:009

PETITION AREA: Approximately (\approx) 18,687-ft²/.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 areas are 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 (Exhibit K)

Ho'okena Village grew around the Kauhako landing on the shoreline. At one time steamship travel to the village created a lively port town with food and merchandise retail stores, restaurants and a hotel. There were much more residents, a church, school and

courthouse. 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.

Based upon written and oral testimony at the Public Hearing of April 22, 2014, it was brought to staff's attention that Ho'okena remains a native Hawaiian fishing village where many Hawaiian fishing traditions evolved. Opelu fishing traditions are mentioned in mo'olelo of Ho'okena and many canoes are still housed in the village. There is a native Hawaiian presence in the area and the village has not been 'abandoned.'

Further written testimony tells of the settlement of the area that included a general store called Hui Opi'opi'o with an Inn and a concrete soaking tank used to process coffee. The testimony notes Kauhako landing as 'a bustling town with numerous residences,' and the existence of a road that connects the town with the main mauka government road in 1883, well before the Highways Act of 1892.

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 and according to historic maps of Kauhako/Ho'okena, at one time did contain a residence.

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 Māmalahoa Hwy are unable to see Ho'okena village due to the distance and lower elevation from the highway.

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.

The redesignation of the subzone could potentially increase the use/density of the property. However this increase would not be realized unless applied for and granted by the Department and/or Board of Land and Natural Resources.

Alternative Considered

Under the 'No Action' alternative, the land would remain in the Limited subzone.

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. Approval from the Board to hold a public hearing was granted on August 23, 2013. Authorization from the Governor was granted on January 27, 2014.

Public Hearing

The Public Hearing regarding this rule amendment was held on April 22, 2014 at the West Hawai'i Civic Center. Approximately 20 individuals were in attendance. A short presentation was done by the applicant's counsel, Mr. Randy Vitousek, who explained due to the subzone designation, a single family residence could not be applied for unless

the subzone of the property is changed to a subzone for which a residence could be applied for. The applicant, Mr. Gregg explained he bought the property 20 years ago and camps on the property. He would like to retire and build a small house on the lot and he was surprised and did not know he had to go through this process.

A testifier wished to inform the Board/Department and for the record that there is a present day connection of the village with native Hawaiians. Much of Ho'okena Beach Park was obtained by imminent domain and condemnation of land from Hawaiians. So Hawaiians did not abandon area as previously stated in documents.

Although the proposed rule amendment may set precedence for others to do the same, it is not expected that approval would initiate more rule amendment proposals. Individuals that testified welcomed the applicant into the community, stated Mr. Gregg is a good man and neighbor and the community supports the proposal. No one present indicated any objections to the proposal.

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:

The Department of Business, Economic Development & Tourism (DBEDT) reviewed the staff submittal for the proposed rule amendment to go to public hearing and has noted that no business impact is apparent. Further, at the August 23, 2013, the Board determined that the proposed rule amendment will not impact or affect small business.

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

Staff visited the site last summer (2013) and noted that the lot was vacant surrounded by rock walls on all four sides with large trees and leave detritus on the parcel. Staff did not note any pooling of water, soil erosion or erosion damage. The petitioned area does not appear to be susceptible to volcanic activities or landslides. Portions of the property that were previously disturbed during the settlement of the village were level then and continue to be level now and clearly do not have steep slopes.

According to the petition, the property is characterized by land with slopes of less than 10%. The property is in Zone X, areas determined to be outside the 0.2% annual chance flood of the Federal Insurance Rate Maps and approximately 250 feet mauka of the VE Flood Zone- coastal flood zone with velocity hazard (wave action). While tsunami flooding could potentially reach the property, given the proximity to the coastline, this would be an episodic event.

According to the Land Use Commission, the Conservation District boundary line was established during the original 1964 SLU Boundary Review effective August 23, 1964 and appears to follow along what was once noted as Government Road. Ho'okena Village is at the base of cliffs and along the shoreline, both areas that may be susceptible to erosion. The Kona Historical Society notes tsunami and earthquake events may have also contributed to a reduction of population of Ho'okena Village prior to 1951. However living on volcanic islands makes all communities along the coastline susceptible to these events.

Staff also took a look at other subzone designations that are lower on the hierarchy of Conservation District subzones to see if the land conforms to other subzone objectives. Staff did not consider the Protective subzone as there does not appear to be valuable natural and cultural resources such as watersheds, marine, plant, and wildlife or significant historic, archaeological, geological and volcanological features and sites or other designated unique areas within the petitioned area.

Regarding the Resource subzone, the objective of this subzone is to ensure, with proper management, the sustainable use of the natural resources of those areas and shall encompass:

- (1) Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;
- (2) Lands suitable for growing and harvesting of commercial timber or other forest products;
- (3) Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking;
- (4) Offshore islands of the State of Hawaii, unless placed in a (P) or (L) subzone;
- (5) Lands and state marine waters seaward of the shoreline to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone.

As this is private property and there is an existing beach park in close proximity, staff does not believe the land is necessary neither for future parkland nor for outdoor recreational uses. The land is not suitable for growing or harvesting forest products. It is not an offshore island nor submerged land seaward of the shoreline. Therefore this land does not appear to meet the criteria of the Resource subzone.

Regarding the General subzone, the objective of this subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature. The General subzone shall encompass:

- (1) 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
- (2) 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 petitioned area borders Agricultural designated land. There are no natural environmental constraints such as erosion, flooding or steep slopes on the property that would limit uses. Ho'okena is a fishing village and not an 'urban community' that is defined as having a population of over 2,500 individuals. Land uses in the area and the neighboring community of Kealia are low profile residential uses that retain the open space character of the vicinity. Leaving the property in the Limited subzone would not contribute to the rural community and preservation of the area as a fishing village.

Amending the petitioned area into the General subzone will not cause substantial adverse impact to the existing resources within the surrounding area, community or region and is appropriate given the physical conditions and capabilities of the parcel. Staff believes the designation is compatible with the locality and surrounding area of the established community. Placing the petitioned area into the General subzone is not inconsistent with the character of the immediate surroundings that are rural in nature.

Staff is of the opinion that the General subzone is an appropriate designation for the petitioned area.

RECOMMENDATION

Based upon the preceding analysis, staff recommends the Board of Land and Natural Resources:

1. Grant petitioner, Mr. Frederick W. Gregg Jr.'s request to amend Chapter 13-5, Hawaii Administrative Rules to designate land of approximately 18,687-ft² that lies within the Conservation District Limited subzone located at Ho'okena, South Kona, Hawai'i County, known as tax map key (3) 8-6-013:009 into the General subzone; and
2. Authorize the forwarding of the rule amendment to the Governor, State of Hawaii for approval and enactment.

Respectfully submitted,



K. Tiger Mills, Staff Planner

Office of Conservation and Coastal Lands

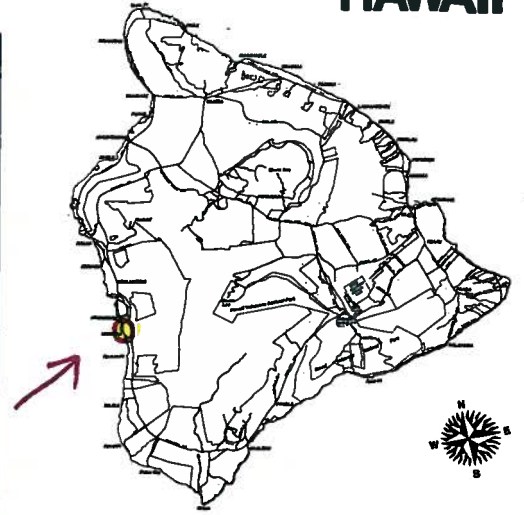
Approved for Submittal:



WILLIAM J. AILA, JR., Chairperson

Board of Land and Natural Resources

HAWAII



Google earth

EXHIBIT A

Site Photo Index and
Site Photos 1-11

MM

mawka

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

PLAT
(8-6-13-37
dropped into
8-6-11-2)

0.40 Ac.

34

42

See Above

Gr. 3189:2
0.103 Ac.

42

Photo 11

Photo 1

Photo 2

L. 0100

0.429 Ac.

Photo 9

Photo 8

Photo 3

Photo 4

Photo 5

Photo 6

Photo 10

Aloysius K.
Pasha

0.08 Ac.

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

L.C. AN. 7034:1
0.2529 Ac.

100.00
91.00

Hookang H.
(Donald E.
Macwhirter)

D.W. Kanui Estate
.15 Ac.

See below for
owners
.29 Ac.

(.15 Ac.)
L.C. AN. 7493:1

L.C. AN. 7
0.30

37.50

EXHIBIT B

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

Charles
& Napa
8400
Und.
Charles
P. Kaili
Und.

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

.10 Ac.

L.C. AN. 7037:1

makai

EXHIBIT C

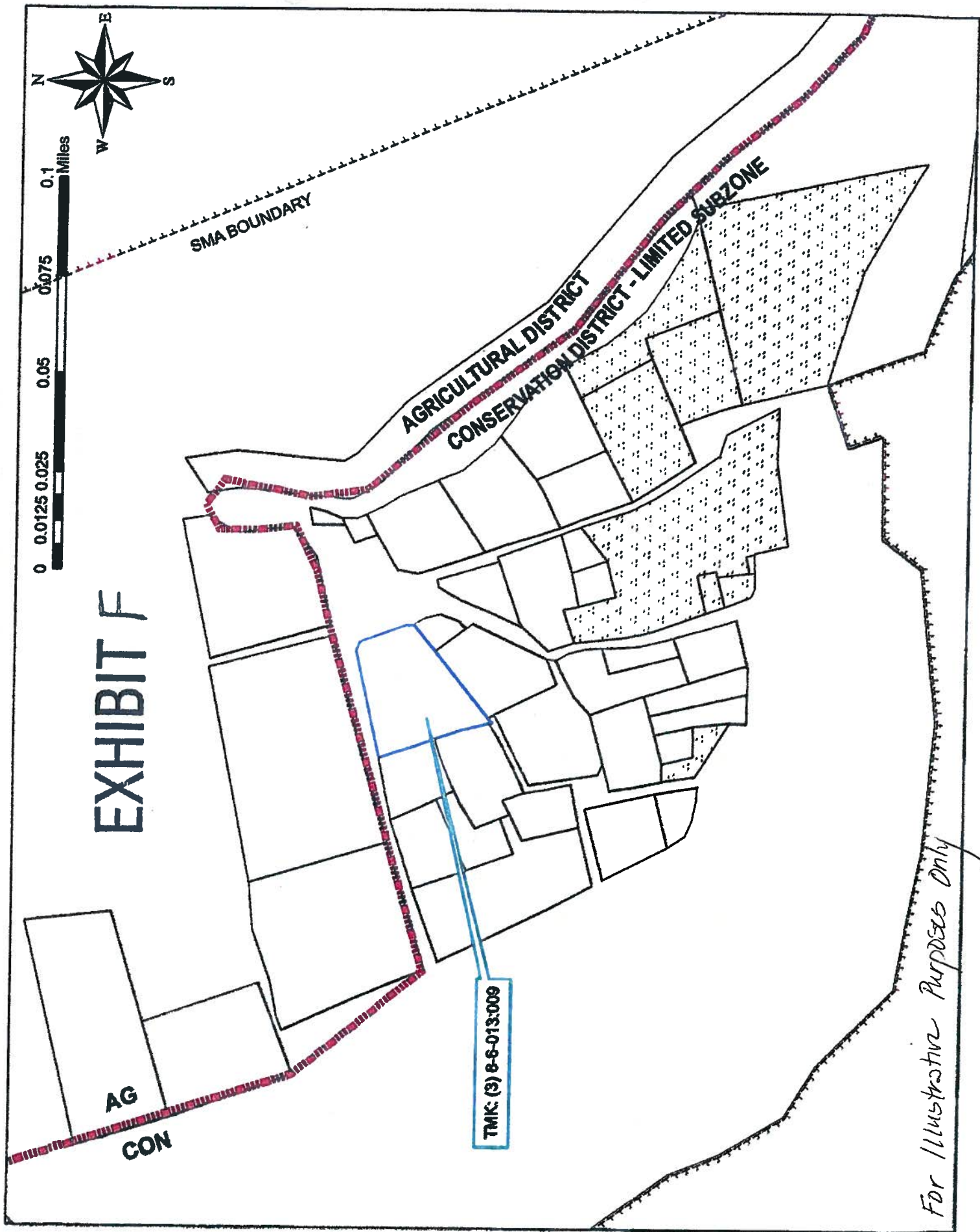


Photo 9

EXHIBIT D



EXHIBIT E



For Illustrative Purposes Only

EXHIBIT F

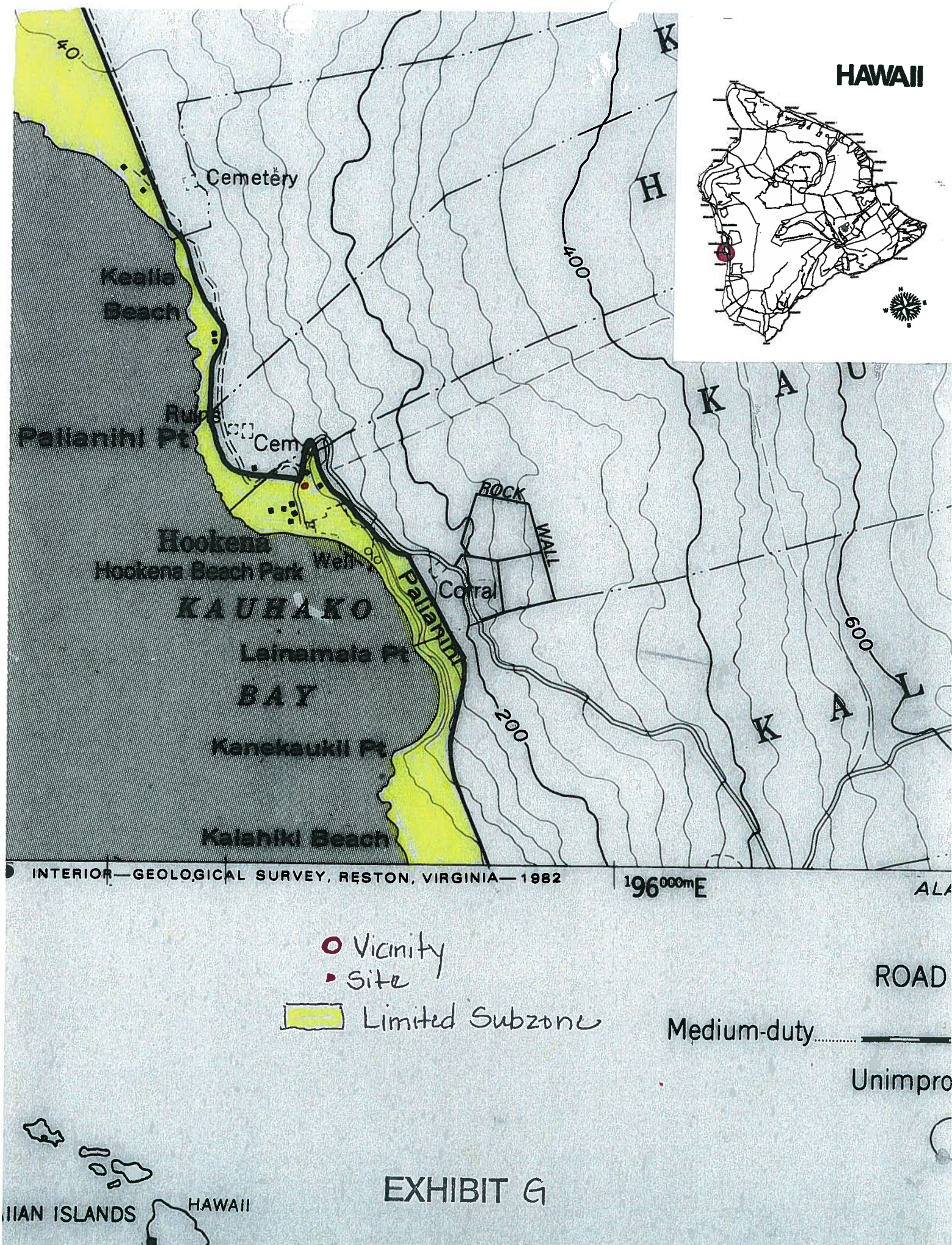


EXHIBIT G

Aerial Photo and
Slope Analysis

EXHIBIT

Peak Elevation:
35 feet

Subject Property

Minimum
Elevation:
16 feet

Hockema Beach Rd

Images © 2013 DigitalGlobe
© 2013 Google

Google

Imagery Date: 8/9/2010 192751.037 N 1555356.000 W Elev: 30 ft

on: Min, Avg, Max, Elevation: 16, 26, 35 ft
Range Totals: Distance: 228 ft Elev Gain/Loss: 9.14 ft -23.1 ft Max Slope: 96.4% Avg Slope: 0.4%

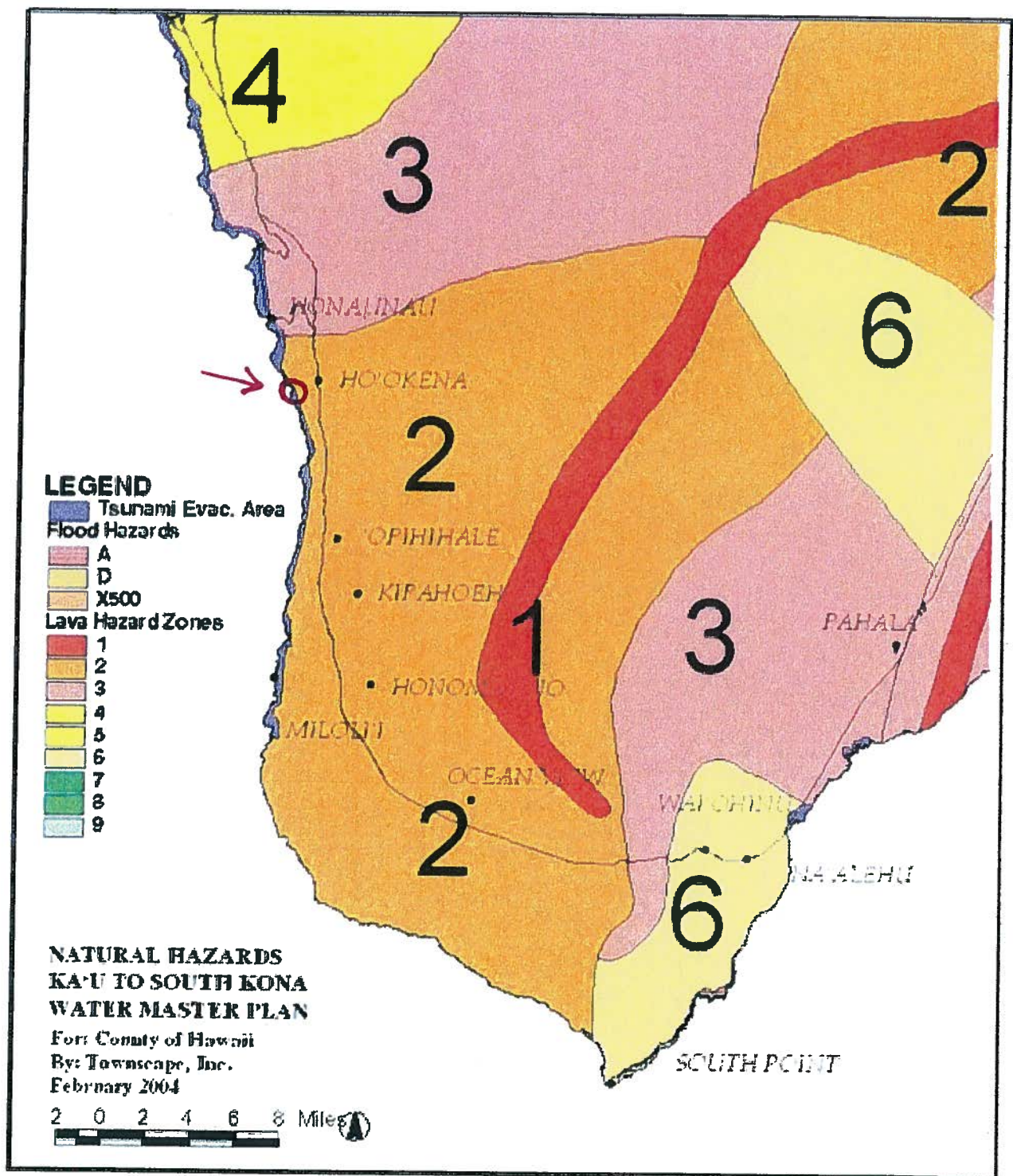
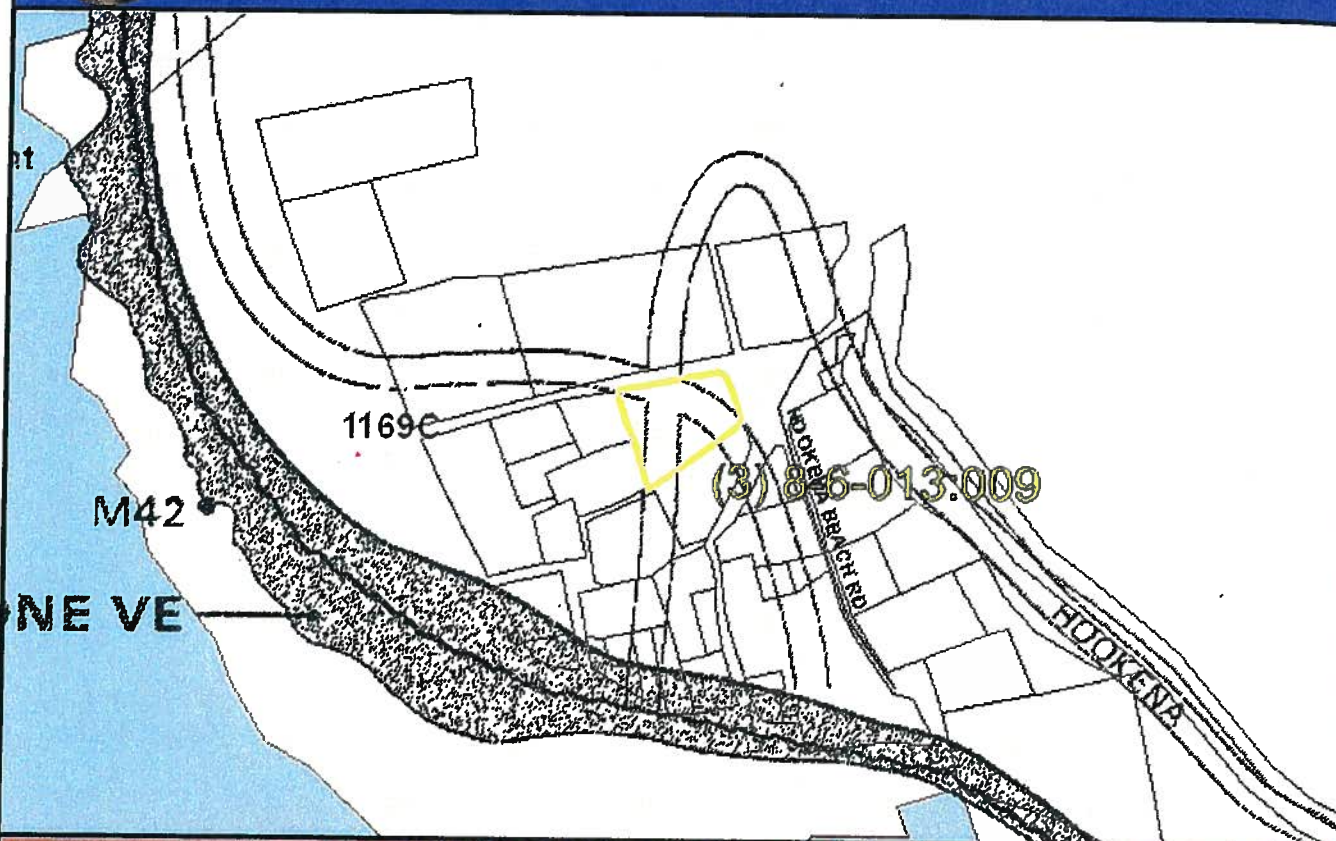


EXHIBIT I

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.



State 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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Preliminary DFIRM Disclaimer: If this map has been identified as "PRELIMINARY", please note that it is being provided for commenting purposes only and is not to be used for official/legal decisions or regulatory compliance.

Awawaloa Cape.
AWAWALO A BAY

Puhsinui Cape

Maka o Keauia

Mokuolale

Pohoele

Kapuamau Pt.
Maluapaka ho. Pt.

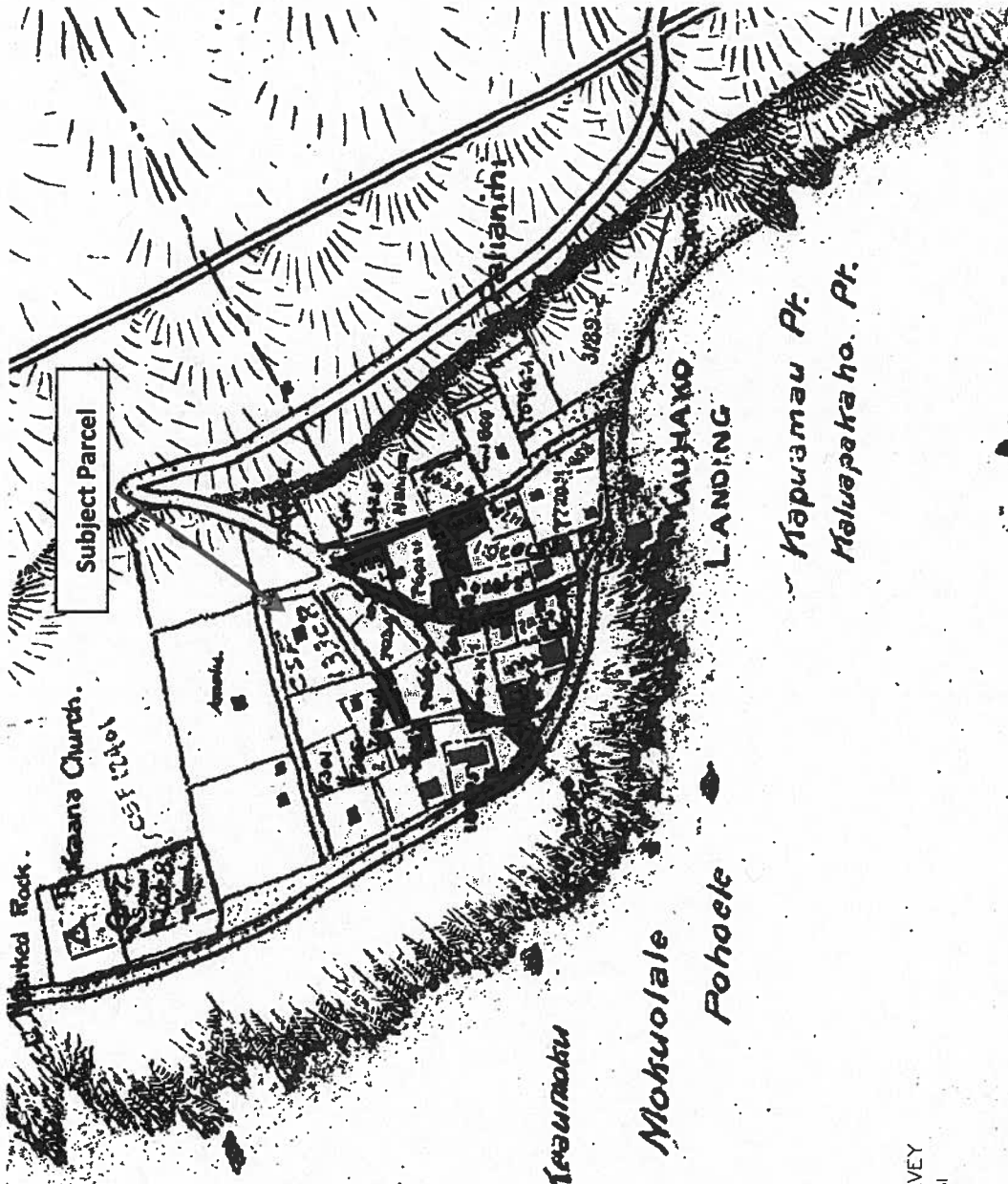


EXHIBIT K

HAWAIIAN GOVERNMENT SURVEY
W.D.ALEXANDER, Surveyor-General

MAPOF

HOOKENA SECTION

SOUTH KONA

HAWAII

Scale 500-ft. = 1 inch

W.A.WALL 1955