

STATE OF HAWAI`I
DEPARTMENT OF LAND AND NATURAL RESOURCE
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai`i

180-Day Exp. Date: January 26, 2015

November 14, 2014

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

REGARDING: Conservation District Use Application (CDUA) HA-3715: Single Family Residence (After the Fact), Subdivision

APPLICANT: Merrill and Ida Smith

AGENT: Celia Shen, `Aiea, Hawai`i

LOCATION: Pohoiki, Puna, Hawai`i

TMK: (3) 1-3-008:037

AREA OF PARCEL: 35.547 acres

AREA OF USE: 7378 square feet

SUBZONE: Resource

DESCRIPTION OF AREA AND PROPOSED USE

The current application is for an after-the-fact permit for the conversion of an existing coffee mill to a single family residence, and for the subdivision of the property into two parcels. An 8.75 acre portion will be retained by the applicant, and the remainder will be acquired by the County for incorporation into Isaac Hale Beach Park.

Pohoiki is a small 1000-foot long bay located approximately three miles south of Kapoho. Isaac Hale County Beach Park, established in 1951 in honor of a local soldier killed in the Korean War, occupies the northeastern bay's northeastern cape. Lae o Kahuna, the bay's southwestern cape, is undeveloped.

The subject parcel runs along the shore from Isaac Hale to Lae o Kahuna, and slopes gently mauka from the shoreline to the Kapoho-Kalapana Road. A 0.411 exclusion lot, TMK (3) 1-3-008:013, is located entirely within the parcel. A 16-foot wide easement through the property extends makai from the road to the exclusion lot. A warm spring is located along the southwestern makai portion of the parcel.

There are no archaeological or written records regarding the pre-contact population of Pohoiki; the first historical record appears in 1846 in the journals of Chester Lyman. The area has remained mostly undeveloped except for a 23 year period of commercial development under Robert Rycroft. Rycroft's ventures between 1877 and 1899 included shipping `awa to the United States for medicinal uses, a 9000-acre cattle operation, a sawmill at Pohoiki landing that sold "all the hardwood used in public works," including the `ohi`a paving blocks for Honolulu's streets, and 35 acres of coffee and a "coffee factory." Rycroft also funded improvements at Pohoiki Landing to support his commercial ventures, although the original landing was destroyed by a tsunami in August 1885. The commercial activity appears to have ended when Rycroft moved to Honolulu in 1899.

The remnants of the Rycroft Coffee Mill was renovated and converted into a single family residence beginning in 2004. The work was done without a permit, and on January 24, 2014 the Board of Land and Natural Resources found the landowner in violation of Conservation District Rules (file no: Enf HA-08-26). One of the conditions for resolving the violation is that the landowner file an after-the-fact CDUA for the conversion, or to return the use to a coffee mill.

Other structures on the parcel at the time the application was submitted included:

- A 552 square-foot caretaker's cottage constructed in 2010¹. The remnants of an old piggery. The existing low walls have been covered with a corrugated metal shed roof, and the site has been incorporated into the caretaker's cottage.
- A 1000 square foot free standing shade structure adjacent to the piggery.
- Four other shade structures of 400, 480, 720, and 700 square feet each.
- A 48 square foot chicken coop and a 24 square foot generator building.

The applicant estimates that the current developed area of the converted mill is 7,378 square feet. This figure includes the original mill and recent additions. The height of the structure to the roof ridge is 29 feet. While this is above the maximum set in Hawai'i Administrative Rules (HAR) Chapter §13-5, its profile and height mimic the historic roofline.

The applicant proposes two alternatives for reducing the developed area of the structure in order to bring it into conformance with the single family design standards contained in HAR §13-5:

The first alternative is to seal off the first floor of the mill, which they calculate will remove 2560 square feet from the developed area and bring the final developed area to 4818 square feet (4737 square feet of habitable space plus an 81 square-foot smoke stack).

The second alternative, which the applicant believes will better preserve the architectural integrity of the historic structure, will be to remove the concrete floor on the lower level and to remove all interior stairways. In this way the lower level would no longer be habitable space, although the applicant wishes to retain the use of this area as a storage area. The total habitable space of the residence would be 4737 square feet.

¹ Conservation District rules only allow for one residence on any legal lot of record, and the applicant has removed this structure as well as the additions to the piggery.

The County of Hawai'i has initiated the process to subdivide the property. The proposal will result in two lots consisting of 8.785 acres (Lot 26-A) and 26.782 acres (Lot 26-B). The County intends to acquire the larger parcel through its Public Access, Open Space, and Natural Resources Preservation Fund. Any proposed improvements that the County proposes for the acquired parcel will be the subject of a future CDUA.

An archaeological inventory survey recorded 27 sites within the property, five of which had been previously recorded. Fourteen of these sites are on the portion of the property to be acquired by the County. The thirteen sites on the 8.785-acre portion of the property to be retained by the applicants are all from the late nineteenth and early twentieth century.

There is an unimproved trail along the coast that leads from Isaac Hale Park to small coves that are used by fisherman use to access fishing spots. Both of these are on the portion of the property that is to be acquired by the County. No other recreational resources are located within the subject property.

Approximately four acres of the parcel near the residence have been partially cleared and managed. The vegetation within this portion of the property is characterized by a large grassed expanse dotted with numerous mature trees such as coconut and mango. Other vegetation includes sword fern (*Nephrolepis exaltata*), noni (*Morinda citrifolia*), golden pothos (*Epipremnum pinnatum*), ti (*Cordyline fruticosa*), and bananas (*Musa paradisiaca*).

The remaining property is dominated by a coastal forest consisting of a mix of native and introduced species dominated by native trees such as hala (*Pandanus tectorius*), milo (*Thespesia populnea*), and introduced and invasive species such as octopus tree (*Schefflera actinophylla*), trumpet tree (*Cecropia obtusifolia*), heliotrope (*Tournefortia argentea*) and Christmas berry (*Schinus terbinthifolus*). No threatened or endangered species are known.

The following exhibits have been included with this report:

1. Location Map
2. Site Plan
3. Developed Area Site Plan
4. Front and Side Elevations
5. Floor Plan
6. Site Photographs
7. Staff Report on Enforcement HA-08-26

ANALYSIS

After reviewing the application, the Department notified the applicant that:

1. The proposed use was an identified land use in the Resource Subzone of the Conservation District, pursuant to §13-5-23, Hawai'i Administrative Rules (HAR R-8, SINGLE FAMILY RESIDENCE (D-1), *A single family residence that conforms to design standards as outlined in this chapter*. This use requires a permit from the Board of Land and Natural Resources, who have the final authority to grant, modify, or deny any permit;
2. The proposed subdivision was an identified land use in the Protective subzone of the Conservation District pursuant to HAR §13-5-22 P-10 SUBDIVISION OR CONSOLIDATION OF PROPERTY (C-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. This use also requires a permit from the Board of Land and Natural Resources.

3. Pursuant to §13-5-40 of the HAR, a Public Hearing would not be required;
4. The proposed improvements and subdivision are identified as exempt pursuant to §11-200-8 *Exempt classes of action*, 4) Minor alterations in the conditions of land, water, or vegetation. OCCL is basing this exemption on the fact that the physical alterations to the existing structure will be primarily internal, that there will be no increase in the structures footprint, and that the proposal does not involve any ground disturbance or removal of the area's natural resources.
5. It is the applicant's responsibility to comply with the provisions of Hawaii's Coastal Zone Management law (HRS Chapter 205A) pertaining to the Special Management Area (SMA) requirements administered by the various counties.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: Office of Hawaiian Affairs; DLNR – Land Division, Historic Preservation Division, Division of Forestry and Wildlife, and Division of Conservation and Resource Enforcement; Office of Hawaiian Affairs; and the County of Hawai'i Department of Planning.

In addition, the application and Environmental Assessment were available for review at the Hawai'i State Library and Keaau Public Library, as well as on OCCL's website. Notice of the application was published in the May 8, 2014 edition of the *Environmental Notice*.

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

DLNR – State Historic Preservation Division (SHPD)

The Rycroft Mill is eligible for inclusion for the State and National Registers of Historic Places. Though the mill has undergone renovations, it still maintains its location, design, setting, materials, and workmanship. The mill was in a state of disrepair when the owners renovated it in the early 2000s. The renovations saved the building from total destruction, and were in compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

An addition to the lanai and the interior partitions are differentiated from the historic structure. As the structure can no longer be used as a mill, its use as a residence will maintain the building with few alterations. As mitigation for the changes, SHPD is accepting an ILS survey which will include a historical narrative, photos, plans, and GIS data.

The proposed infill of the first floor will adversely affect the historic integrity of the building. SHPD suggests the plan be revised.

Applicant's Response

The applicant resubmitted their application to include a second alternative wherein the lower level would not be sealed off, but where interior stairs and the concrete floor will be removed.

DLNR – Land Division

No comments

DLNR – Division of Forestry and Wildlife

No comments

Office of Hawaiian Affairs

No comments

County of Hawai'i, Planning Department (August 20, 2014)

The Planning Department noted that the subject parcel is within the Special Management Area (SMA), and will require review against SMA rules and guidelines. In April 2009 the County determined that the conversion of the coffee mill into a residence was exempt from the definition of “development” and would not need further review. This determination did not include the proposed subdivision.

On January 14, 2014 the applicant submitted SMA Assessment Application SAA 14-740 for the subdivision. Per the comments received from SHPD, an archaeological inventory survey (AIS) was recommended prior to approval of the proposed subdivision. The County will thus postpone its determination on SAA 14-740 until final AIS, and if necessary an archaeological preservation plan, has been reviewed and accepted by SHPD.

OCCL's Response (August 26, 2014)

OCCL notified the applicant that, pursuant to Hawai'i Revised Statutes (HRS) §205A-29 SPECIAL MANAGEMENT AREA USE PERMIT PROCEDURE, (d) *No agency authorized to issue permits to any development within the special management area shall authorize any development unless approval is first received in accordance with the procedures adopted pursuant to this part.* Based on this statute, the Department will be unable to issue a permit for the proposed subdivision until the Planning Department either issues an SMA determination or an SMA permit. OCCL encouraged the applicant to work with the Department to ensure that this is completed before the CDUA's processing deadline on January 6, 2015.

County of Hawai'i, Planning Department (September 4, 2014)

Given that the stated valuation of \$0 is less than the \$500,000 maximum allowable for the issuance of an SMA Minor Use Permit, the County has determined that the proposed subdivision meets the requirements for an SMA Minor Permit. SMA Minor Permit 14-000295 was issued on September 4, 2014.

A condition of the permit is that the applicant adheres to the recommendations of SHPD regarding their review and preservation recommendations regarding the archaeological sites extant on the subject property.

OCCL's Comments

The application and archeological inventory survey disclose the existence of a 552 square-foot caretaker's cottage constructed in 2010. The remnants of an old piggery have also been incorporated into the cottage's living area, bringing the total developed area to 984 square feet. In order for OCCL to make a positive recommendation on the application the landowner will need to address the removal of the second residence.

Applicant's Response

The caretaker's cottage and additions to the piggery have been removed. OCCL confirmed this on a site visit to the property in the summer of 2014.

SECTION 13-5-30 CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 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 project is considered an identified land use in the subject area of the Conservation District; as such, it is subject to the regulatory process established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. It is consistent with the standards set forth in 13-5, HAR, and it has associated management regimes in place to protect the historic resources found on the property.

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 in this subzone pursuant to HAR, §13-5-24, R-8, SINGLE FAMILY RESIDENCE, (D-1) *A single family residence that conforms to design standards as outlined in Chapter 13-5, HAR.*

The renovated structure meets the setback requirements contained in 13-5. All structures are connected, there is one kitchen, there is no grading, and the structure is shielded from the park and coastal view plains by large trees.

The height of the structure to the roof ridge is 29 feet. While this is above the maximum set in 13-5, its profile and height mimic the historic roofline.

Pursuant to the design standards, the maximum developed area for a lot this size would be 5000 square feet. The mill has an area of 7,378 square feet. This figure includes the original mill and recent additions. The applicant proposed to remove the concrete floor on the lower level and to remove all interior stairways. In this way the lower level would no longer be habitable space, although the applicant wishes to retain the use of this area

as a storage area. The total habitable space of the residence would thus be 4737 square feet.

The proposed subdivision is an identified land use pursuant to HAR §13-5-22 P-10 SUBDIVISION OR CONSOLIDATION OF PROPERTY (C-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.*

The subdivision will allow the County to acquire the larger portion of the property for incorporation into Isaac Hale Park, which serves a public purpose.

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

Staff finds that the project is consistent with the following Chapter 205A objectives:

Recreational resources: Shoreline access will remain unchanged. While the landowners currently allow the public to transit the area along the coastal trail, there are no guarantees that future landowners will do the same. Incorporating the coastal area into a public park will help preserve the recreational resources of the area.

Historic resources: The coffee mill was in danger of total failure; the restoration work was in compliance with national Standards for the Treatment of Historic Properties.

Scenic and open space resources: The project will have a minimal impact on open space, and will not impact any important view planes.

Coastal Ecosystems: At its closest point, the historic mill structure is located approximately 532 feet from the shoreline. Neither its conversion to a residence nor the proposed options to address its exceedance of the MDA would affect coastal ecosystems; no grading or placement of impermeable surfaces would occur that could potentially contribute to increased runoff or sedimentation into nearshore waters.

Subdivision of the subject property involves no actions that would affect coastal ecosystems.

Coastal Hazards: The proposed residence is set back 532 feet from the shoreline. It is in Flood Zone X, which is outside the 500 year flood plain. It is, however, in an area that the Hawai'i County Civil Defense Agency recommends evacuating during a tsunami warning. It is in Lava Hazard Zone 3, and as such there is some risk of lava inundation.

Public Participation: The application was distributed for public comment, and was available for public review both at the nearest library and on OCCL's website.

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

Staff believes the proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area. The site was significantly modified over a century ago when the coffee mill, the small wharf and related uses were operational on the site. When the applicants acquired the property and converted it to residential use,

some vegetation clearing was required. The cleared vegetation consisted largely of dead and fallen trees, guava trees and vines that had overgrown the land area.

The County anticipates that the subdivision and their subsequent acquisition of the larger lot will allow for better management of the coastal forest.

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's gentle topography and previous land usage is suited for the proposed residential use. The historic mill structure has been situated on the property for 120 years, constructed before contemporary land use and building regulations; its adaptive reuse as a residence and related property improvements on land that was previously disturbed obviated the need to develop pristine, undisturbed land.

Subdivision of the subject property is to facilitate acquisition of a 26.782-acre portion by the County of Hawai'i. The purposes for which the County is acquiring the property—expansion of Isaac Hale Beach Park, preservation of open space, and management of natural resources—is compatible with the public and recreational uses of the surrounding area.

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

No additional construction or landscaping is being considered as part of this application. Approval of this permit should thus have no impact on the existing physical and environmental aspects of the land.

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

The subject property is being subdivided for a public purpose—to facilitate acquisition of the larger subdivided lot by the County of Hawai'i through its Public Access, Open Space and Natural Resources Preservation Fund. No additional developments are proposed, and the County intends to passively manage the land at this time. Any future infrastructure improvements will be subject to Conservation District rules and might trigger the need for additional permitting.

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

The conversion of the mill to a residence should have no impact on the public's health, safety, or welfare. The expansion of Isaac Hale Beach Park will benefit the community by increasing the amount of public land available in the region.

DISCUSSION

The remnants of the Rycroft Coffee Mill was renovated and converted into a single family residence beginning in 2004. The work was done without a permit, and on January 24, 2014 the Board of Land and Natural Resources found the landowner in violation of Conservation District Rules (file no: Enf HA-08-26). The conditions for resolving the violation are that the landowner pay fines totaling \$15,000 on or before January 24, 2015, and that the landowner file an after-the-fact Conservation District Use Application (CDUA) for the conversion of the mill into a residence.

The County of Hawai'i has initiated the process to subdivide the property. Final approval is subject to obtaining this Conservation District Use Permit and a Special Management Area Assessment. The sale to the County includes escrow instructions that will pay the fines and fees associated with enforcement case HA-08-26. As the County needs to expend the funds by the end of the current year, the applicant is confident that the fines will be paid before January 24, 2015.

The landowner's representative has asked that the Board allow for a two-month 'grace period' in paying the fines to allow for any unexpected delays in filing the paperwork with the County. **OCCL has no objections to this request, and will recommend that the Board extend the deadline for paying the fines to March 24, 2015.**

In the enforcement case the Board ordered that *in the event of failure of the landowners to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.* **OCCL will recommend that the Board carry over this condition to the current permit if approved.**

Securing this Conservation District Use Permit (CDUP) and paying the mandated fines will resolve the current violation.

The applicant proposes two alternatives for reducing the developed area of the structure in order to bring into conformance with the single family design standards contained in HAR §13-5.

The first alternative is to seal off the first floor of the mill, which they calculate will remove 2560 square feet from the developed area and bring the final developed area to 4818 square feet (4737 square feet of habitable space plus an 81 square-foot smoke stack).

The second alternative is to remove the concrete floor on the lower level and to remove all interior stairways. In this way the lower level would no longer be habitable space, although the applicant wishes to retain the use of this area as a storage area. The total habitable space of the residence would be 4737 square feet.

OCCL supports the second alternative. Staff conducted a site visit in the summer of 2014, and noted that the lower level of the structure is used for storage, and is not a "livable" space. OCCL concurs with SHPD that sealing off the windows and doors will impact the structure's historical integrity, and believes that it will have no impact on the structure's size or footprint, and will only artificially reduce the calculated developed area.

We thus recommend that **a condition of any permit be that the interior stairways and lower-level concrete floor be removed**, but that the owners not be required to seal off the space. We also recommend that **an additional condition be that the lower level not be converted to residential use** (e.g. by creating additional bedrooms, kitchens, et cetera).

OCCL reviewed the application in light of the Coastal Zone Management Act, HRS Chapter 205A, and found that it was consistent with the program's objectives and policies. In addition, the County of Hawai'i Planning Department concluded that the conversion of the mill to a residence is exempt from the definition of "development" under Special Management Area (SMA) rules. The County issued a SMA Minor Permit for the subdivision in September 2014.

The coastal area is popular with tourists, and the hot ponds are featured in a number of popular guides to 'secret' spots. The landowner and the County have both stated that the County will be better able to manage the area. The subdivision of the parcel and the incorporation of the larger part into Isaac Hale Park will benefit the community by increasing the amount of public recreational areas in Puna

RECOMMENDATION

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources:

- A. EXTENDS the deadline for paying the fines associated with Enforcement HA-08-26 to March 24, 2015.
- B. APPROVES the application for the conversion of the Rycroft Mill into a Single Family Residence, and the subdivision of the subject parcel, at Pohoiki, Puna, Hawai'i, TMK (3) 1-3-008:037, 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 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. No other construction or landscaping is authorized under this permit;
 7. 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;
 8. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
 9. 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;
10. 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;
 11. 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 toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
 12. 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;
 13. 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 HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
 14. The interior stairways and lower-level concrete floor shall be removed;
 15. The lower level of the mill shall not be converted to residential use (e.g. by creating additional bedrooms, kitchens, et cetera).
 16. In the event of failure of the landowners to comply with any order contained within Enforcement HA-08-26 the matter shall be turned over to the Attorney General for disposition, including all administrative costs;
 17. Other terms and conditions as prescribed by the chairperson.
 18. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Respectfully submitted,



Michael Cain, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



William J. Ana, Chairperson
Board of Land and Natural Resources

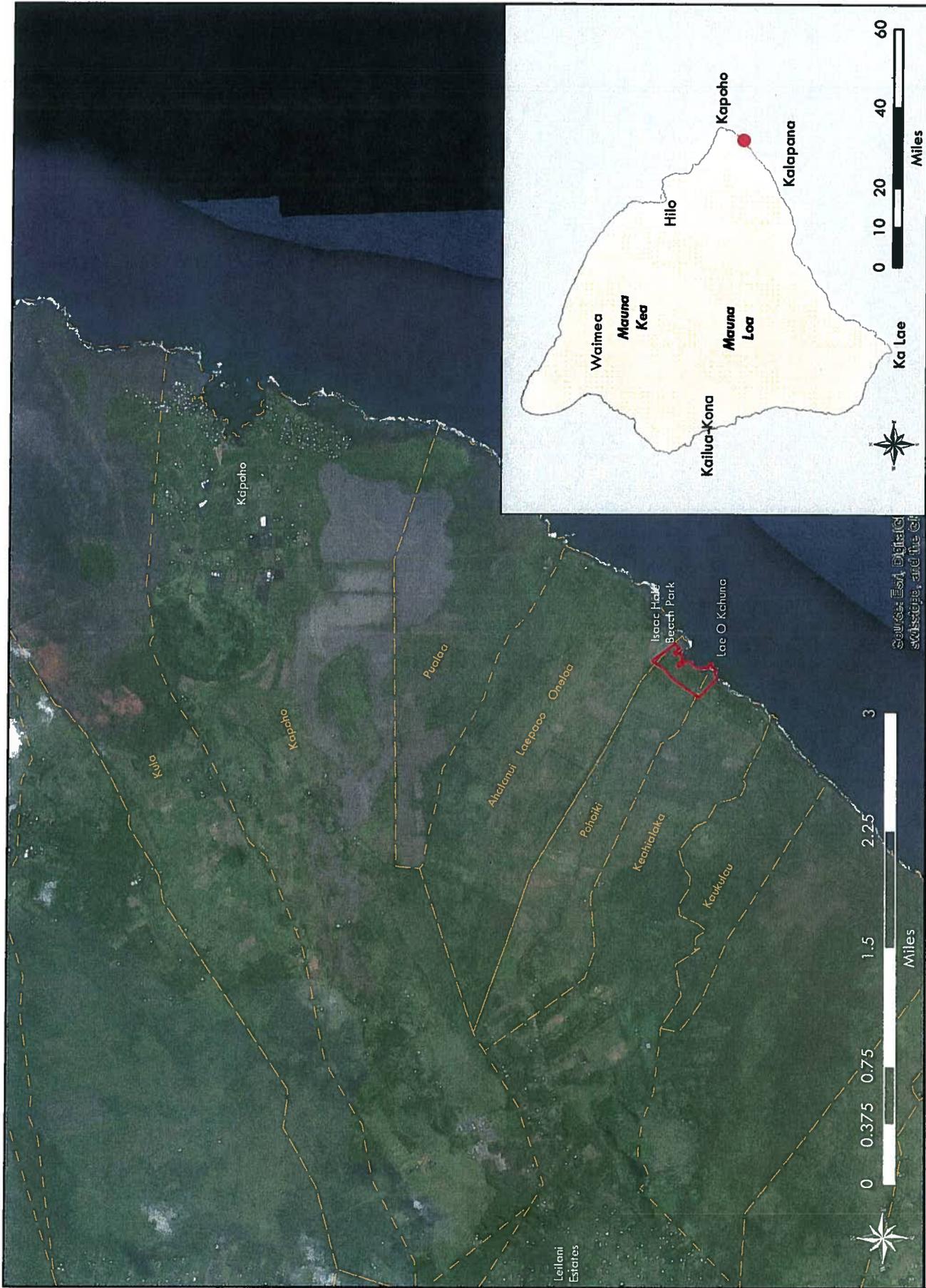


Figure 1. Location Map

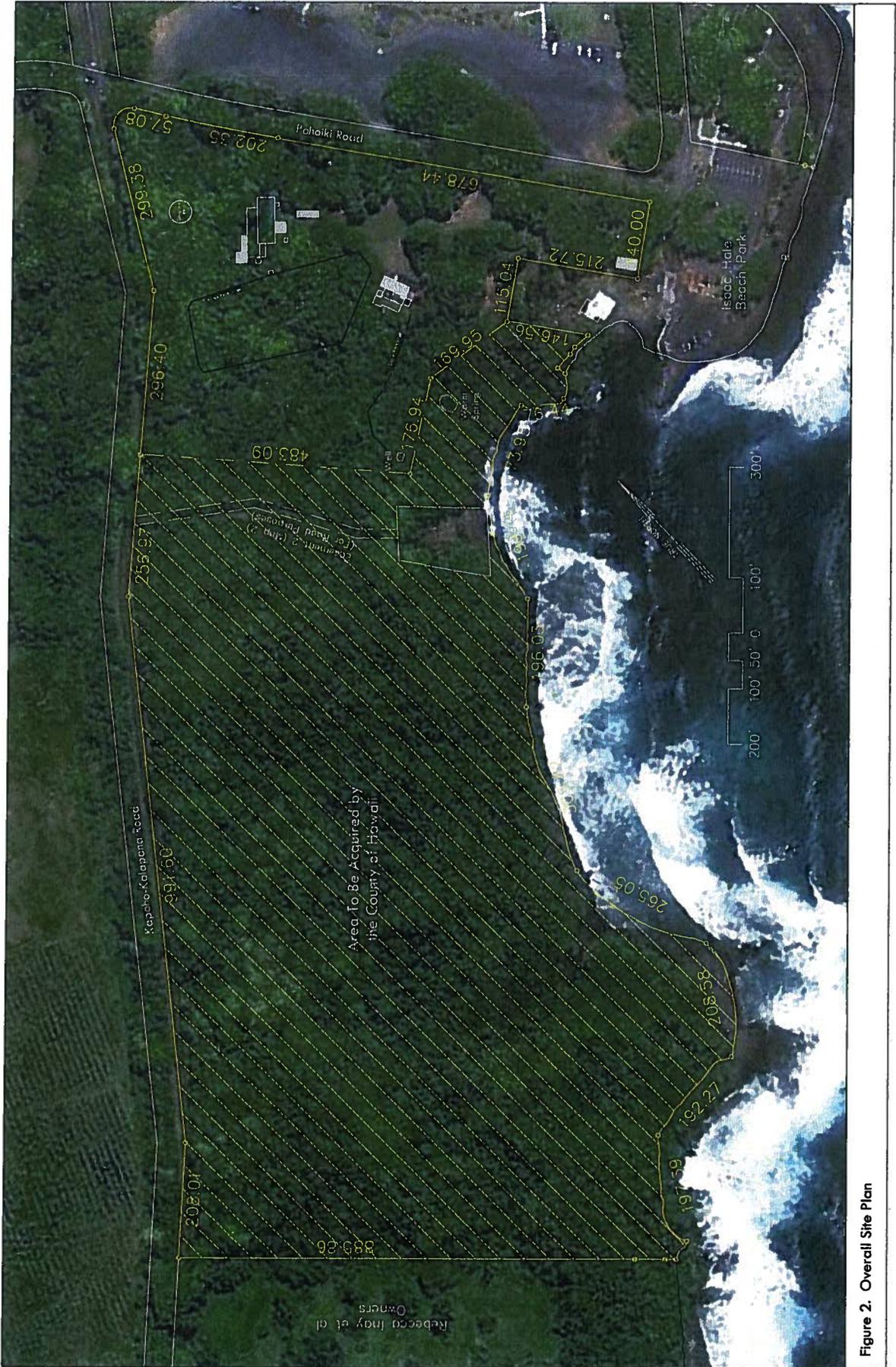


Figure 2. Overall Site Plan

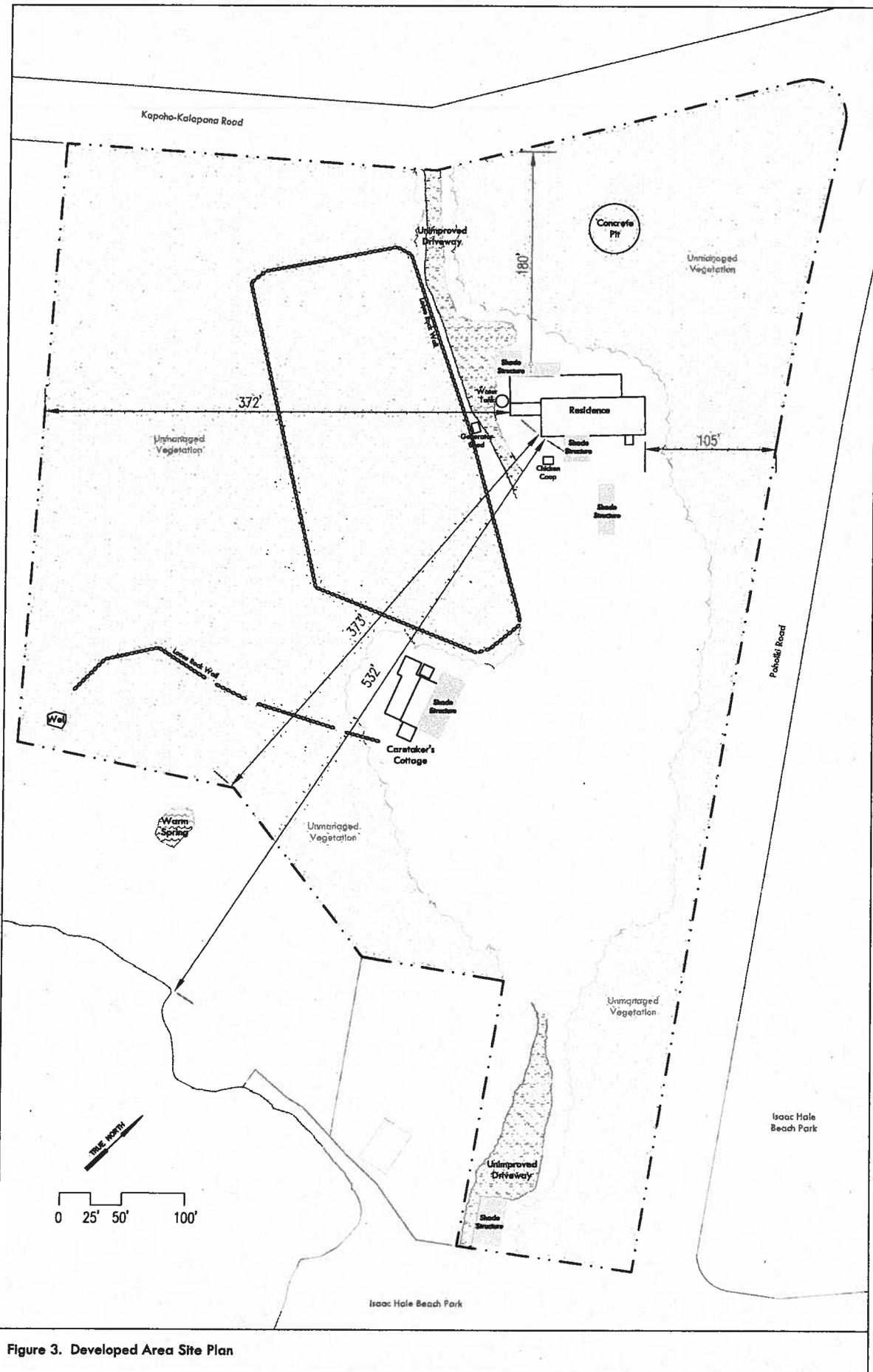
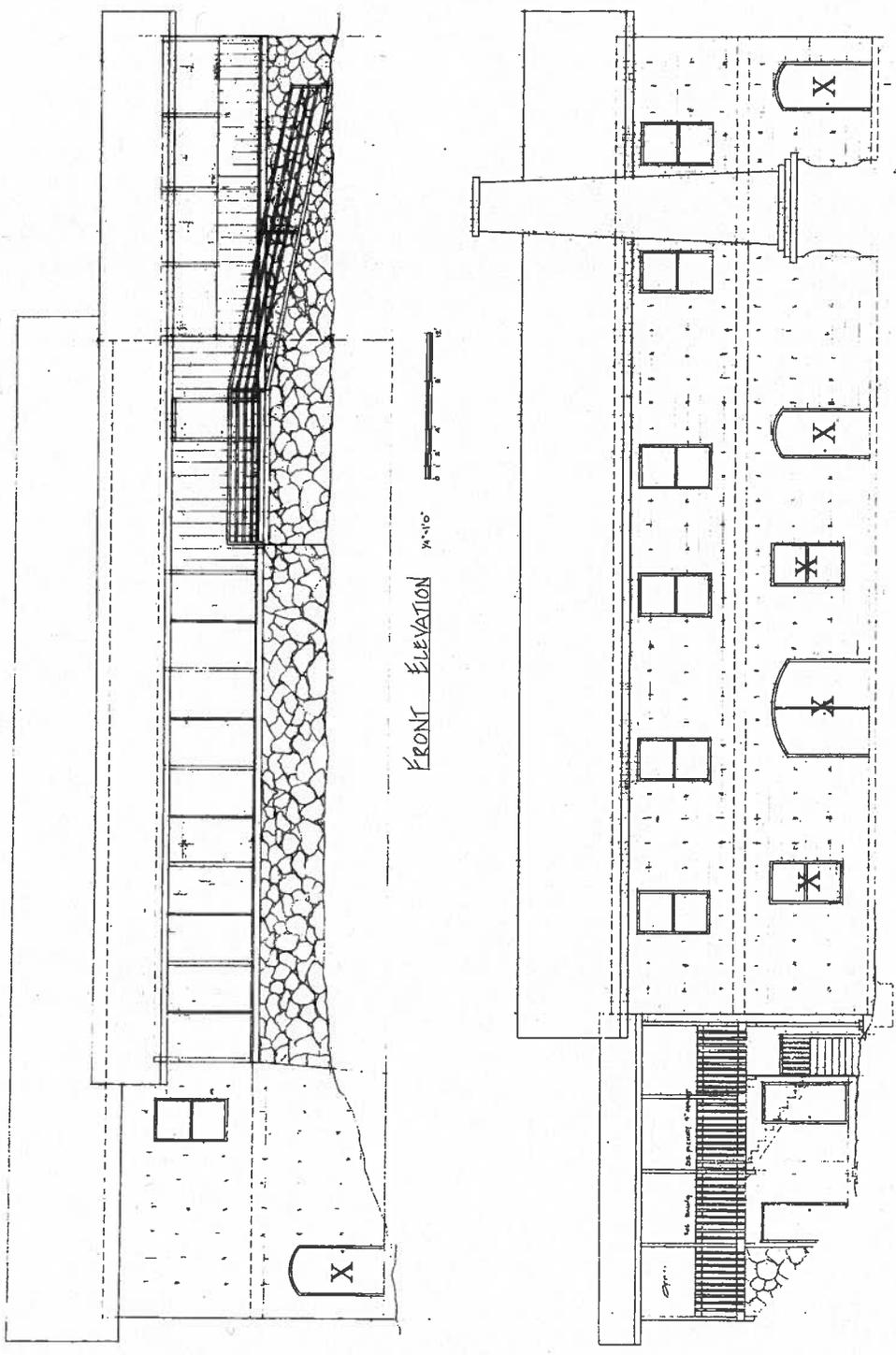


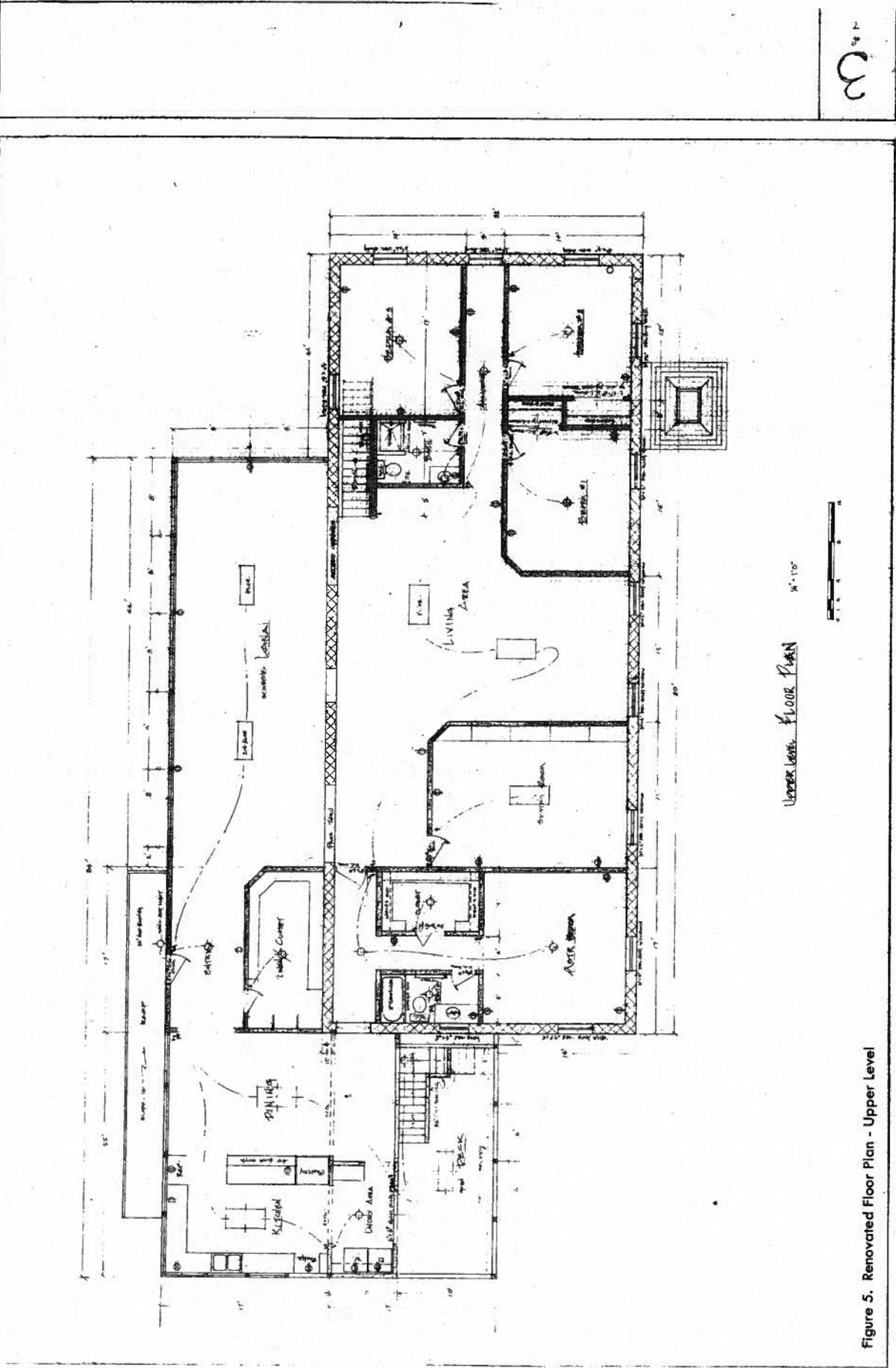
Figure 3. Developed Area Site Plan



FRONT ELEVATION N-110

REAR ELEVATION N-111

Figure 7. Mauka and Makai Elevations



042

Figure 5. Renovated Floor Plan - Upper Level



Makai façade of residence.



**' . Eastern corner of residence, mill
smokestack.**



Northeast gable end wall.



Northern corner of residence.



Entrance to residence.



2. Unimproved driveway, facing Kapoho-Kalapana Road.



Central portion of property's developed area, facing makai.



Central portion of property's developed area, facing north.

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

January 24, 2014

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

REGARDING: Conservation District Enforcement File HA-08-26
Alleged Unauthorized Use of a Coffee Mill Structure as a Single Family
Residence

BY: Lawrence Merril Smith
Ida Kailakanoa Smith

**LOCATION/
Tax Map Key:** Pohoiki, Island of Hawaii
(3) 1-3-008:034

LOT SIZE: 36 Acres

SUBZONE: Resource

DESCRIPTION OF AREA:

The subject area is located in Pohoiki, Puna District, Island of Hawaii, TMK: (3) 1-3-008:034 (Exhibits 1, 2 & 3). The property abuts Isaac Hale Park. The property is located in the State Land Use Conservation District, Resource subzone (see Exhibit 4). The property is approximately 36 acres. The property abuts the shoreline. Based on records with the Office of Conservation and Coastal Lands (OCCL), there is currently one nonconforming coffee mill converted to a single family residence (SFR) on the property.

CHRONOLOGY:

Unauthorized Conversion of a Coffee Mill to a Single Family Residence

On February 13, 2008, the DLNR issued a letter to the Smiths informing them of a complaint about the illegal use of a structure on the property (Exhibit 5).

On February 28, 2008, DLNR received a response from the Smith's representative (Ken Fujiyama) indicating that an "old coffee mill" had been converted to a single family residence and that as built plans would be furnished to DLNR (Exhibit 6).

ITEM K-1

In July 2013, via a letter from Ken Fujiyama, the Smiths offered to enter into a memorandum of agreement (MOU) with DLNR to finally resolve the matter (**Exhibit 7**). This is because the County of Hawaii is seeking to purchase approximately 26 acres of the Smith's property for the extension of Isaac Hale Park. However, the Smiths have pending violations so the DLNR is not able to process their CDUA for the subdivision action. Section 13-5-6(c), Hawaii Administrative Rules (HAR) states that "No permit shall be processed by the department or board until any violations pending against the subject parcel are resolved."

Thus, resolution of the "pending violation" will entail action by the Board of Land and Natural Resources (Board) on the unauthorized conversion of the coffee mill to an SFR. Additional actions will include an after-the-fact CDUA for SFR, a fine, and reduction in the livable footprint of the SFR to comply with maximum developable area for single family residences in the Conservation District¹.

ALLEGED UNAUTHORIZED LAND USE:

Chapter 183C, Hawaii Revised Statutes (HRS) and Chapter 13-5, Hawaii Administrative Rules (HAR) regulate land uses in the Conservation District by identifying a list of uses that may be allowed by a Conservation District Use Permit (CDUP). The chapters also provide for penalties, collection of administrative costs and damages to state land for uses that are not allowed or for which no permit has been obtained. Chapters 183C, HRS and HAR §13-5-2 defines "land use" as follows:

"The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land."

Furthermore, § 13-5-6(d), HAR states that:

"No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board."

Conversion of the coffee mill to a single family residence qualifies as a land use and would have required authorization from the department or board. This, this enforcement action is brought before the Board of Land and Natural Resources pursuant to Chapter 183C-7, HRS and § 13-5-6(d), HAR.

DISCUSSION:

On July 10, 2013, the OCCL wrote back to Ken Fujiyama in response to the Smith's request to resolve the violation and consummate a subdivision of the land for park purposes (**Exhibit 8**). In that letter, the OCCL agreed to prepare a report to the BLNR to propose a conclusion to the long pending violation case. The OCCL indicated that there would likely be a fine and a need for an

¹ Under Section 13-5, Exhibit 4 of the Hawaii Administrative Rules, for lots larger than one (1) acre, the maximum developable area is 5,000 square feet. Staff still needs to work with the Smiths to calculate exactly how much the existing structure is over the maximum allowable area of 5,000 square feet.

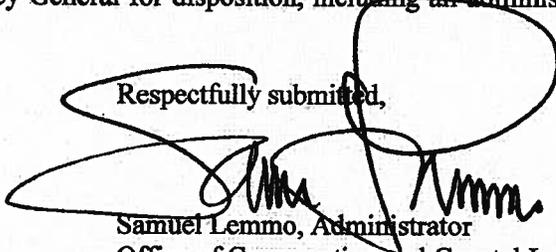
after-the-fact permit for the SFR. This submittal and notice of the Board's meeting shall be sent to the landowners by certified mail to the address on record.

AS SUCH, STAFF RECOMMENDS:

That pursuant to Chapter 183C, HRS, the Board finds the Landowners of TMK: (3) 1-3-008:034 at Pohoiki, Puna, Hawaii, in violation of Chapter 183C-7, HRS and Chapter 13-5-6, HAR, subject to the following:

1. The Landowner is fined \$14,000.00² for the Conservation District violation, pursuant to Chapter 183C-7, HRS;
2. The Landowner is fined an additional \$1,000.00 for administrative costs associated with the subject violation;
3. The Landowner shall pay all fines (total \$15,000.00) within sixty (60) days of the date of the Board's action;
4. The Landowner shall file an after-the-fact Conservation District Use Application for conversion of the coffee mill into a single family residence within three (3) months of the date of the Board's decision on this matter, or alternatively, return the use to a coffee mill;
5. That in the event of failure of the landowners to comply with any order herein, the landowner shall be fined an additional \$15,000.00 per day until the order is complied with; and
6. That in the event of failure of the landowners to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including ~~all~~ administrative costs.

Respectfully submitted,


Samuel Lemmo, Administrator
Office of Conservation and Coastal Lands

Approved for submittal:


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

² The original notice to the Smith's mentioned up to a \$2,000 fine for the unauthorized use. After this notice was issued, the Legislature changed the maximum fine to \$15,000. Per Exhibit 7 of this report, the Smiths have agreed to pay up to \$15,000 for the violation.