June 10, 2026

Dawn Chang
Chairperson
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, 1st Floor
Honolulu, Hawaii 96813
via blnr.testimony@hawaii.gov

Re: Testimony on Agenda Item K-1, BLNR Meeting June 12, 2026

With all due respect to the Office of Conservation and Coastal Lands ("**OCCL**"), we are disappointed that OCCL submitted its request for approval to hold statewide public hearings on amendments to the Conservation District Administrative Rules, which include a provision which revises the Single Family Residential Standards by, amongst other matters, reducing the maximum developable area ("**MDA**") for parcels over 1 acre in size to 3,500 square feet ("**s.f.**") from 5,000 s.f. without first addressing the undersigned's Motion for Reconsideration and Petition for Contested Case, both of which are attached hereto, which have been pending since November of 2025.

You may recall that on November 14, 2025, the Board of Land and Natural Resources ("**Board**") considered Conservation District Use Permit Application ("**CDUA**") Nos. HA-3981 (Agenda Item K-1) and HA-3982 (Agenda Item K-2) which sought the Board's approval to consolidate and resubdivide Tax Map Key Nos. (3) 1-5-010:026 and (3) 1-5-010:027 and develop one single-family residence ("**SFR**") on each of the parcels. The proposed SFRs are designed with MDAs under the current limit of 5,000 s.f.

At the November 14, 2025 hearing, Administrator Michael Cain informed the Board that the SFRs on neighboring parcels were significantly smaller than they were. Administrator Cain read the permit numbers for the neighboring properties to the Board and represented to the Board that those numbers represented the approved developed square footage of the neighboring parcels' SFRs. In fact the SFR that Administrator Cain represented as having an approved developable area of 3,705 s.f. was CDUP HA-3705, approved for 4,322 s.f.; the permit identified as being 3,013 s.f. is actually CDUP HA-3013 & HA-3482 approved for 4,154 s.f.; and the permit represented as being 3,868 s.f. is actually CDUP HA-3868 approved for 4,695 s.f.

At the November 14, 2025 meeting, the Board denied the Applicants' CDUAs in part because some Board members indicated that the size of the dwellings proposed were not in alignment with the size of other homes in the area. A request for a contested case hearing was made at that meeting, and two written Petitions for a Contested Case Hearing dated November 24, 2025 (one on behalf of Applicant Opunaha, LLC (Ryan Pastorek) and one on behalf of Paul Pastorek) (collectively, the "**Requests**") and a Motion for Reconsideration dated November 21, 2025 ("**Motion**") were timely filed with the Board based on the incorrect representations made by OCCL.

After seven months, and repeated inquiries with the OCCL staff and the attorney general's office, neither the Motion nor the Request have been agendzied. OCCL has indicated it has been consulting with the attorney general's office and the AG continues to say that we need to check with OCCL. Because of the pending Motion and Request, the Applicants have been unable to move forward.

It is with great disappointment that we then see that OCCL has submitted rule amendments which now seek to reduce the MDA which would support its erroneous testimony and a future decision on our pending CDUAs. While the proposed rules state that any applications accepted for processing will be processed under the old rules, this does not help us with the Motion and Requests which have been stuck in administrative limbo, and if they are denied, we may not be able to submit a new application under the existing rules.

The existing Conservation District rules do not include any information on why there is a 5,000 s.f. MDA for properties one acre or greater, and the proposed rule amendments likewise do not justify a blanket decrease of MDA to 3,500 s.f. for properties that are one acre or greater. This cap is completely arbitrary. If any amendments are to be made to the MDA, OCCL and this Board should consider an MDA for properties that are one acre or larger that is proportional to the size of the property. There is certainly good reason for additional MDA to be necessary for SFRs on larger properties, as additional structures and uses (e.g., storage sheds, etc.) become necessary when stewarding larger parcels.

We do not know if there are others in our situation, but we urge the Board to consider requiring OCCL to address the Motion and Requests and situations like ours prior to commencing hearings on any new rules.

Opunaha, LLC

By */s/ Ryan Pastorek*
Its Member

/s/ Paul Pastorek

CARLSMITH BALL LLP

KATHERINE A. GARSON 5748
PUANANIONAONA P. THOENE 10005
121 Waianuenue Avenue
P.O. Box 686
Hilo, HI 96721-0686
Tel No. 808.935.6644
Fax No. 808.935.7975
kgarson@carlsmith.com
pthoene@carlsmith.com

Attorneys for Applicants
OPUNAHA, LLC (RYAN PASTOREK) AND PAUL PASTOREK

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DEPT OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of Conservation District Use Permit Application Nos. HA-3981 and 3982; Applicants Opunaha, LLC (Ryan Pastorek) and Paul Pastorek, Tax Map Key Nos. (3) 1-5-010: 026 and 027, Puna, County and Island of Hawai'i	CDUA NOS. HA-3981 AND HA-3982 MOTION FOR RECONSIDERATION OR RECISSION OF THE BOARD OF LAND AND NATURAL RESOURCES' NOVEMBER 14, 2025 DECISIONS ON AGENDA ITEMS K-1 AND K-2; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF COUNSEL; EXHIBITS "A" - "E"; CERTIFICATE OF SERVICE

MOTION FOR RECONSIDERATION OR RECISSION OF THE BOARD OF LAND AND NATURAL RESOURCES' NOVEMBER 14, 2025 DECISIONS ON AGENDA ITEMS K-1 AND K-2

Applicants OPUNAHA, LLC (RYAN PASTOREK) and PAUL PASTOREK (collectively, "**Applicants**"), through its undersigned counsel, respectfully moves the Board of Land and Natural Resources of the State of Hawai'i ("**Board**") to reconsider or rescind its decisions taken at its November 14, 2025 meeting to deny Conservation District Use Permit Application Nos. HA-3981 (Agenda Item K-1) and HA-3982 (Agenda Item K-2). This Motion

for Reconsideration ("**Motion**") is made pursuant to Hawai'i Administrative Rules §§ 13-1-34 and 13-1-39, and is supported by the attached Memorandum in Support and exhibits thereto. Applicants request that the Board agendize this Motion for hearing at the Board's next regularly scheduled meeting on December 12, 2025.

DATED: Honolulu, Hawai'i, November 21, 2025.

KATHERINE A. GARSON
PUANANIONAONA P. THOENE

Attorneys for Applicants
Opunaha, LLC (Ryan Pastorek) and Paul Pastorek

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of Conservation District Use Permit Application Nos. HA-3981 and 3982; Applicants Opunaha, LLC (Ryan Pastorek) and Paul Pastorek, Tax Map Key Nos. (3) 1-5-010: 026 and 027, Puna, County and Island of Hawai'i	CDUA NOS. HA-3981 AND HA-3982 MEMORANDUM IN SUPPORT OF MOTION

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

I. INTRODUCTION

At its regular meeting on November 14, 2025, the Board of Land and Natural Resources of the State of Hawai'i ("**Board**") heard and considered Conservation District Use Permit Application ("**CDUA**") Nos. HA-3981 (Agenda Item K-1) and HA-3982 (Agenda Item K-2) (collectively, the "**Applications**"). The Applications seek the Board's approval to consolidate and resubdivide Tax Map Key ("**TMK**") Nos. (3) 1-5-010: 026 ("**Parcel 026**") and (3) 1-5-010: 027 ("**Parcel 027**") (collectively, the "**Properties**"), and develop one single-family residence ("**SFR**") on each of Parcel 026 and Parcel 027, as permitted under Hawai'i Administrative Rules ("**HAR**") Title 13, Chapter 5 (the "**Conservation District Rules**"). Under HAR § 13-5-42 and Exhibit 4 (Single-Family Residential Standards), properties that are one (1) acre or greater in size have a maximum developable area[1] ("**MDA**") of 5,000 square feet ("**s.f.**"). Under the Applications, the proposed MDA for Parcel 026 is approximately 4,739 s.f. on 4.048 acres (post-consolidation/resubdivision) and the proposed MDA for Parcel 027 is approximately 4,984 s.f. on 6.402 acres (post-consolidation/resubdivision). Thus, both indisputably satisfy the MDA

[1] MDA "[m]eans the total floor area in square feet allowed under the approved land use. The floor area computation shall include: all floor areas under roof, including first, second, and third story areas, decks, pools, saunas; garage or carport, and other above ground structures." Exhibit 4 to the Conservation District Rules.

requirements under the Conservation District Rules.

The Properties are located in the Puna District on the Island of Hawai'i, and **are located between two large subdivisions**, Hawaiian Paradise Park ("**HPP**") which consist of approximately 8,800 lots and a population nearing 15,000,[2] making it one of the largest subdivisions in Hawai'i, and Hawaiian Beaches, which consists of approximately 1,300 lots. The Properties are approximately one mile from the HPP subdivision, and two miles from the Hawaiian Beaches subdivision, and are located makai of Government Beach Road, which runs between the two subdivisions.

The Department of Land and Natural Resources ("**DLNR**") Office of Conservation and Coastal Lands ("**OCCL**") staff recommendation to the Board was to deny both Applications, generally stating, but without providing sufficient analysis, that the Applications did not satisfy the eight criteria set forth in Hawai'i Administrative Rules ("**HAR**") § 13-5-30(c). The primary basis for recommending denial, however, was OCCL's opinion that the proposed SFRs were purportedly not appropriate for the area.

In denying the Applications, the Board expressed two reasons: First, the Board adopted OCCL's unfounded characterization of the Properties, and second, the Board stated that sizes of the proposed SFRs were too large despite being below the 5,000 s.f. MDA in the Conservation District Rules and similar in size to neighboring homes in the area. The Board's decisions to deny the Applications based on the perception that the proposed SFRs were "too large" for the area were based on inaccurate statements by OCCL staff that neighboring homes in the area were in the 2,000 and 3,000 s.f. range.

Following the Board's decisions to deny the Applications, Applicants made a timely

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[2] COUNTY OF HAWAI'I RESEARCH AND DEVELOPMENT, *Census Community Profiles*, *available at* https://www.rd.hawaiicounty.gov/data-information/community-profiles (last visited Nov. 10, 2025).

verbal request for a contested case hearing on Agenda Items K-1 and K-2 pursuant to HAR § 13-5-29(a).

The Board's decisions to deny the Applications were arbitrary and capricious, an abuse of the Board's discretion, in excess of the Board's authority, and clearly erroneous in light of the evidence supporting the Applications and information presented to the Board. For the reasons set forth herein, Applicants request that the Board reconsider its decisions to deny the Applications and grant the Conservation District Use Permits for Parcels 026 and 027 ("**CDUPs**") subject to the conditions agreed upon at the November 14, 2025 meeting between Applicant and OCCL (which include all of the standard conditions in HAR § 13-5-42 and additional conditions requested by OCCL). In the alternative, the Applicants request that the Board rescind its decisions to deny the Applications made at the November 14, 2025, after which the Applicants will withdraw their requests for contested case hearings. The result would be that the Applications would be automatically granted by operation of Hawai'i Revised Statutes ("**HRS**") § 183C-6(b). In the event the Board rescinds its decisions, the Applicants will agree to the conditions agreed upon at the November 14, 2025 meeting between Applicants and OCCL.

II. LEGAL STANDARD

Under HAR § 13-1-39(a), the Board may reconsider a prior decision it made on the merits if the movant shows that: "(1) New information not previously available would affect the result; or (2) A substantial injustice would occur."

III. ARGUMENT

A. The Motion Should be Granted Because the Applications and Information on the Sizes of the Neighboring Homes were Misstated by OCCL.

At the November 14, 2025 meeting, the Board's stated reason for denying the Applications were that they were too large for the area. Applicants' counsel noted that, just

months prior (in March of 2025), the Board approved a third extension of time on a CDUP for a home whose MDA was in excess of 4,900 s.f. OCCL Administrator Michael Cain testified that OCCL had identified five (5) CDUPs that were issued for properties that are on both sides of Parcels 026 and 027, and are also located between the two large subdivisions (i.e., HPP and Hawaiian Beaches), and represented the square footage of the maximum developed area as: (a) 3,705 s.f.; (b) 3,013 s.f.; (c) 2,644 s.f.; (d) 3,847 s.f.; and (d) 3,868 s.f. Administrator Cain also stated that OCCL's position was that the dwelling units requested by the Applications were "significantly bigger"[3] than the neighboring homes in the area. OCCL, however, did not provide that information in writing to the Board in the Staff Submittal. This information was the most significant, if not determinative, factor in the Board's decision to deny the Applications. Chair Chang indicated that her decision not to approve the Applications was based on "the size of the dwellings," that they were "not in alignment," and would "change the character of the area."

Administrator Cain's statement was demonstrably incorrect. Administrator Cain read the ***permit numbers*** for the neighboring properties, not the approved ***square-footage*** developed area (or size) of the existing previously approved SFRs. The actual number of CDUPs for SFRs that the Applicant was able to locate between HPP and Hawaiian Beaches was double what Mr. Cain represented and are set forth in the chart below and supported by Figures 1 - 3 and Exhibits A and B.

The SFR that Administrator Cain represented as having an approved developable area of 3,705 s.f. was CDUP HA-3705 approved for **4,322** s.f.; the permit that Administrator Cain identified as being 3,013 s.f. is actually CDUP HA-3013 & HA-3482 approved for **4,154** s.f.; and the permit represented as being 3,868 s.f. is actually CDUP HA-3868 approved for **4,695** s.f.

[3] Video recording of the Board's November 14, 2025 meeting is available at https://www.youtube.com/watch?v=s0Iu5QfSlc0&list=PLDh6ZXzdUvQkHtqVoauOkfa26NfNLh2pK. *See* the recording at around the 1:54:00 mark.

Thus, the actual CDUPs that have been granted for homes along Government Beach Road are, in fact, similar in size to what the Applicants are proposing. The chart below details the sizes of the neighboring homes, as shown on Figures 1 - 3.

	TMK No./ Current Owner Name per COH RPT Website	Size	CDUP No.	Date Approved	MDA Per Conservation District Rules in Effect on Date Approved (in sq. ft.)	Approved Development Area
1.	(3) 1-5-010-009 Garrett / Kamahele Farms LLC	13.43 acres	HA-3868	Oct. 9, 2020 (2nd time extension approved March 14, 2025)[4]	5,000	**4,695** SFR and 680 s.f. Farm/utility shed[5]
2.	(3) 1-5-010-025 Wood	5.43 acres	HA-3482	Nov. 25, 2008	5,000	**4,154**[6] (originally HA-3013 approved on May 11, 2001 for 3,700 s.f.)
3.	(3) 1-5-010-028 Melella	3.5 acres	HA-3705	Aug. 22, 2014	5,000	**4,332**[7] as of February 16, 2022, SFR and accessory uses (originally approved 3,371 s.f.)
4.	(3) 1-5-010-029 Robinson	3.6 acres	HA-2644	Sept. 10, 1993	No MDA limit	2,600
5.	(3) 1-5-010-031 Moore	8.75 acres	HA-3847	Nov. 8, 2019 (3rd time extension approved Sept. 12, 2025)[8]	5,000	(originally approved **4,301**) currently 3,592 Developable Area and a 769 sq. ft. farm shed after alterations and additions[9]
6.	(3) 1-5-009-035 Yermian	2.181 acres	HA-3676	Dec. 13, 2013[10]	5,000	**4,470**[11]
7.	(3) 1-5-009-036 Ray	1.6310 acres	HA-3/15/82-1466	On or about Aug. 13, 1982	No MDA limit	2,200 s.f.[12] (COH RPT drawing shows 2,662 s.f. including "porch unceiled shed roof")
8.	(3) 1-5-009-040 Gadler Family Trust	10.005 acres	HA-3233	Oct. 28, 2005	5,000	**4,096** SFR approx. 2,849 s.f, covered lanais (594.5 s.f.), arcade, breezeway (approx. 352.5 s.f.), utility, storage area (approx. 300.68 s.f.)[13]

[4] https://dlnr.hawaii.gov/wp-content/uploads/2025/05/Minutes-250314.pdf (Item K-1).
[5] https://dlnr.hawaii.gov/wp-content/uploads/2025/03/K-1.pdf (page 1).
[6] *See* Exhibit A (CDUP HA-3482 and Staff Submittal at 6).
[7] *See* Exhibit B (After the Fact Site Plan Approval).
[8] https://dlnr.hawaii.gov/wp-content/uploads/2025/09/K-1.pdf
[9] *Id.* at 15.
[10] https://dlnr.hawaii.gov/wp-content/uploads/2020/11/131213-minutes.pdf (Item K-5).
[11] https://files.hawaii.gov/dlnr/meeting/submittals/131213/K-5.pdf (page 3).
[12] *See* Exhibit C (CDUA HA-3/15/82-1466, dated August 13, 1982).
[13] *See* Exhibit D (Staff Recommendation) and Exhibit E CDUP HA-3233.

9.	(3) 1-5-009-053 Grossbard & Bourzat	6.91 acres	HA-3851	Dec. 13, 2019[14]	5,000	**3,418** (2,560 SFR, 858 carport and utility shed[15])
10.	(3) 1-5-009-055 Dearing	6.79 acres	HA-3797	Oct. 13, 2017[16]	5,000	**4,922**[17]
	Applicants' Proposal					
11.	(3) 1-5-010-026	4.048 acres	HA-3981	N/A	5,000	**MDA 4,739** 4,010 s.f. SFR
12.	(3) 1-5-010-027	6.402 acres	HA-3982	N/A	5,000	**MDA 4,984 s.f.** 2,750 SFR + landscaping, pool, art studio

Figure 1



[14] https://dlnr.hawaii.gov/wp-content/uploads/2019/12/Agenda-191213-D.pdf (Item K-1).
[15] https://dlnr.hawaii.gov/wp-content/uploads/2019/12/K-1.pdf (p. 4)
[16] https://dlnr.hawaii.gov/wp-content/uploads/2018/02/Minutes-171013.pdf (pgs. 12-13)
[17] https://dlnr.hawaii.gov/wp-content/uploads/2017/10/K-1.pdf (p. 4).

Figure 2
(Identifying Approved Developed Area and CDUP Nos.)

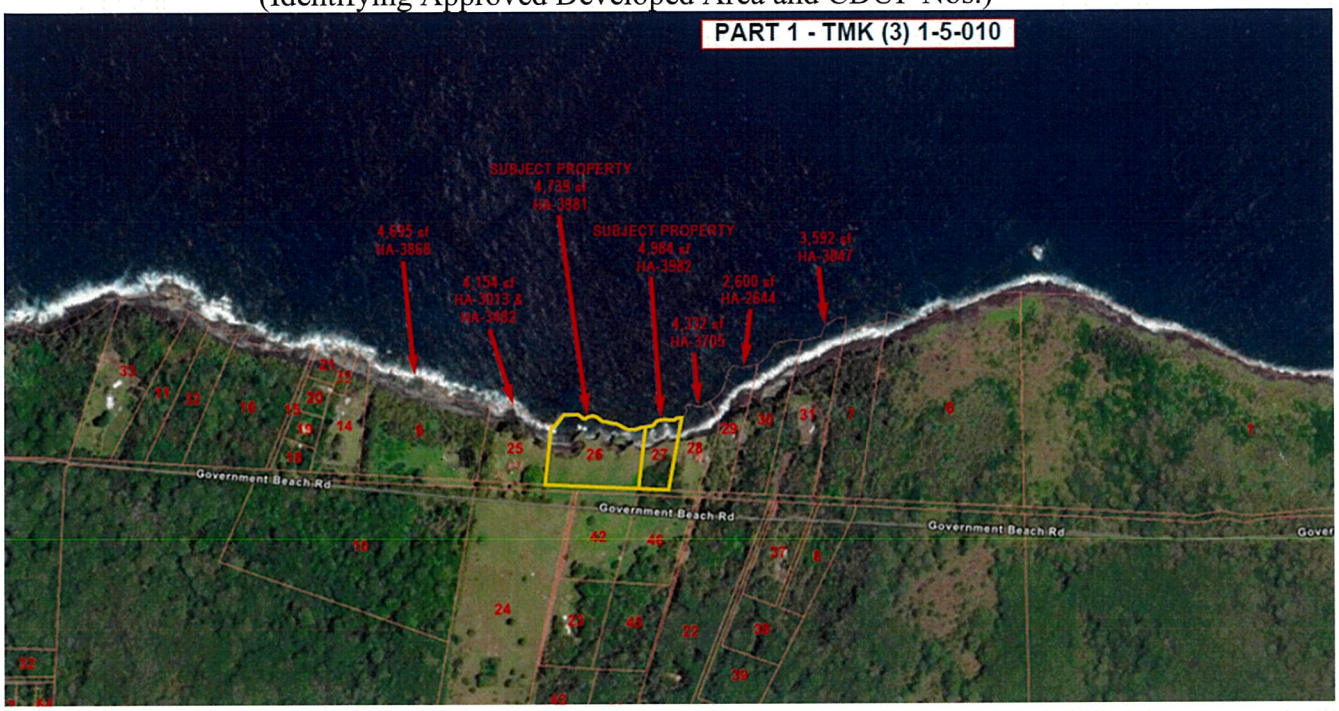
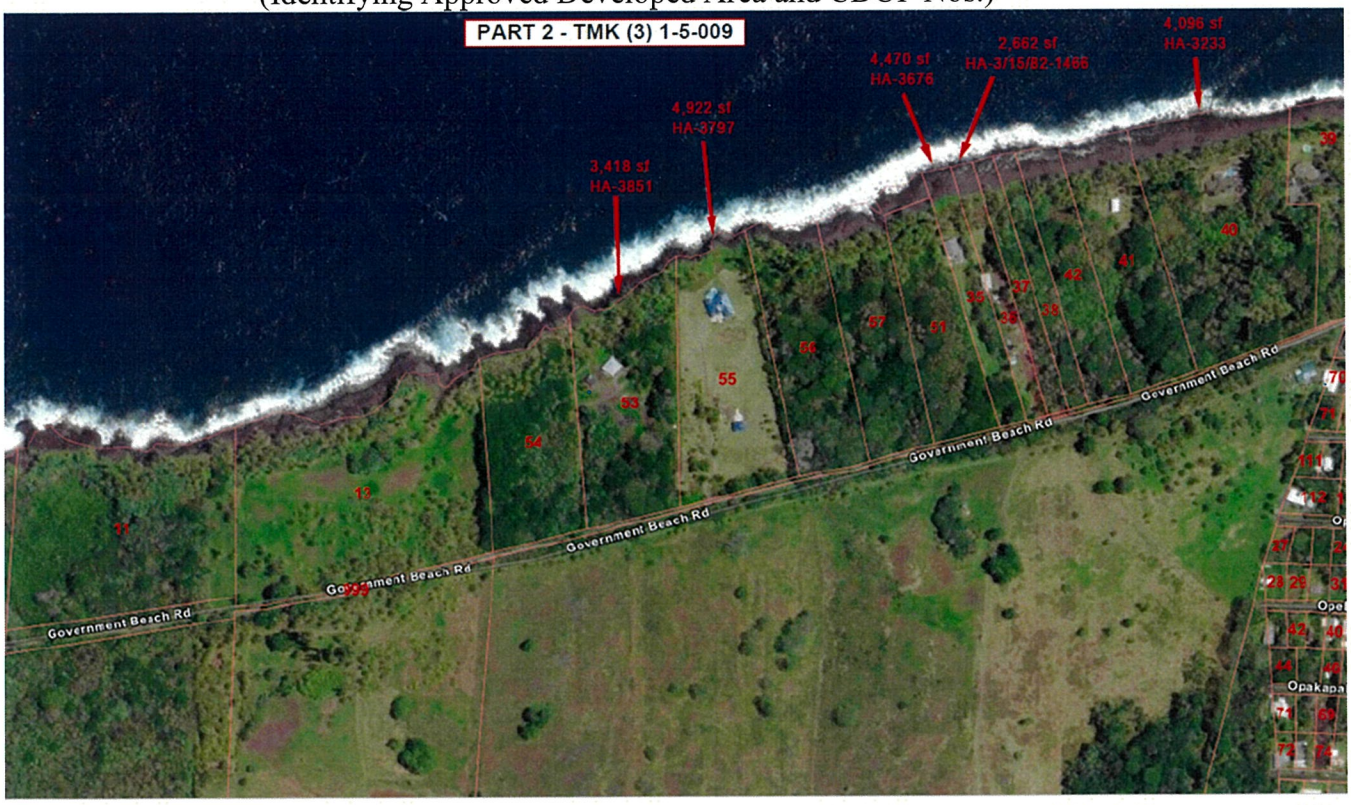


Figure 3
(Identifying Approved Developed Area and CDUP Nos.)



The Staff Recommendation and some Board members made statements that the general area in which the Properties are located is "remote" and "rural". Denying the Applications for this reason was arbitrary and capricious and made in error. As the Applicants pointed out in their written testimony and presentation to the Board, and as shown on Figures 1 -3 above, this characterization of the Properties is not accurate. In reality, as recognized by the County of Hawai'i Planning Department in its recommendation to approve the Special Management Area permit for the SFRs on Parcels 026 and 027, "[t]he subject parcels are within an ***established*** residential community that [sic] both agricultural and residential uses, as well as the fully developed Hawaiian Paradies [sic] Park located north of the project site." (Emphasis added.)

B. The Motion Should be Granted Because a Substantial Injustice Has Occurred.

1. The Board Did Not Have Sufficient Time to Consider the Applications and Applicants Were Not Given Sufficient Time to Present the Applications and Counter the Staff Recommendations.

As a foundational matter, the Board did not have sufficient time to consider the Applications. Prior to the November 14, 2025 meeting, Applicants requested that the Board allow Applicants to make a presentation on the Applications, particularly because the staff recommendations were to deny the permits. The Applicants were informed that their presentations would be limited to just five minutes.

In September 2025, Applicants' consultant was told by OCCL staff that the Applications would likely be scheduled for decision making at the Board's October 24, 2025 meeting. This would have given Applicants the opportunity to initially present the Applications to the Board at the October 24, 2025 meeting, and if necessary, address any concerns raised by the Board had at the November 14, 2025 meeting. The only reason given to Applicants for not scheduling the Applications at the October 24th meeting was that OCCL staff could not complete the submittal in time. Instead, OCCL put the Applicants in the untenable position of scheduling the

Applications at a Board meeting just 4 days before the automatic approval deadline and on a very packed agenda with other controversial items, thereby forcing the Board to rush through the limited materials provided by OCCL and vote to deny the permits, even if there were any unanswered questions on the projects, to avoid an automatic approval. This also resulted in leaving Applicants with no choice but to request a contested case hearing.

When HRS § 183C-6 was amended in 2016 to allow for the extension of the 180-day review period of CDUAs by an additional 90 days in the case where environmental review or a contested case proceeding was required, former Board member Christopher Yuen testified in favor of the measure and aptly noted that "[n]ormally, BLNR's staff has been very good at bringing such applications to the board for a decision at a meeting a month or two before the 180-day deadline."[18] Mr. Yuen further noted that "[d]ecisions involving our conservation lands should be made on the merits, not because of an arbitrary deadline." *Id.*

While the Applicants are appreciative that the Board gave them more than five minutes to present the Applications, the time provided was not sufficient to counter OCCL's negative recommendation and the incorrect and incomplete information provided to the Board. This was a clear violation of Applicants' due process rights. Indisputably, Applicants were not given a meaningful opportunity to be heard or any opportunity to refute the incorrect information provided by OCCL. *See Sandy Beach Defense Fund v. City Council of Honolulu*, 70 Haw. 361, 377, 773 P.2d 250, 260-61 (1989) ("The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest."); *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.*, 136 Hawai'i 376, 389, 363 P.3d 224, 237 (2015) (identifying two

[18] Testimony of Christopher Yuen in support of HB2036, *available at* https://www.capitol.hawaii.gov/sessions/Session2016/Testimony/HB2036_TESTIMONY_WAL_02-01-16_.PDF.

instances in which a property interest is considered sufficiently substantial to trigger due process protections, including "where an agency denies an applicant's proposed property use").

2. The Applications Were Not Reviewed by the Board Prior to Denying Them.

The Board's decisions to deny the Applications were arbitrary and capricious and made in error because the Board was not even provided copies of the Applications as part of the Staff Submittals for Agenda Items K-1 and K-2. This deprived the Board of any opportunity to review the actual Applications it was rendering decisions on. Instead, the Board relied entirely on the analysis provided by OCCL staff, including the incorrect information that was apparently dispositive in the Board's decision to deny the Applications. *See* Part III.A, *supra*; *see also Mauna Kea Anaina Hou*, 136 Hawai'i at 391, 363 P.3d at 239 (holding that the Board's process of ruling on the merits of a CDUA before the factual record was developed failed to satisfy the appearance of justice).

3. The Applications Comply with the SFR Standards in the Conservation District Rules.

There is no valid, defensible reason for denying the Applications. The proposed SFRs comply with the Conservation District Rules, are below the MDA of 5,000 s.f., and are similar in size and scale to other SFRs the Board has approved in the same area. *See* HAR § 13-5-41 and Exhibit 4 to the Conservation District Rules (providing that the MDA for lots larger than one (1) acre is 5,000 s.f.). Treating Applicants differently from similarly situated neighbors with approved CDUPs for their SFRs is arbitrary, capricious, and a violation of Applicants' due process rights. *See DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC.*, 134 Hawai'i 187, 219, 20, 339 P.3d 685, 717-18 (2014) (discussing that the equal protection clauses of the United States and the Hawai'i Constitutions "mandate[] that all persons similarly situated shall be treated alike, both in privileges conferred and in the liabilities imposed" and recognizing an equal

protection claim may be brought by a "class of one," "where the plaintiff alleges that [he/she] has ben intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment") (citations omitted).

The design standards contained in Exhibit 4 to the Conservation District Rules are intended to guide the Board and prevent the very kind of subjective and arbitrary decision-making that occurred at the November 14, 2025 meeting. The January 1991 Auditor report to the Hawai'i Legislature on the regulation of SFR construction in the Conservation District, serious concerns were raised that in the absence of specific standards, it would be hard for the Board to determine whether certain residences were "compatible with the locality and surrounding areas" or violated the subjective condition that "natural beauty and open space be preserved". *See Review of the Regulation of Residential Construction in the Conservation District*, A report to the Governor and the Legislature of the State of Hawai'i, Report No. 91-1, January 1991 by the Auditor of the State of Hawai'i.[19] Despite the adoption of detailed construction standards, those concerns provided true in the Board's denial of the Applications.

HAR § 13-5-41(a) provides that SFR uses approved by the Board must comply with the SFR standards in Exhibit 4 to the Conservation District Rules:

> Single family residential uses approved by the board ***shall comply with the design standards contained in Exhibit 4***, entitled "Single Family Residential Standards: August 12, 2011", located at the end of this chapter and made a part of this section, ***except*** as may be allowed by the board ***upon finding that prevailing conditions warrant the deviation from specific standards***, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen percent.

(Emphases added.)

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[19] THE AUDITOR, STATE OF HAWAI'I, *RESIDENTIAL CONSTRUCTION IN THE CONSERVATION DISTRICT, REPORT NO. 91-1* (Jan. 1991), *available at* https://files.hawaii.gov/auditor/Reports/1990-1995/91-1.pdf.

Exhibit 4 provides only one exception that allows for a reduction of the permissible MDAs: "***Site characteristics*** and the ***degree of pre-existing site disturbance*** may be a further limiting factor in the calculation of maximum developable area ***when so determined by the board.***" (Emphases added.) Thus, by its own rules, the Board can only reduce the permissible MDA if it makes explicit determination that such a reduction is warranted based on "site characteristics" and "the degree of pre-existing site disturbance." The Board made no such determination that could justify its decision to deny the Applications. Instead, the Board denied the Applications based on: (a) certain members' subjective belief about what the right size of the SFRs should be (without providing any guidance as to what that would be), and (b) the incorrect information provided by the OCCL Administrator on the sizes of the neighboring homes.

The Board's decisions to deny the Applications are clear abuses of the Board's discretion.

III. CONCLUSION

For the reasons set forth above, the Motion should be granted and the Board should approve CDUA HA-3981 and CDUA HA-3982 subject to the standard conditions in HAR § 13-5-42 and the additional conditions proposed by OCCL at the November 14, 2025 meeting. In the alternative, the Board should rescind its prior actions denying the Applications so that the Applicants can withdraw their requests for contested cases hearings and the CDUPs can be issued by operation of law.

DATED: Honolulu, Hawai'i, November 21, 2025.

KATHERINE A. GARSON
PUANANIONAONA P. THOENE

Attorneys for Applicants
Opunaha, LLC (Ryan Pastorek) and Paul Pastorek

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of Conservation District Use Permit Application Nos. HA-3981 and 3982; Applicants Opunaha, LLC (Ryan Pastorek) and Paul Pastorek, Tax Map Key Nos. (3) 1-5-010: 026 and 027, Puna, County and Island of Hawai'i	CDUA NOS. HA-3981 AND HA-3982 DECLARATION OF COUNSEL; EXHIBITS "A" - "E"

DECLARATION OF COUNSEL

I, PUANANIONAONA P. THOENE, hereby declare as follows:

1. I am an attorney with the law firm of Carlsmith Ball LLP, counsel of record for Applicants Opunaha, LLC (whose sole member is Ryan Pastorek) and Paul Pastorek (collectively, "**Applicants**"). This declaration is made on my personal knowledge and I am competent in all respects to make this declaration.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts from a file labeled CDUA #HA-3482 TMK: 3-1-5-10:25 obtained from the State of Hawai'i, Department of Land and Natural Resources, Office of Conservation and Coastal Lands ("**OCCL**") files on November 20, 2025.

3. Attached hereto as Exhibit B is a true and correct copy of a letter dated February 16, 2022 from OCCL to Kim Chiodo at Land Planning Hawaii LLC regarding an After-the-Fact Site Plan Approval (SPA) for the placement of a portable spa on an existing 17' x 17' concrete slab and the partial removal of a pre-existing concrete slab at 2225 Government Beach Road, Puna, Hawaii, Tax Map Key No.: (3) 1-5-010:028.

4. Attached hereto as Exhibit C is a true and correct copy of the OCCL staff submittal dated August 13, 1982 in File No.: HA-3/15/82-1466, obtained from OCCL files on November 21, 2025.

5. Attached hereto as Exhibit D is a true and correct copy of the OCCL staff submittal dated October 28, 2025 in File No.: HA-3233, obtained from OCCL files on November 21, 2025.

6. Attached hereto as Exhibit E is a true and correct copy of Conservation District Use Permit HA-3233 dated October 28, 2025, obtained from OCCL files on November 21, 2025.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawai'i, November 21, 2025.

PUANANIONAONA P. THOENE

EXHIBIT A

CDUA# HA-3482

TMK: 3-1-5-10:25

Isl./Dist. Hawaii, Makuu, Puhoo

Applicant: Donald & Susan Wood

Landowner: Same as above

Use: Additions to a Single Family Residence

Board Action: Approved 11/25/2008 w/16 conditions

CONSERVATION DISTRICT USE APPLICATION HA-3182

SUBZONE: RESOURCE

180-DAY EXP. DATE: 17 FEB 09

Acceptance: 20 AUG 2008

APPLICANT:

DONALD & SUSAN WOOD

Agent: Greg Moovers

tel 880-1455

USE REQUESTED: Additions to SFR

DISTRICT/ISLAND: Makuu, Puna, Hawai'i

TAX MAP KEY: (3) 1-5-10:25

AREA/PARCEL: 5.43 acres **AREA/USE:** +2400 ft²

PUBLIC HEARING: ____YES ✓ NO **PUBLIC HEARING DATE:** _____

BOARD ACTION:

Chair Approved 11.25.08

VIOLATION ____YES ____NO

FINE IN AMOUNT OF: $ _____

INDEXED _____

LINDA LINGLE
GOVERNOR OF HAWAII





BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2009 JUN -2 A 8:30
DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:MC

CDUP: HA-3482

MAY 13 2009

Mr. Don Wood
HCR3 Box 10020
Kea`au, HI 96749

SUBJECT: CONSERVATION DISTRICT USE PERMIT (CDUP) NO. HA-3482
Additions to the Wood Single Family Residence
Maku`u, Pahoa, Puna District, Hawai`i
TMK (3) 1-5-10:25

This is to inform you that on November 25, 2008, the Chair of the Board of Land and Natural Resources approved this Conservation District Use Application (CDUA) HA-3482 for additions to the single-family residence at Maku`u, Pahoa, Hawai`i, TMK (3) 1-5-10:25, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of HAR §13-5-42;

2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai`i harmless from and against any loss, liability, claim or demand for property damage, personal injury or 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 applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to HAR §11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;

4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans to the Chairperson or her authorized representative for approval. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction of the residence and infrastructure must be completed within three years of the approval.

6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;

7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

8. The applicant will use Best Management Practices for the proposed project;

9. The applicant will give preference towards using native plants all landscaping work;

10. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

11. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this 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/or the Department may, in addition, institute appropriate legal proceedings;

12. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;

13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

14. The single family dwelling will not be used for rental or any other commercial purposes unless approved by the Board;

15. The applicant will contact OCCL for any permitting requirements should they change the scope of the project;

16. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, please feel free to contact Michael Cain at 587-0048.

Sincerely,

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged

Applicant's Signature

May 31, 2009
Date

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

FILE NO.: CDUA HA-3482
REF: OCCL: MC

Acceptance Date: August 20, 2008
180 Exp. Date: February 17, 2009

TO: Chairperson's Office, Department of Land and Natural Resources

REGARDING: Additions to a Single Family Residence

APPLICANT: Donald and Susan Wood
HCR Box 10020, Ke`eau, HI 96749

AGENT: Gregory Mooers, Mooers Enterprises
Post Office Box 1101, Kamuela, HI 96743

LOCATION: Maku`u, Puna, Hawai`i

TMK: (3) 1-5-10:25

AREA OF PARCEL: 5.43 acres

AREA OF USE: 2420 sqft.

SUBZONE: Resource

DESCRIPTION OF AREA AND CURRENT USE:

The 5.43 acre coastal property is located off of the Old Government Road that runs between the Hawaiian Paradise Park and Hawaiian Beaches subdivisions. The land was once used for grazing, and now consists of grassland with occasional trees.

On May 11, 2001 the Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) HA-3013 for a single family residence on the property. The plans allowed for a segmented, two-bedroom, one-story residence and a barn, with a total Developed Area of 3700 square feet. The proposal called for the residence and associated structures to be built in three phases.

The landowners completed Phase One of the original project, which included a great room, a bedroom, and a walled garden. The total developed area of the completed structure is 1734 square feet. The remainder of the house was not built. **Exhibit 1** shows the original site plan. Completed structures are outlined in green. Exhibit 2 shows a photograph of the residence.

The applicants built an outdoor courtyard and garden that was not shown on the original site plans. This is shown in **Exhibit 3**. The courtyard is not graded and is not paved; OCCL has concluded that this does not need to be counted when calculating the maximum developable area.

The landowners did not complete the remainder of the proposed project. CDUP HA-3013 contained the standard condition that construction begin within a year of approval and finish within 3 years. As the landowners did not request an extension of the permit, they were required to seek a new CDUP for the remainder of the work.

PROPOSED USE:

The landowners have chosen to modify their original plans, and have submitted an application to add a two-story 760 square foot bedroom, a 720 square foot art studio, and a 960 square foot detached garage to the existing residence.

The revised Site Plan is shown in **Exhibit 4**. Existing buildings are outlined in green, proposed elements are outlined in red. **Exhibits 5-9** contain floor plans for the proposed new elements to the residence.

None of the proposed additions will be closer than 150-200 feet from the shoreline.

The proposal does not involve any grubbing or grading.

The additions would result in a net increase of 2420 square feet, bringing the total developed area to 4154 square feet. This is within the Maximum Developable Area for this parcel as allowed under the Single Family Residential Standards outlined in Hawai`i Administrative Rules (HAR) §13-5.

There are no violations or enforcement cases pending against the property.

There are no known archaeological features at the site.

SUMMARY OF COMMENTS:

The Office of Conservation and Coastal Lands referred the application to the following agencies for review and comment: Department of Health; Office of Hawaiian Affairs; the County of Hawai`i Planning Department; and Department of Land and Natural Resources (DLNR) Land Division, Division of Forestry, Division of Conservation and Resource Enforcement, and Historic Preservation Division.

A notice of the application was placed in the September 8, 2008 edition of the Office of Environmental Quality Control's *Environmental Notice*. In addition, a copy was available for review at the Hilo Public Library.

Comments were received from the following agencies:

DLNR Land Division
No comment

DLNR DOCARE
No comment

DLNR Division of Forestry and Wildlife
No comment

DLNR Historic Preservation Division
The parcel was surveyed in October 2000, at which time it was determined that no historic properties would be affected by the development.

Planning Department
The project is in the Special Management Area. The original proposal was determined to be exempt from the definition of development. However, the Department believes that a new SMA application needs to be submitted to the office to determine if the additions are also exempt.

Applicant's Response
The applicant appealed this determination, and Planning concurred that the previous SMA assessment is adequate for the proposed additions. OCCL confirmed this decision by phone with the Department.

ANALYSIS:

Following review and acceptance for processing, the Applicant's Agent was notified, by letter dated March 17, 2008, that:

1. The addition was an identified land use within the Conservation District, pursuant to Hawai`i Administrative Rules (HAR) §13-5-22 *Identified land uses in the protective subzone,* P-9 STRUCTURES, EXISTING, (C-1) *Demolition, removal, or alteration of existing structures, facilities and equipment.*

2. Pursuant to HAR §13-5-40 *Hearings*, a public hearing was not required.

3. This project was exempt from conducting an Environmental Assessment pursuant to HAR §11-200-8 (4) *Minor alterations in the conditions of land, water, or vegetation.*

§13-5-30 CRITERIA:

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

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.

Staff is of the opinion that the proposed action will not negatively impact the natural resources of the area.

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

Pursuant to HAR §13-5-14, the objective of the Resource Subzone *is to designate open space where specific conservation uses may not be defined, but where urban use may be premature.*

The project in and of itself will not affect open space. It will increase the density on the subject parcel; however, the total developed area will remain less than the maximum set in the Administrative Rules.

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

The proposal is exempt from the definition of development, and will not need a Special Management Area permit

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

Staff notes that the project is similar in style to other residences in the neighborhood. The area is relatively isolated, and the development will be hid from general view. Staff does not foresee an adverse impact on the community.

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 renovations are similar in size and design to others in the community.

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.*

Staff is of the opinion that the natural beauty and open space characteristics of the portions of the lots within the Conservation District will be maintained.

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

The proposed project does not involve subdivision of Conservation District land.

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 addition will not be materially detrimental to the public health, safety and welfare.

DISCUSSION:

In 2001 the Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) HA-3013 for a 3700 square foot single family residence on the subject property. The proposal called for the residence and associated structures to be built in three phases. The landowners only completed the master bedroom and 'great room,' which totaled 1743 square-feet of developed area. Elements of the original plan that were not built included an additional bedroom, a gazebo, an art studio, a two-car garage, and a detached barn

In early 2008 the landowners requested permission to continue with construction. After reviewing the records, OCCL concluded that the original construction deadline had passed, and that the a new permit would be required.

The landowners chose to amend their original plan. OCCL had concerns with their amendments, as some of the structures were detached and could conceivably be converted to second residences or rental units. The landowners revised their plans to address these concerns by attaching the proposed second bedroom and proposed art studio to the main residence. The garage remains separate, but will not be connected to the plumbing system.

OCCL is satisfied that the proposed additions are consistent both with the design guidelines for residences in the Conservation District and with the original site plan that the Board approved.

Therefore:

RECOMMENDATION:

Based on the preceding analysis, Staff recommends that the Chair of the Board of Land and Natural Resources APPROVE this application for additions to the Wood residence at TMK (3) 1-5-10:25, Maku`u, Puna, Hawai`i, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of HAR §13-5-42;

2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai`i harmless from and against any loss, liability, claim or demand for property damage, personal injury or 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 applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to HAR §11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;

4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans to the Chairperson or her authorized representative for approval. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction of the residence and infrastructure must be completed within three years of the approval.

6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;

7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

8. The applicant will use Best Management Practices for the proposed project;

9. The applicant will give preference towards using native plants all landscaping work;

10. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

11. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this 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/or the Department may, in addition, institute appropriate legal proceedings;

12. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;

13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

14. The single family dwelling will not be used for rental or any other commercial purposes unless approved by the Board;

15. The applicant will contact OCCL for any permitting requirements should they change the scope of the project;

16. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully submitted,

Michael Cain
Staff Planner

Under the authority of §13-5-30(a) and 13-5-33, Hawai`i Administrative Rules, this request for a Departmental Permit for CDUA OA-3314 is hereby:

☑ Approved

☐ Disapproved

Dated at Honolulu, Hawai`i 11/25/08

for **LAURA H. THIELEN**, Chairperson
Board of Land and Natural Resources

EXHIBIT B

DAVID Y. IGE
GOVERNOR OF HAWAI'I

SUZANNE D. CASE.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHO'OLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAI'I 96809

Ref: OCCL:RB

SPA: HA 22-50

Feb 16, 2022

Kim Chiodo
Land Planning Hawaii LLC
194 Wiwoole St.
Hilo, HI 96720

SUBJECT: After-the-Fact Site Plan Approval (SPA) for the placement of a portable spa on an existing 17'x17' concrete slab and the partial removal of a pre-existing concrete slab at 2225 Government Beach Road, Puna, Hawaii
Tax Map Key: (3) 1-5-010:028

Dear Ms. Chiodo:

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your After-the-Fact SPA for the placement of a portable spa on an existing 17'x17' concrete slab and the partial removal of the pre-existing concrete slab. It should be noted that SPA HA 20-04 indicates, "the old cement slab was demolished and replaced with a new 17-foot x 17-foot cement slab." The applicant notes that this statement is incorrect as only a portion of the old (pre-existing) slab was removed as noted in their SPA HA 20-04 application, "a portion of an old cement slab was demolished and replaced with a new 17'x17' cement slab." The existing 17'x17' slab was permitted under SPA HA 20-04.

The therapy spa is prefabricated and portable; it measures 15'x15'. Approximately 360 square feet of the pre-existing slab was previously removed; it currently measures 357 square feet. The single-family residence and accessory uses are 4,332 square feet. Pursuant to HAR §13-5 Exhibit 4 the permitted Maximum Developable Area (MDA) on lots larger than one acre is a maximum of 5,000 square feet; therefore, the existing SFR and associated structures are within the permitted MDA.

This application is meant to resolve an enforcement action, HA 22-16, in which unauthorized land uses were discovered to have taken place at the subject property. Staff notes that according to the enforcement action, unauthorized land uses included the following: pool, new concrete pad, and a gazebo. The OCCL notes that the gazebo has been removed; that the pool is a portable spa; and the new concrete pad is the unremoved portion of the old (pre-existing) slab.

To resolve this matter, the landowner is required to apply for an after-the-fact SPA for the unauthorized land uses. The landowner states that because the SPA HA 20-04 acknowledged that the purpose of the 17'x17' concrete slab was to house the spa, the landowner believed this acknowledgement to imply that the spa was permitted under SPA HA 20-04. Thus, the applicant is submitting this after-the-fact SPA to obtain approval for the portable spa atop the 17' x 17' concrete slab and the old (pre-existing) concrete slab's partial removal.

Additionally, Condition #9 of SPA HA 20-04 states, *the permittee shall remove the hog wire fence within the designated easement area for Site No. 18418 as outlined in the preservation plan. The permittee is required to submit a copy of the preservation plan to the Department along with photographic evidence that the fence was removed in the required area.* The applicant has submitted photographic evidence that the fence was removed in the required area; the applicant has submitted a copy of the preservation plan. The OCCL notes that this condition has been fulfilled.

ANALYSIS

The project area is located within the Resource Subzone of the State Land Use Conservation District. Based on the project description provided, it would appear that the proposed project is consistent with the following:

- Hawai'i Administrative Rules (HAR) §13-5-22, P-9 STRUCTURES, ACCESSORY (B-1) *Construction or placement of structures accessory to existing facilities or uses;* and
- HAR §13-5-22, P-8 STRUCTURES AND LAND USES, EXISTING (B-1) *Demolition, removal, or minor alteration of existing structures, facilities, land, and equipment.*

Further, the proposed project may be considered an exempt action under the following:

- §11-200-8, HAR (a)(3) *Construction and location of single new, small facilities or structures and the alteration and modification of same and installation of new, small, equipment and facilities and the alteration and modification of same including but not limited to: (E) accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences.*
- §11-200-8(a)(4) *Minor alteration in the conditions of land, water or vegetation.* Specifically, the Exemption List for the Department under Exemption Class 4, No. 7 allows for *minor ground adjustments (e.g., grading, grubbing, cutting, or filling) that do not require grading permits.*

Staff notes that the Land Division was consulted with regard to the HRS §343, Exemption Determination and they concurred that the exemptions are appropriate for the proposed work.

Therefore, authorization is hereby granted to Lorraine A. Melella and Laura T. Melella for the after-the-fact SPA for the placement of a portable spa on an existing 17'x17' concrete slab and the partial removal of a pre-existing concrete slab at 2225 Government Beach Road, Puna, Hawaii Tax Map Key: (3) 1-5-010:028 and is 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. The permittee understands and agrees that this permit does not convey any vested rights or exclusive privilege;

5. In issuing the approval, the department has relied on the information and data, which the applicant has provided in connection with the application. If, subsequent to the issuance of the approval such information and data prove to be false, incomplete, or inaccurate, this approval may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;

6. 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;

7. 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 Hawai'i, and by Hawai'i statutory and case law;

8. Other terms and conditions as prescribed by the Department; and

9. Failure to comply with any of these conditions shall render a permit void under Chapter 13-5, as determined by the chairperson or board.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other. Should you have any questions, please feel free to contact Rachel Beasley at 798-0386.

Sincerely,

S Michael Cain

Michael Cain, Acting Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

Lauren Q. McClean

_____ Date 3-2-2022
Applicant's signature

c: Chairperson
Hawai'i Board Member
HDLO/DOCARE-Hawai'i
CoH, Planning Dept.

EXHIBIT C

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

FILE NO.: HA-3/15/82-1466
180-Day Exp. Date: 9/12/82

August 13, 1982

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

Gentlemen:

Conservation District Use Application for
Single Family Residential Use
at Puna, Hawaii

APPLICANT: Robert Gerald D'Anna
P. O. Box 1287
Pahoa, Hawaii 96778

LANDOWNERSHIP: Private, applicant

LOCATION: TMK: 1-5-9: 36

AREA OF PARCEL/USE: 1.631 acres/1.631 acres

SUBZONE: Resource

DESCRIPTION OF AREA:

The subject parcel is located approximately one-fourth mile north of Hawaiian Beaches Subdivision with frontage on the Government Beach Road. Access is via the Government Beach Road via Kahakai Boulevard or Makuu Drive.

The property has a slight slope towards the ocean, approximately 15 percent. Shoreline area consists of boulders and sand with small tidal pools at the waters edge. The remainder of the parcel consists of pahoehoe lava covered with varying amounts of soil supporting a variety of plant life: coconut, plumeria, banana, citrus trees, taro, sweet potatoe, exotic palms and wiliwili trees.

CURRENT USE:

Vacant; parcel is currently not served by utilities.
NOTE: See Division of Conservation and Resources' report (Appendix B) regarding current use.

PROPOSED USE:

The applicant proposes to construct a single-family, 2-story dwelling with loft area and a detached garage on parcel 36, with a combined floor space of 2,200 square feet. In addition, he also proposes to construct a pool-type water tank, 18 feet in diameter, 4 feet deep with an 8,000 gallon capacity; the garage roof will serve as catchment area to supply the tank.

Board of Land and
Natural Resources

The applicant intends to establish a self-sufficient farm on the remainder of the parcel. The proposed improvements are non-commercial and are for the owner's use only.

Sewerage disposal shall be accommodated by a regulation type cesspool (6 feet by 14 feet) to be located directly behind the dwelling no closer than 10 feet to any building or property line.

The applicant states that should he desire to have telephone service in the future, Hawaiian Telephone Company has indicated service can be provided with the permission of the owners of parcel 12, lying mauka of the Government Road. The telephone line would be run on overhead lines to the applicant's property and underground within the subject parcel.

A photo-electric, 12-volt battery system will be used to supply power for residence use and to operate the water tank pump.

The applicant would like to begin construction in August, 1982 and complete the project by October, 1982.

Preliminary plans for house and garage have been submitted for review.

The present access road on the property is posted as private-no trespassing.

This parcel is held in Fee Simple by the owners with no covenants or restrictions, except where provided for in Exhibit "A". (See Appendix A).

SUMMARY OF COMMENTS:

The application was sent to the following agencies for review and comment:

County of Hawaii Planning Department, Department of Water Supply, Department of Public Works, the State Department of Health, Office of Environmental Quality Control, Environmental Quality Commission, Office of Hawaiian Affairs and the following Department of Land and Natural Resources divisions: Aquatic Resources, Forestry and Wildlife, State Parks/Historic Sites, Land Management, Water and Land Development, Natural Area Reserves System and the Division of Conservation and Resources Enforcement.

Their comments follow:

County of Hawaii Planning Department:

Thank you for the opportunity to review the subject applicat
For your information, the subject parcel lies within the Spe
Management Area. However since development will be limited
a single family dwelling and cultivation for personal

Board of Land and
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Because the subject property lies within an agriculture one acre zoning district, the County has no objections to the intended development, but requests that the following conditions be attached to the application:

1. The front yard shall have a minimum depth of thirty (30) feet, and the rear yard a minimum dept of forty (40) feet in observance of the shoreline setback.

2. Side yards shall be a minimum of twenty (20) feet.

3. Non-attached accessory buildings, water tanks, and cesspool must be located at least ten (10) feet from the main structure.

The County Department of Water Supply:

We have no objections to the Conservation District Use Application inasmuch as there is no County water system in the area. Further, we do not anticipate developing any source in the area.

The Department of Public Works:

Should this application be approved, the applicant shall obtain a building permit.

The State Department of Health:

Our staff has reviewed this request and does not foresee any major adverse environmental effects arising from this project.

Please be informed that we have no objections to granting the permit.

The Office of Hawaiian Affairs, Land Division:

No adverse impacts on Hawaiian/Native Hawaiian Rights and/or Ceded Lands are anticipated from this proposed action.

The Office of Hawaiian Affairs is concerned about the preservation of Historical and Archaeological sites located on any property, and may take a stand to advocate for its protection.

The Department of Land and Natural Resources, Division of Aquatic Resources:

The applicant proposes to construct a single-family dwelling (total floor space of 2,200 square feet) on a 1.631 acre beachfront parcel in Puna, Hawaii. Also proposed is the establishment of a farm on the remainder of the parcel. All proposed improvements are non-commercial and intended for the owner's use.

The applicant states that a regulation type (6 feet by 14 feet) cesspool, to be located directly behind the dwelling, will be used for sewage disposal.

Comments:

Inasmuch as the dwelling will be located at least 300 feet from the ocean, no significant adverse impact upon the area's aquatic resources is anticipated. However, appropriate measure should be taken to minimize excessive erosion, silting and seepage during and subsequent to development.

The Division of State Parks/Historic Sites:

Recreation Concerns:

There are no known public parks interests in the subject parcel but public access should be maintained along the shoreline sand and tide pool area.

Historic Sites Concerns:

Our records do not indicate the presence of historical, cultural, architectural and/or archaeological resources on this property which are listed on the Hawaii Register and/or the National Register of Historic Places, or that have been determined Eligible for Inclusion on the National Register of Historic Places.

In the event that any unanticipated sites or remains such as artifacts, shell, bone or charcoal deposits; human burials; rock or coral alignments, pavings, or walls are encountered during construction, please inform the applicant to stop work and contact this office immediately.

The Division of Conservation and Resources Enforcement has provided a field inspection and report. This report is appen in its entirety to this Submittal as Appendix B. The report addresses construction activity and structures found to be present on the subject parcel.

The Divisions of Forestry and Wildlife, Land Management, and Water and Land Development indicate they have no objections to the proposed land use; and the Natural Area Reserves Syst indicates the proposal will not affect the existing Natural Area Reserves program.

ANALYSIS:

Following review and acceptance of the application, for processi the applicant, by letter dated May 11, 1982, was notified that:

1. The proposed use, single family residential use, is a conditional use of the Resource Subzone of the Conservation District according to Title 13, Chapter 2, Departmental Administrative Rules, as amended;

2. No public hearing pursuant to Section 183-41, Hawaii Revised Statutes (HRS), as amended will be required; and

3. The proposed use qualifies as an exempt action in accordance with Section 1:33 of the Environmental Impact Statement Regulations.

The County of Hawaii indicates the site lies within the Special Management Area, but is exempt from Special Management Area Rules and Regulations.

The objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

Subchapter 21 relating to standards requires all applications be reviewed in such a manner that the objective of the subzone is given primary consideration.

The proposed use, construction of a home and garage, water tank and catchment system, solar power and 12-volt battery system, cesspool and use of the subject property for a self sufficient farm as presented in the application, would appear to be a commendable approach to development of the site for residential use, utilizing the existing resources in a prudent manner. In fact, Staff is of the opinion that the use, as proposed, a single family residence, is a reasonable use, consistent with the objective and intent of the Resource Subzone and the Conservation District. Furthermore, the proposed use would appear to be consistent with the objectives of the Conservation Lands Plan.

However, Staff notes the application, filed with the Planning Office in Honolulu on March 15, 1982, indicated that the land was vacant and all improvements were proposed. Staff, in meeting with the applicant, on July 15, 1982, was informed that he had in the past months, begun to construct "forms" for pouring the foundation for the main structure, the house. The applicant did not indicate that any other work had been done. The applicant did indicate that the Division of Conservation and Resources Enforcement officers had visited the property.

Following this meeting with the applicant, Staff received the Division of Conservation and Resources Enforcement field investigation report (Appendix B) which indicates a number of conditions not evident in the application or from conversations with the applicant.

It then became apparent that the applicant actually began construction on the site over two years ago. This he admitted to the reporting Division of Conservation and Resources Enforcement officer.

The Division of Conservation and Resources Enforcement report indicates the existence of three wooden structures - a 21 foot by 22 foot structure reported to be a dwelling but identified by the applicant as a garage, an 18 foot by 20 foot hothouse structure and a restroom located within the 28 foot by 28 foot forms constructed by the applicant for the purpose of pouring a concrete foundation for a house.

Board of Land and
Natural Resources

In addition, the proposed water tank/catchment system has been installed and is presently operable, feeding water to the structure identified as a garage and to the toilet system of the site.

The 21 foot by 22 foot garage noted in the report has a built-in sink, stove, and ice box. The reporting DOCARE officer indicates that a portion of this structure is used as sleeping quarters (see the Division of Conservation and Resources Enforcement report, Exhibit 2) and that the applicant does live on the subject property. The report does not indicate how icebox and stove are fueled.

Makai of this "garage", the applicant has constructed a 18 foot by 20 foot hothouse or greenhouse, which the applicant claims is portable. This structure was not requested in the current application. The Division of Conservation and Resources Enforcement officer notes that the foundation posts are set in concrete, leading Staff to believe the structure is intended to be non-portable, and of a permanent nature.

At the proposed house site, the applicant has constructed restroom facilities and has begun to layout "forms" for pouring the concrete slab for the house.

The applicant has indicated to the Division of Conservation and Resources Enforcement officer that the "sewer system", assumed to be the proposed cesspool, had been installed by a licensed contractor.

To date, it is evident that the applicant has constructed two wooden structures, and partially completed a third structure, installed a water tank/catchment system, installed a cesspool and toilet, and presently utilizes the garage as living quarters - all without a Board approved Conservation District Use Application.

The above noted unauthorized structures, improvements and use of the subject property are considered to be violations of Title 13, Chapter 2, Departmental Administrative Rules, as amended and as such, the applicant is subject to a fine of $500.00 per violation.

Staff considers the total number of violations to be equal to six (6), as listed above.

Furthermore, it is the policy of the Board of Land and Natural Resources to permit one house only per parcel in the Conservation District. As such, continued use of the structure designated as a garage for living quarters cannot be permitted.

Staff maintains that at this point it would serve no useful purpose to require the applicant to remove all the improvements made thus far. However, Staff does maintain that the improvements not shown on the proposed plans submitted with the Conservation District Use Application should be removed and the uses indicated on the plan adhered to.

Board of Land and
Natural Resources

This means that the applicant should be required to remove the "hothouse" and remove the kitchen applicances installed in the garage. Further, the garage should be used only for the purpose of parking and storage.

This means that the applicant should be required to remove the "hothouse" and remove the kitchen applicances installed in the garage. Further, the garage should be used only for the purpose stated - garage and storage.

In addition, Staff has contacted the County building inspector who has indicated that a residence cannot be occupied until the County completes its final inspection. To date, the applicant has not obtained a building permit and has constructed a structure which he occupies without County approval. The County indicates they will look into the matter and possibly cite the applicant for violations.

As such, Staff recommends as follows:

RECOMMENDATION:

A. That the Board find the construction of two (2) wooden structures, and partial construction of a third structure, installation of a water tank/catchment system, installation of a cesspool and toilet, use of the structure designated as garage for living quarters to be violations of Title 13, Chapter 2, Departmental Administrative Rules, as amended, and that the Board assess the applicant a fine of Five Hundred Dollars ($500.00) per violation, the total of six (6) separate violations being equal to the sum of Three Thousand Dollars ($3,000.00) to be paid within sixty (60) days of the date of this meeting, this date being July 13, 1982.

B. That the applicant cease living on the subject property until he obtains permission from the County of Hawaii to occupy the structure designated on his plans as "house".

C. That the applicant remove the stove, icebox and any fuel supply/storage system from the structure designated on his plans as a garage. This structure is to be used only as a garage and storage space, and not for living quarters.

D. That this application for a single family residence with detached garage, water tank and catchment system, cesspool and solar power system, with use of the remaining land for non-commercial subsistence farming on property identified as TMK: 1-5-9: 36, in Puna, Island of Hawaii be approved subject to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and City and County governments, and applicable parts of Section 13-2-21 of Title 13, Chapter 2, Departmental Administrative Rules, as amended;

2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for pro-

perty 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. Other terms and conditions as prescribed by the Chairman;

4. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered during construction, the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;

5. That the applicant comply with all applicable Public Health Regulations;

6. A fire contingency plan, acceptable to the Division of Forestry and Wildlife shall be implemented during and after the construction of the dwelling;

7. That the single family dwelling not be used for rental or any other commercial purposes;

8. The construction, alteration, moving, demolition and repair of any building or other improvement on lands within the Conservation District, shall be subject to the building codes of the respective counties in which the lands are located; provided that prior to the commencement of any construction, alteration or repair of any building or other improvement, four (4) copies each of the final location map, plans and specifications shall be submitted to the Chairman, or his authorized representative, for approval, provided however, that any alteration or repair which does not change or expand on the existing land use shall not be subject to the above

9. Clearing areas for construction purposes shall require prior approval by the Chairman. Ground cover of slopes over 40 percent shall not be removed unless specifically authorized by the Chairman;

10. Cleared areas shall be revegetated within thirty (30) days, unless otherwise provided for in a plan on file with and approved by the Department;

11. Upon approval of a particular use by the Board, any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and, all work and

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HA-1466
August 13, 19

13. Side yards shall be a minimum of twenty (20) feet;

14. Non-attached accessory buildings, water tanks, and cesspool must be located at least ten (10) feet from the main structure;

15. That appropriate measures shall be taken to minimize excessive erosion, silting and seepage during and subsequent to development.

Respectfully submitted,

Sherrie Samuels

SHERRIE SAMUELS
Staff Planner

Attachment

APPROVAL FOR SUBMITTAL:

S. Ono

SUSUMU ONO, Chairman
Board of Land and Natural Resources

EXHIBIT D

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

File No.: HA-3233
180-Day Exp. Date: December 10, 2005

October 28, 2005

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

REGARDING:	Conservation District Use Application (CDUA) HA-3233 for a Single Family Residence (SFR) & Related Improvements
APPLICANT:	Steven Lim for the Gadler Family Trust
LANDOWNER:	Gadler Family Trust
LOCATION:	Keonepoko Iki, Puna, island of Hawaii
TMKs:	(3) 1-5-009:040
AREA OF PARCEL	Approximately (≈) 10 acres
USE:	≈ 1 acre
SUBZONE:	Resource

DESCRIPTION OF AREA AND CURRENT USE

The proposed project site is located on unimproved oceanfront property makai of a Government Beach Road, and is adjacent and North (Hilo side) of the Hawaiian Beaches subdivision located at Keonepoko Iki, District of Puna on the island of Hawaii. The 10,005 acre parcel identified as TMK (3)1-5-009:040 appears to lie entirely within the Resource subzone of the Conservation District. To the northeast is the Pacific Ocean, to the southeast is private property noted as the Klein residence within the Urban District and the Hawaiian Beaches subdivision beyond, to the southwest is the Government Beach Road and unimproved private property within the Agricultural District, and to the northwest are two approved Single Family Residence (SFR) and other private properties within the Conservation District **(Exhibit 1, 2, 3, 4 & 5)**.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
OCT 28 2005

ITEM K-2

An existing rock wall borders the property's southern (mauka) boundary. Rock wall remnants are located in the center of the property, mauka of an existing lauhala grove. Remnants of a tree house exist in a large banyan tree. There are two gated entry ways which breach the southern boundary wall with two existing roadways one that is 12 feet wide and ≈ 258 feet long and the other that is 15 feet wide and ≈420 feet long **(Exhibit 6,7, 8 & 9)**.

Access to the property is via provided from the Keaau-Pahoa highway that connects to Kahakai Boulevard in the Hawaiian Paradise Park subdivision to the Government Beach Road, also known as the Puna Trail, an improved gravel/dirt roadway having a 10-foot wide right-of-way. A 40-foot building setback line runs along the makai portion of the right of. Way. Electrical and Telephone service have underground entries located along the Government Beach Road and at the end of Welea Street within the Hawaiian Beach Subdivision **(Exhibit 10 & 11)**. There is no municipal water system available.

The shoreline of the subject area is rocky consisting of low/medium height sea cliffs **(EXHIBIT 12)**. The property is characterized by a gradual slope of predominantly historical a'a lava flow which covers the entire area makai of the Government Beach Road. The elevation of the property ranges from sea level to approximately 54 feet above mean sea level along the mauka boundary near the Government Beach Road.

According to the applicant, community contacts and consultation with kupuna familiar with the area disclosed that there are no known traditional or customary native Hawaiian practices within the subject property. Opihi, limu gathering and fishing take place at the shoreline areas.

According to the applicant, no plant species listed by the U.S. Fish & Wildlife Services or State protected plant species as threatened or endangered, proposed, or a candidate species or "species of concern" occur on the property or immediate vicinity. The shoreline of the property and adjoining oceanfront properties are bare of vegetation. Plants on the property consist of mature coconut, octopus, gunpowder, autograph, Norfolk pine, avocado and pandanus (hala).

According to the applicant, no endangered or otherwise rare bird or mammal species were observed within the project area. The area is not included within the critical habitat for protected species. Known avifauna consists of lowland urban birds such as the mynah, house finch, cardinal, and majiro. No resident endemic and indigenous land birds, water birds, seabirds and migratory birds have been recorded on the property. Mammal species most expected to occur on the property include mongoose, feral cat, mouse and rat. Marine mammals and sea turtles have not been observed along the low/medium height jagged, barren lava sea cliffs along the property.

PROPOSED USE

According to the applicant, the proposed Single Family Residence consists of a one-story concrete floor dwelling with two bedrooms, two and a half baths, a kitchen, a dining room, a living room, a foyer and entry that is approximately 2849 square feet. There are covered lanais (≈594.5 ft²), arcade and breezeway of (≈352.5 ft²), a utility and storage area (≈300.68 ft²) with all structures connected. An approximately 900 square foot swimming pool and a perimeter 4 foot-high chain link fence are proposed on the makai side of the SFR **(Exhibit 13)**.

According to the applicant, the area of the SFR is at the maximum of 5,000 square feet. The SFR will be sited along the northeastern boundary of the property. The front or mauka setback is 500 feet, the side setbacks are 224 feet and 111 feet and the back or makai setback is 159 feet. The maximum height shall not exceed 25 feet. Neutral colors and materials such as wood, stone and slate will be used on the exterior of the dwelling to harmonize with the existing physical environment **(Exhibit 14, 15, 16 & 17)**.

According to the applicant, the existing topography will require grading/contouring of 7% of the property. The proposed house site will require grading of approximately 1,138.67 cubic yards and fill of 1,215.84 cubic yards to accommodate the natural contours of the land. An individual waste water treatment system is proposed for domestic wastewater disposal meeting all applicable County and State regulations. The disposal system will be located adjacent to the dwelling. Potable water will be by private catchment system consisting of a concrete underground storage catchement water tank to be housed underground beneath the utility and storage area.

Driveway improvements include two 6.5' high rock column and gate at the existing entrances. The applicant proposes to place 3 inches of red cinder on the existing dirt roads and proposes "an additional pea gravel driveway and parking area of approximately 15-feet wide by 270 lineal feet, 24-feet wide by 851 lineal feet, and 25-feet by 40 lineal feet to connect both dirt roads to the dwelling."

Landscaping improvements will consist of planting of small shrubbery and ground cover around the perimeter of the house. Plant species being considered are pohinahina, akia, hinahina kukahakai, ma'o, naupaka kahakai, nehe, wiliwili, ilima, a'ali'i and ulei. The final landscaping plan will depend upon the availability of planting materials. 10-20 Norfolk Pines and 10-20 Coconut trees, 20 feet tall are proposed to be removed or relocated along with juvenile Norfolk pines and coconut trees 4-feet or less. A landscaping plan shall be submitted with the construction plans to the Department for approval.

Regarding the wall remnants on the subject property, based upon a field inspection and the applicants commitment to avoid any impact to the area of the parcel containing the wall remnants, the State Historic Preservation Division has determined that "no historic properties will be affected" by the proposed project.

Alternatives to the proposed action

The applicant has reduced the size of the proposed residence and related accessory use improvements as initially envisioned. Under the "No-Action" alternative, the Applicant would abandon the proposed project and the area would remain vacant land. This alternative deprives the Applicant of the reasonable use of their property.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: the **State**: Department of Health; Office of Hawaiian Affairs; Office of Environmental Quality Control; Department of Land and Natural Resources Divisions of: Aquatic Resources, Conservation and Resource Enforcement, Engineering, Forestry and Wildlife, Hawaii District Land Office, Historic Preservation; and the **County of Hawaii:** Department of Planning, Department of Environmental Management. In addition, this application and Final Environmental Assessment was also sent to Malama O Puna, a non-profit organization and the nearest public library, the Pahoa Public Library, to make this information readily available to those who may wish to review it.

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

STATE OF HAWAII

DEPARTMENT OF HEALTH

Clean Water Branch

An National Pollutant Discharge Elimination System (NPDES) permit is required before the commencement of the construction activities. The operation and maintenance of the proposed swimming pool will not result in any discharges into State waters. Any discharge related to project construction or operation activities, will comply with the applicable State Water Quality Standards as specified in HAR, Chapter 11-54.

There are no site specific Best Management Practices (BMPs) measures proposed to properly isolate and confine the construction activities and to contain and prevent any potential pollutant discharge from adversely impacting State waters. At a minimum, the BMP shall include site characterization; construction sequence construction method; characteristics of the discharge and potential pollutants associated with the proposed construction activity; and control measures and/or treatment.

The is no Applicable Monitoring and Assessment Plan proposed to demonstrate how the project construction activity would be in compliance with the applicable State Water Quality Standards.

Pursuant to Hawaii Revised Statutes (HRS), §342D-50(a), requires that "No person, including any public body, shall discharge any water pollutants into state waters, or cause

or allow any water pollutant to enter State waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director."

APPLICANT'S RESPONSE

The Applicant will comply with the NPDES permitting requirements prior to commencement of the construction activities. The Applicant will also comply with applicable rules and regulations to ensure that the operation and maintenance of the proposed swimming pool will not result in any discharge into State waters.

Wastewater Branch

The subject project lies in the Critical Wastewater Disposal Area with One Acre Lot Exception. Wastewater treatment and disposal has been briefly mentioned in the draft Environmental Assessment (EA). As there is no County service system within the vicinity, and the property is larger than one acre, we concur with the application. Although our rules allow cesspools to be used in this area, we strongly recommend that wastewater be handled by a non-cesspool treatment system and effluent be disposed of into shallow soil absorptions systems rather then seepage pits. All wastewater plans must conform to applicable provisions of the Department of Health's Rules. We do reserve the right to review the detailed wastewater plans for conformance to applicable rules.

APPLICANT'S RESPONSE

Wastewater for the project will be handled via a private septic tank and perk field system meeting with all applicable governmental regulations.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL

Please consult with all immediate neighbors. Describe in as much details the proposed wastewater system. Describe whether there are any anchialine pools in the vicinity of the project.

APPLICANT'S RESPONSE

The Applicant has made contact with adjacent property owners on the Kapoho side who have written a letter of support for the proposed project. Other adjacent properties are vacant with no full-time residents. The Wastewater for the project will be handled via a septic tank and perk field system meeting with all applicable governmental regulations. There are no anchialine pools in the vicinity of the project.

OFFICE OF HAWAIIAN AFFAIRS (OHA)

OHA commends the property owner for choosing to develop the proposed dwelling away from known archaeological sites and an old-growth hala tree. And does not intend to impede any traditional cultural practices, including procurement, along the shoreline.

Regarding the complex of walls within the property State Site numbers should be assigned to the sites and significance should be assessed, just as they would in a formal Archaeological Inventory Survey. OHA recommends that an Archaeological Monitoring Plan be drafted in support of this project. A Cultural Impact Statement should be prepared. Identify the cultural consultant who prepared the synopsis. Identify the community members consulted. Should iwi or Hawaiian cultural or traditional deposits be found during ground disturbance work shall cease and the appropriate agencies will be contacted.

APPLICANT'S RESPONSE

A site visit conducted on 09/11/03 by Jeanne Knapp, Hawaii island Assistant Archaeologist revealed several wall remnants which were located outside of the proposed development area. Given these findings from the field inspection, State Historic Preservation Division (SHPD) stated that it believed that "no historic properties will be affected by this undertaking."

The Cultural Impact Statement was prepared by Virginia Goldstein, former County of Hawaii Planning Director who consulted with local residents, Grant Togashi, and Hamilton and Pat Ahlo who are familiar with the area. The EA has been revised to incorporate this information. The applicant will stop work in the immediate vicinity and contact SHPD if any archaeological or historic sites are found.

DEPARTMENT OF LAND AND NATURAL RESOURCES

AQUATIC RESOURCES

The proposal as described should not significantly impact aquatic resource values provided construction activities are restricted to periods of minimal rainfall and low runoff, and the areas denuded of vegetation or susceptible to erosion are appropriately stabilized. Precautions shall be taken to prevent debris, landscaping chemicals, eroded soil, petroleum products and other potential contaminants from flowing blowing or leaching into coastal waters. Additional or undescribed construction or landscape modifications within the Conservation District should be submitted to the Department for review.

APPLICANT'S RESPONSE

The applicant will comply with the NPDES permitting requirements prior to commencement of the construction activities. The Applicant will also comply with applicable rules and regulations to ensure that construction and landscaping activities will not result in any discharge into coastal waters.

ENGINEERING

The project site is located in minimal tsunami inundation area. Please refer to the Federal Emergency Management Agency (FEMA) , instead of the U.S. Corps of Engineers Flood Insurance Rate Maps (FIRM)

APPLICANT'S RESPONSE

The Final EA will reflect reference to the Federal Emergency Management Agency, and not the U.S. Corps. of Engineers Flood Insurance Rate Maps (FIRM).

FORESTRY AND WILDLIFE

No Comments

COUNTY OF HAWAII

DEPARTMENT OF PLANNING

By letter dated March 11, 2005, the proposed use was determined to be exempt form the Special Management Area definition of development. The requirement to submit a current certified shoreline survey was waived because all proposed improvements were located a minimum of 110-feet from the ocean.

ANALYSIS

After reviewing the application, by correspondence dated June 17, 2005, the Department has found that:

1. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to §13-5-24, Hawaii Administrative Rules (HAR), R-8, SINGLE FAMILY RESIDENCE, (D-1), "A single family residence that conforms to design standards as outlined in this chapter." Please be advised, however, that this finding does not constitute approval of the proposal;

2. Pursuant to §13-5-40 of the Hawaii Administrative Rules, a Public Hearing will not be required;

3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) is anticipated for the proposed project.

It had been determined that satisfaction of the Special Management Area has been met with documentation dated March 11, 2005, from the County of Hawaii which states that the proposed construction of the single-family dwelling and related improvements are exempt from the definition of development. This exemption is based on the location of all

proposed improvements as depicted on a site plan dated June 22, 2004, which illustrates that the proposed swimming pool deck is located approximately 159 feet from the ocean and the chain-link fence is located approximately 110 feet from the ocean.

In addition, a FONSI to the environment was published in the September 23, 2005 Environmental Notice.

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. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

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

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. A Single Family Residence is an identified land use pursuant to HAR, §13-5-24, R-8, SINGLE FAMILY RESIDENCE (D-1) A single family residence that conforms to design standards s outlined in Chapter 13-5, HAR. Providing for one SFR and associated improvements within one acre of a ten-acre parcel should not adversely affect the open space and public views along the shoreline. The applicant has stated the remaining portion of the property shall remain in its natural state.

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

Staff believes the proposed project complies with provisions and guidelines contained in Chapter 205, HRS regarding Coastal Zone Management. It had been determined that satisfaction of the Special Management Area has been met with documentation dated March 11, 2005, from the County of Hawaii which states that the proposed construction of the single-family dwelling and related improvements are exempt from the definition of development. This exemption is based on the location of all proposed improvements as depicted on a site plan

dated June 22, 2004, which illustrates that the proposed swimming pool deck is located approximately 159 feet from the ocean and the chain-link fence is located approximately 110 feet from the ocean.

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, community or region. There may be short-term adverse effects on the surrounding area associated with construction activities such as potential noise and air quality. No changes in the shoreline or topography are envisioned. Pedestrian access along the shoreline will not be curtailed. The Hawaiian beach subdivision within the Urban District is immediately adjacent to the subject parcel.

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 proposed SFR and associated improvements are proposed on approximately one acre of a ten-acre parcel and the remaining portion of the property will continue to remain in its natural condition. A SFR exists in the Urban Land Use District to the east (Kapoho side) and an approved SFR exists to the west (Hilo side) within the Conservation District. The Agricultural Land Use District exists to the South across the street from the subject parcel.

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

The proposed home site is set back over a hundred feet from the shoreline. The proposed design and siting of the residential dwelling and related accessory use improvements and the property's gradually slopping terrain helps to facilitate the preservation of the natural beauty of the coastline's views and vistas. The applicant has stated that the remaining portions of the property will remain in its natural condition.

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

There will be no subdivision of land for this proposed project.

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

Staff believes the proposed land use will not be materially detrimental to the public health, safety and welfare.

DISCUSSION

Staff has no objections to a Single Family Residence that adheres to Conservation District Rules on the subject site. The subject property abuts the Urban and Agricultural State Land Use Districts. The adjacent residents within the Conservation District have received Conservation District Use Permits. The subject area is adjacent to the Hawaiian Beaches subdivision and some utilities are available to service homes. The area has established residential use and the proposed use shall be compatible with the locality and surrounding area.

Staff visited the subject parcel on the morning of August 29, 2005. Staff noted the area appeared as represented in the CDUA. Staff noted the remnants of the tree house. Staff noted off of the existing roadway, the ground was very rocky and uneven, heavily vegetated with numerous mosquitoes. Staff noted very large groves of hala and coconut trees. Staff noted the shoreline area consisted of a wide expanse of barren rock. There was unimpeded lateral access along the shoreline and the siting of the subject SFR will not affect this access in any way.

Staff believes the tree house was in disuse and recommends immediate removal. Within the application, discussions regarding the driveway areas were unclear. However because plans are preliminary and the Department will be approving final construction and grading plans, Staff believes all proposed improvements will be clarified and shall met our approval prior to construction.

The applicant proposes to disturb approximately 1 acre of land and leave the remaining natural areas of the parcel "as is." In addition, remnant stone walls located in the middle of the property will not be disturbed. Staff notes the groves of hala and coconut trees adds to the beauty and maintains the character of the Puna coastline. The landscaping plan should reflect and maintain the natural beauty of Puna and also soften and mitigate the inland view towards the residence.

RECOMMENDATION:

Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources APPROVE this application for a one-story Single Family Residence as described in CDUA HA-3233 located at Keonepoko, Puna, island of Hawaii, TMK: (3) 1-5-009:040 subject to the following conditions:

1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;

2) The applicant, 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 or 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 applicant shall comply with all applicable Department of Health administrative rules;

4) The applicant shall remove the unauthorized tree house within 30 days of Board approval of CDUA HA-3233;

5) The single-family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;

6) All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit;

7) The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;

8) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

9) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his 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 applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

10) The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

11) The applicant will minimize visual impacts using appropriate lighting, house color and landscaping. Existing trees shall be maintained to screen the structure from the surrounding lands. No mature trees shall be removed without the approval of the Department;

12) No outdoor lighting shall be directed towards the sea;

13) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this 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/or the Department may, in addition, institute appropriate legal proceedings;

14) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;

15) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

16) Potable water supply and sanitation facilities shall have the approval of the appropriate agencies;

17) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;

18) The applicant 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;

19) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the aquatic environment, off-site roadways, utilities, and public facilities;

20) Cleared areas shall be re-vegetated within thirty days of the completion of construction as described in a landscaping plan on file with the Department;

21) Obstruction of public roads, trials, and pathways shall be minimized. If obstruction is unavoidable, the applicant shall provide roads, trails, or pathways acceptable to the department;

22) The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules, Title 13-5;

23) Other terms and conditions as may be prescribed by the Chairperson; and

24) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

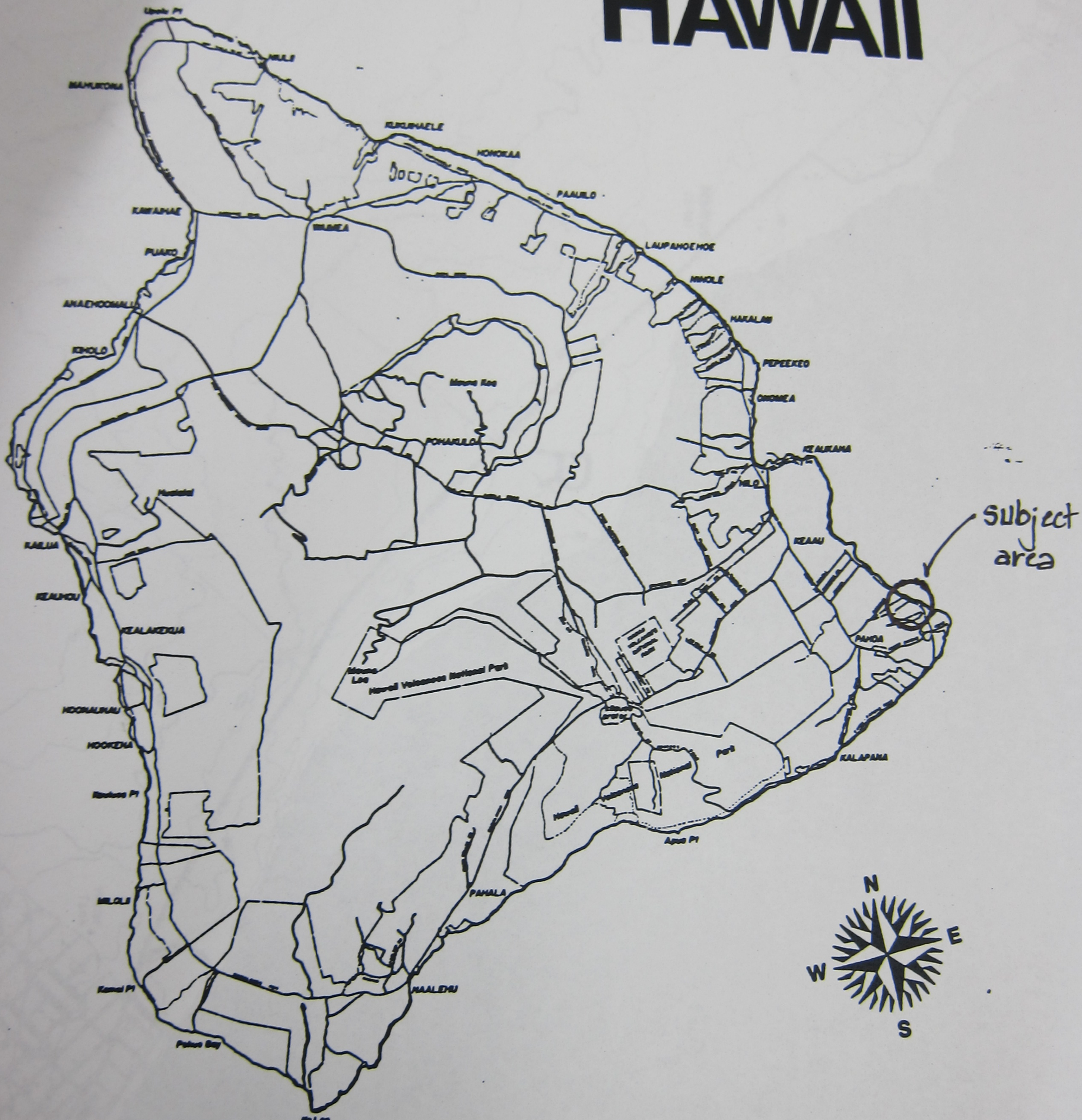
Respectfully submitted,

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

Approved for submittal:

Peter T. Young, Chairperson
Board of Land and Natural Resources

HAWAII



subject area

EXHIBIT 1

EXHIBIT 2

Subject area

OCEAN

Auwae

Makuu
(Site)

Opihi Rock

Water Tank

Honolulu Lighting

R

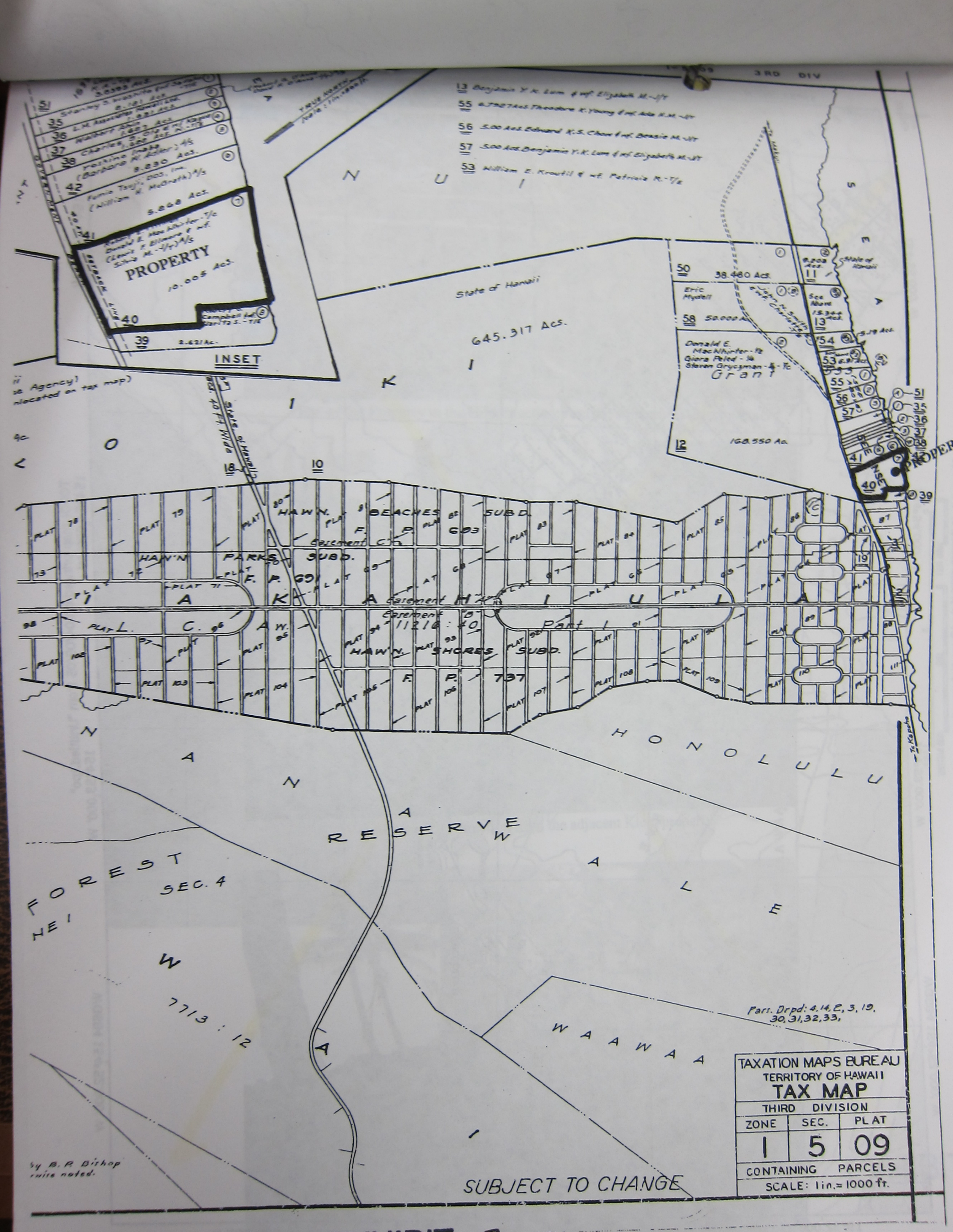
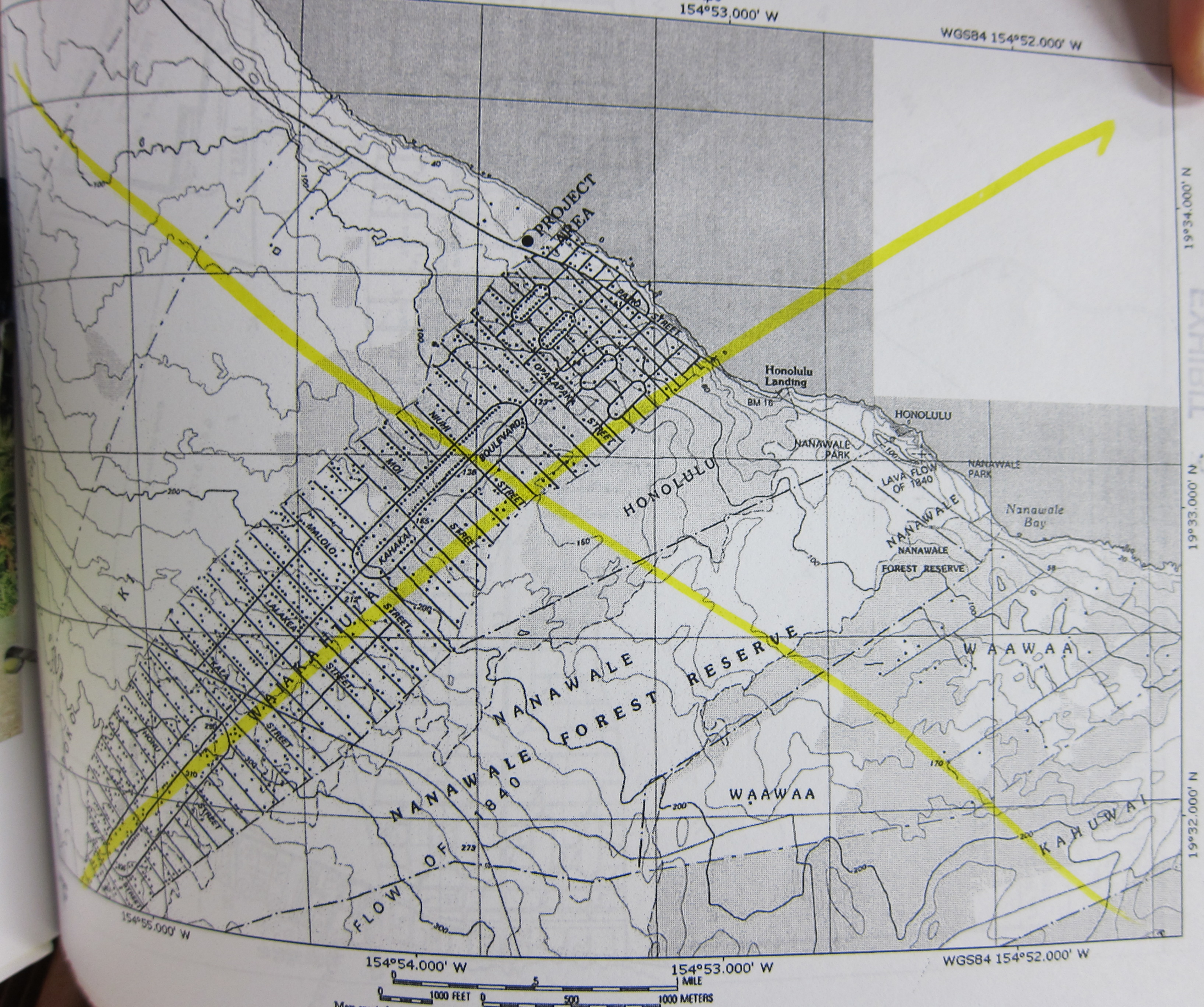

PROPERTY
10.005 Acs.
5.868 Acs.
8.830 Acs.
2.621 Ac.
INSET
645.317 Acs.
State of Hawaii
38.480 Acs.
50.000 Acs.
168.550 Acs.
Grant
Eric Myalell
Donald E. MacNhirter - ½
Glora Field - ¼
Steven Grycyman - ¼ - ½
Easement "B" 11216 : 40
Part 1
Easement "C"
Easement "H"
737
HAWN. BEACHES SUBD.
HAWN. PARKS SUBD.
HAWN. SHORES SUBD.
F. P. 603
F. P. 605
F. P. 606
F. P. 607
Parts. Drpd: 4, 14, E, 3, 19, 30, 31, 32, 33,
SUBJECT TO CHANGE
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
THIRD DIVISION
ZONE 1 | SEC. 5 | PLAT 09
CONTAINING PARCELS
SCALE: 1 in. = 1000 ft.

EXHIBIT 3



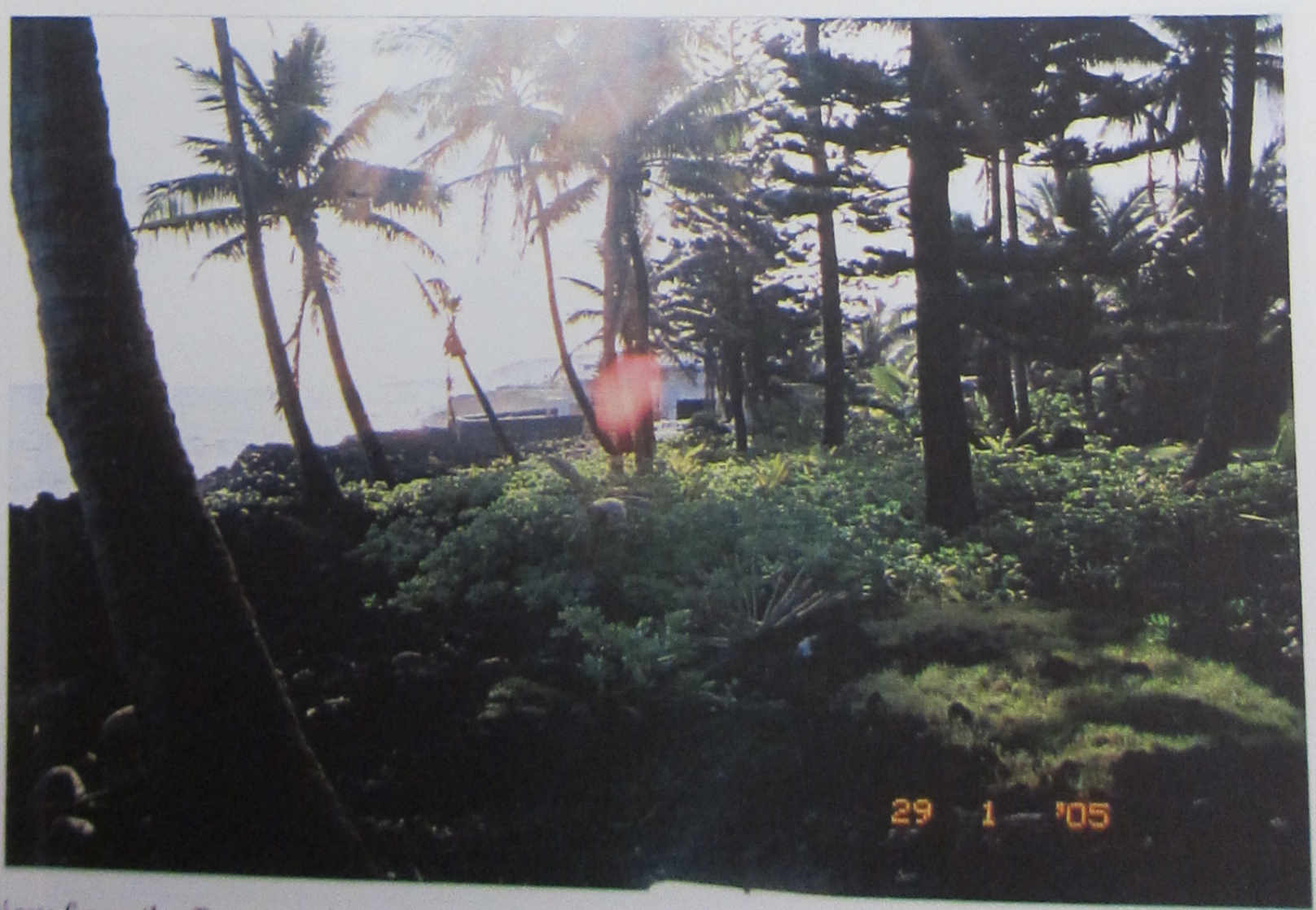
154°53.000' W
WGS84 154°52.000' W
PROJECT AREA
Honolulu Landing
BM 16
HONOLULU
NANAWALE PARK
LAVA FLOW OF 1840
Nanawale Bay
NANAWALE FOREST RESERVE
WAAWAA
KAHUWAI
NANAWALE FOREST RESERVE
NANAWALE FLOW OF 1840
WAIAKAHIULA
PARO STREET
OPAKAPAKA STREET
NIUHI
BOULEVARD
MOI
STREET
KAHAKAI
MALOLO
LALAKEA
KALA
HONU
19°34.000' N
19°33.000' N
19°32.000' N
154°55.000' W
154°54.000' W
154°53.000' W
WGS84 154°52.000' W
0 .5 1 MILE
0 1000 FEET
0 500 1000 METERS



View of the Property in the Hilo direction from the adjacent Klein property.



View in the Hilo direction from the adjacent Klein property.



EXHIBIT



View of first adjacent single-family dwelling (Hilo side).



View of first adjacent single-family dwelling (Hilo side) from the ocean.

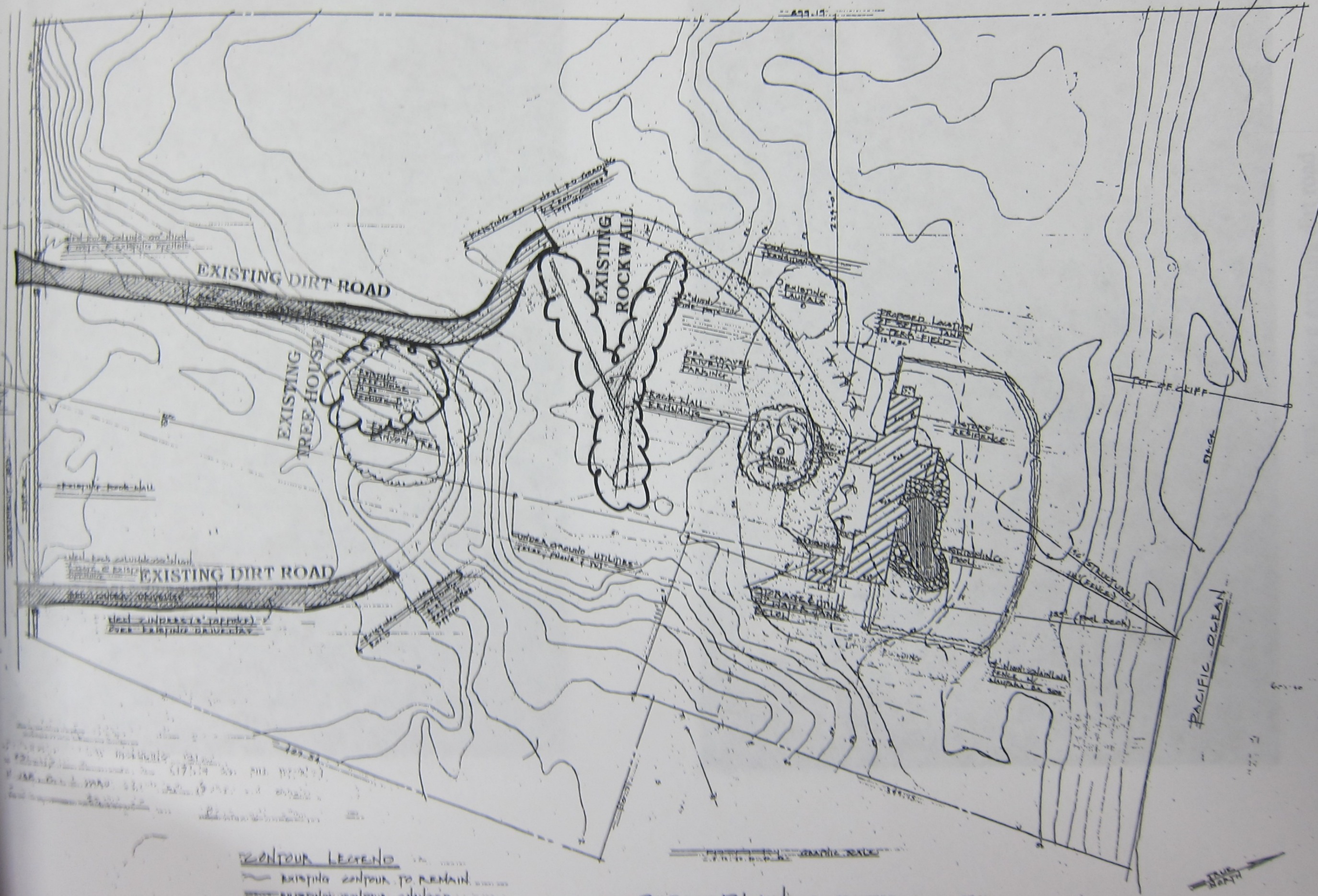


View of the second adjacent single-family dwelling (Hilo side) from the Old Government Road.

EXHIBIT 5

EXHIBIT 6

EXISTING STRUCTURE



PROPOSED NEW SINGLE FAMILY RESIDENCE FOR
MR. & MRS. NICHOLAS GADLER
GOVERNMENT BEACH ROAD KEONOPOKO DISTRICT, PUNA, HAWAII

1



Hilo entrance existing dirt road



Hilo entrance existing dirt road

EXHIBIT 7



Kapoho side entrance and existing dirt road



Hilo side entrance and existing dirt road

EXHIBIT 8



ree house in the Banyan tree to be removed.



Lauhala grove to be retained and located next to the proposed driveway to the single-family residence



EXHIBIT 9

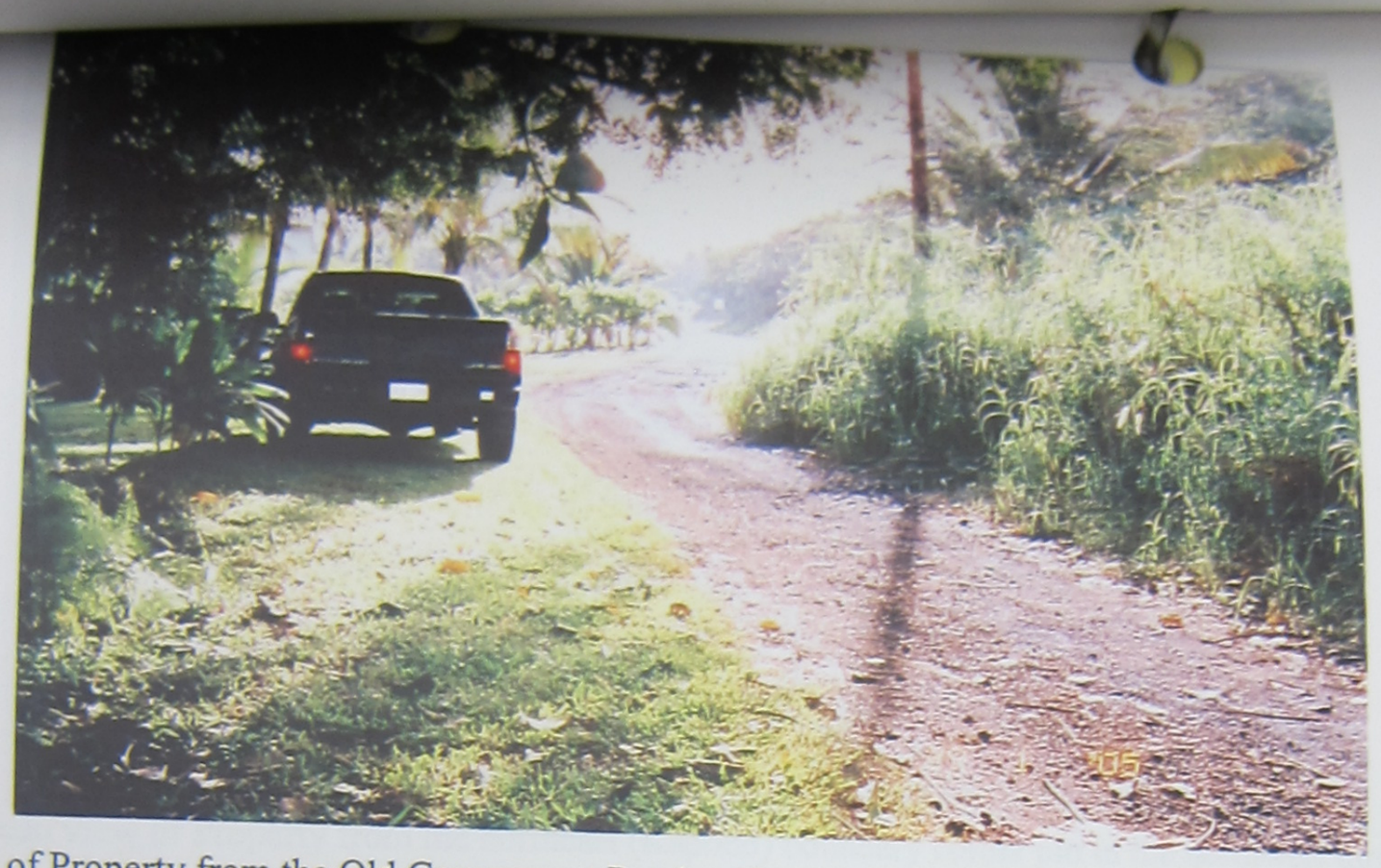
Norfolk Pine and Coconut trees to be removed and/or relocated

MAKAI SIDE OF THE PROPERTY

Subject parcel

EXHIBIT 10

MAUKA ENTRANCE TO THE PROPERTY



View of Property from the Old Government Road to Hawaiian Beaches Subdivision (Kapoho direction).



View of Property from the Old Government Road in the Kapoho direction.



Property entrance from the Old Government Road.

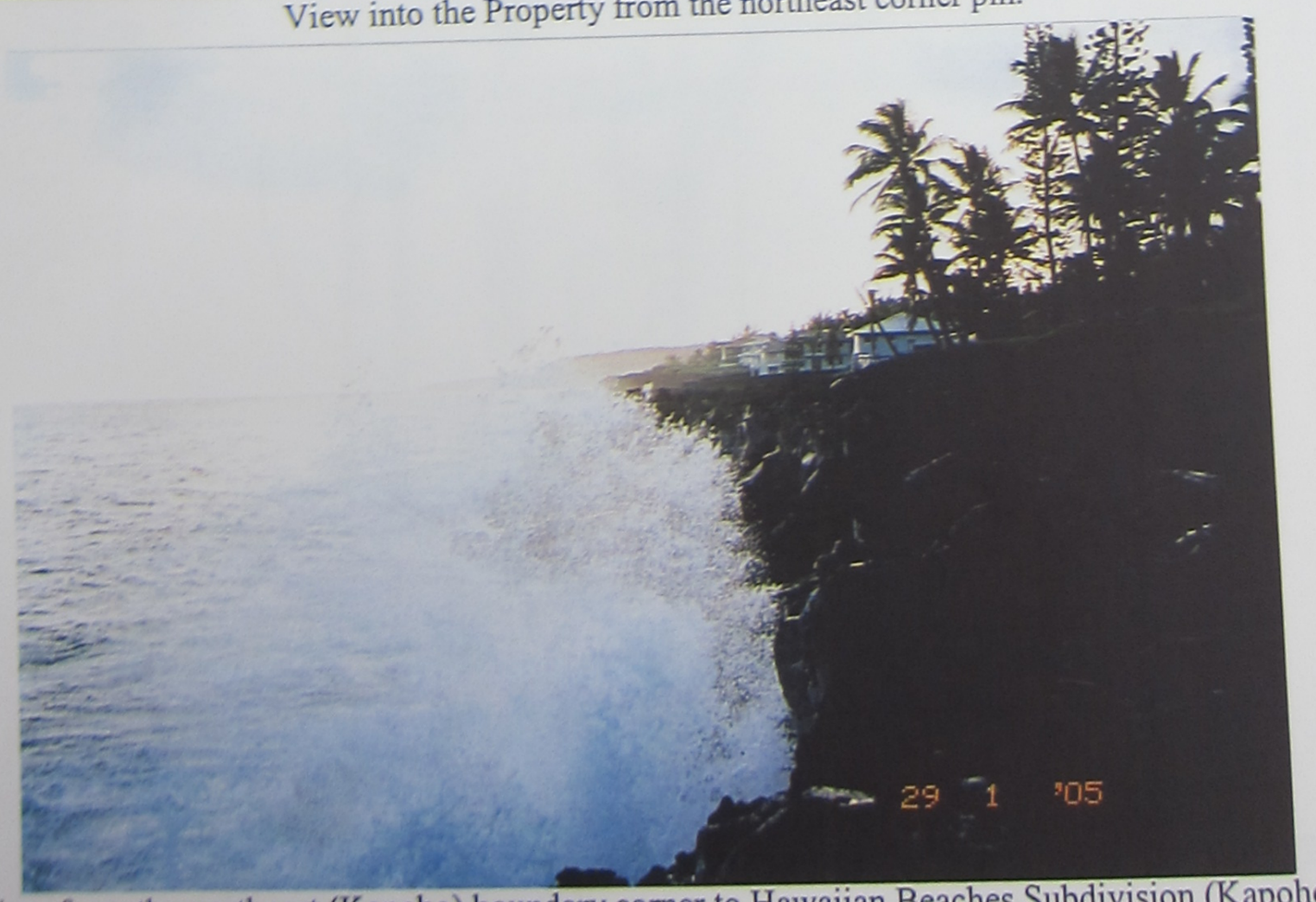
EXHIBIT 11



Ocean view of Property from the northeast (Kapoho) boundary corner pin in the northwest direction (Hilo direction).



View into the Property from the northeast corner pin.



Ocean view from the northeast (Kapoho) boundary corner to Hawaiian Beaches Subdivision (Kapoho direction).

EXHIBIT 12

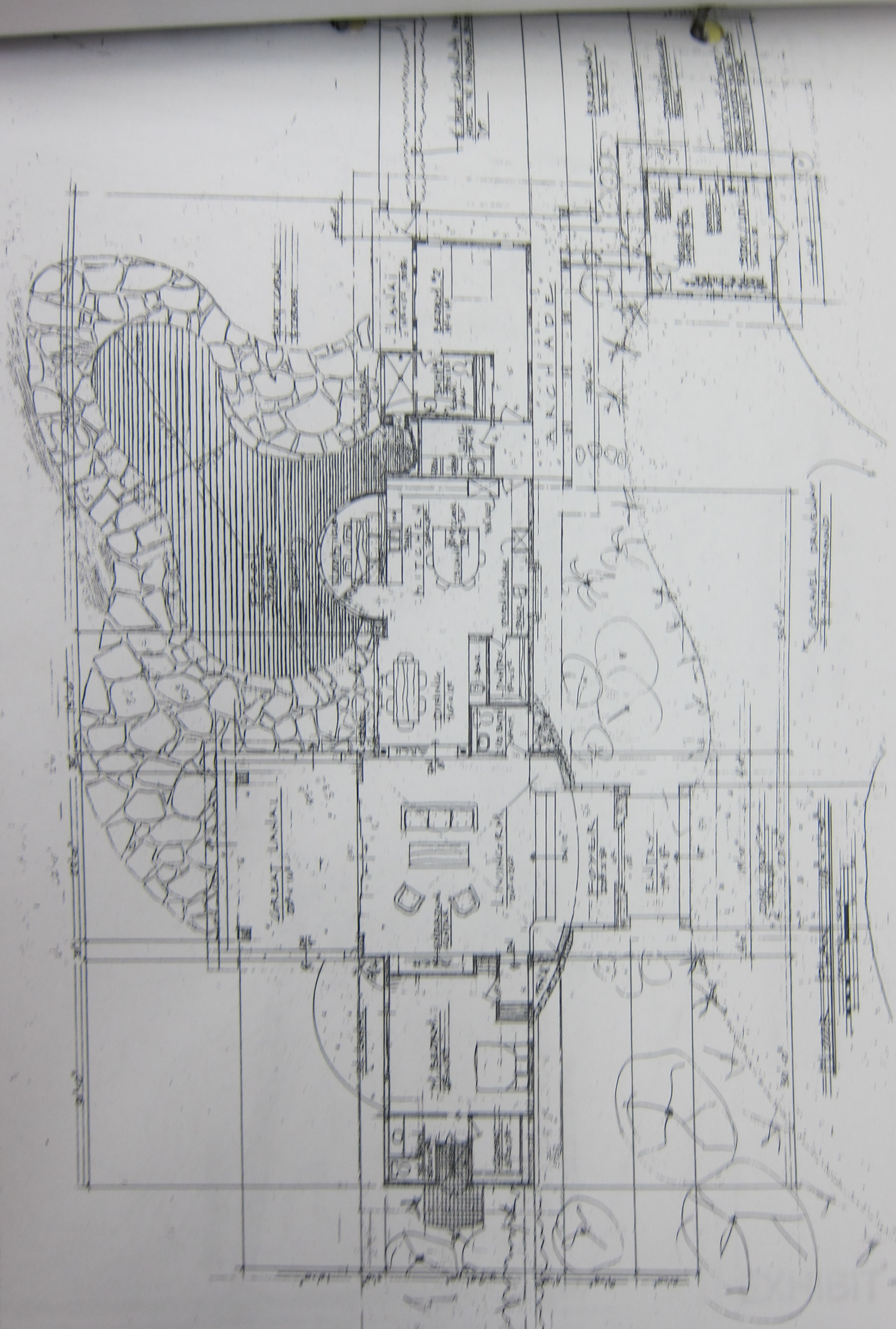
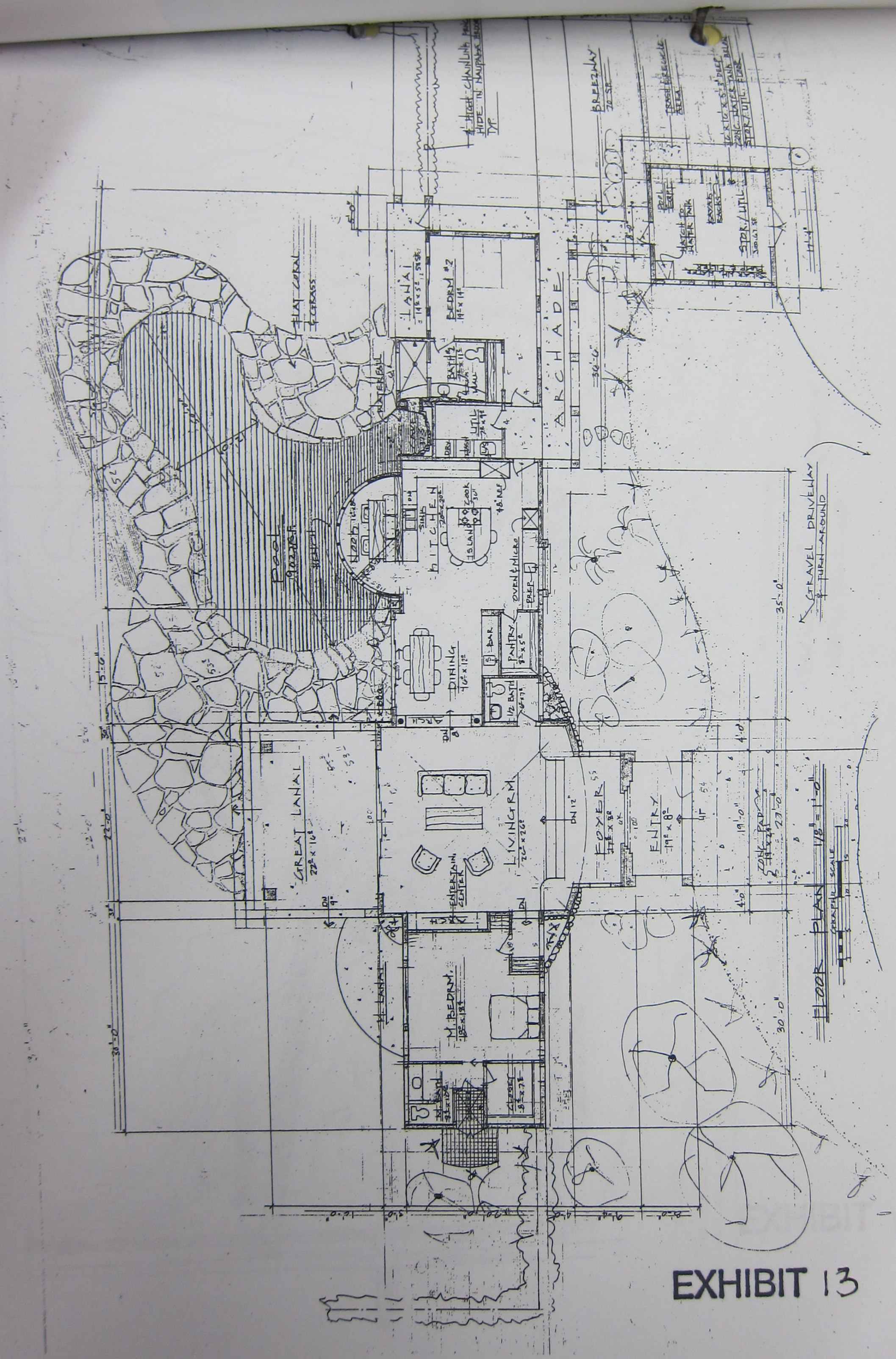


EXHIBIT 13



LANAI
BEDRM #2
ARCHADE
BREEZEWAY
FLAT CORAL & GRASS
WATERFALL
BATH #2
UTIL
DRY
WASH
KITCHEN
ISLAND
COOK
OVEN & MICRO
PREP
PANTRY
BAR
DINING
1/2 BATH
GREAT LANAI
LIVING RM
ENTERTAIN CENTER
FOYER
ENTRY
M. BEDRM.
CLOSET
GRAVEL DRIVEWAY & TURN AROUND
FLOOR PLAN
GRAPHIC SCALE

EXHIBIT 13

EXISTING ROCK WALL

NEW ROCK COLUMN 28'-0" HIGH @ EXISTING RETAINING

NEW ZINPERS (3" TAPERED) OVER EXISTING DRIVEWAY

NEW ROCK COLUMN 28'-0" HIGH @ EXISTING RETAINING

EXISTING TREE TO BE REMOVED

EXISTING BANYAN TREE

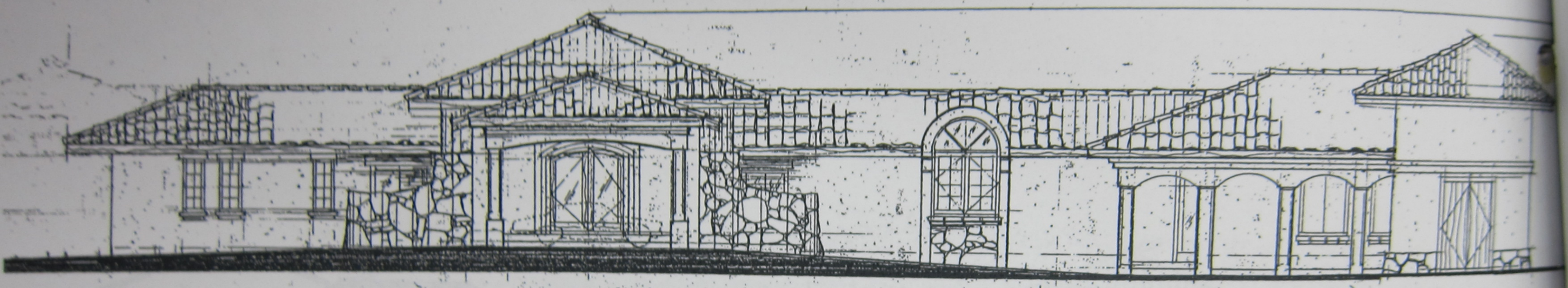
NEW 6" SEWER LATERAL

NEW 6" SEWER LATERAL

EXISTING SEWER MANHOLE

EXISTING SEWER MANHOLE

EXISTING SEWER MANHOLE



MAUKA ELEVATION - GADLER RESIDENCE 1/8" = 1'-0"

GRAPHIC SCALE

EXHIBIT 15

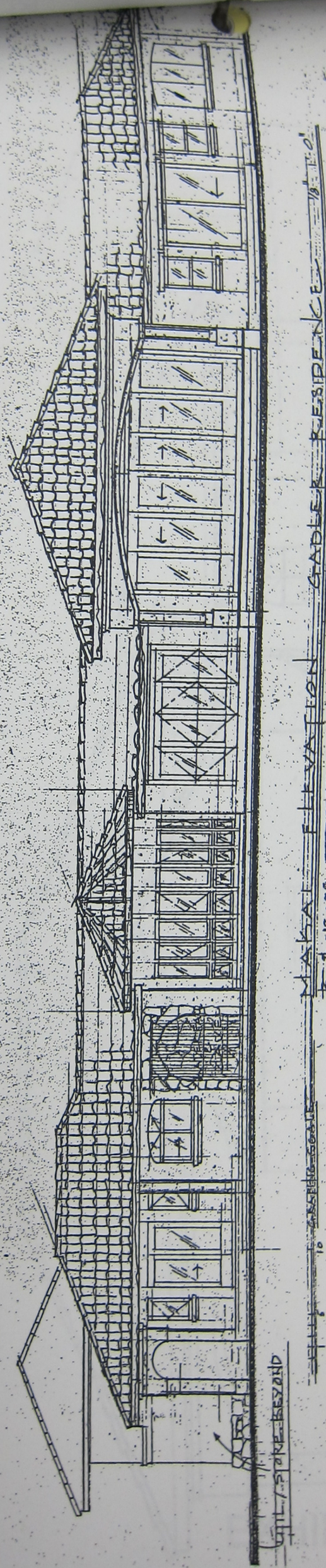

MAKAI ELEVATION GABLER RESIDENCE
GRAPHIC SCALE
GILL/STONE BEYOND

EXHIBIT 16

ROOFING: BUFF/BROWN
MISSION TILES

FASCIA:
MAHOGANY

SIDING:
BUFF
CEM. PLASTER

LAVA ROCK
ACCENTS

22'

SOUTH ELEVATION 1/8" = 1'-0"

4.12.05

1 5 10 GRAPHIC SCALE

EXHIBIT 17

NORTH ELEVATION 1/8" = 1'-0"

4.12.05

1 5 10 GRAPHIC SCALE

EXHIBIT E

LINDA LINGLE
GOVERNOR OF HAWAII





PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

CDUP HA-3233
Acceptance Date: June 13, 2005
180-Day Exp. Date: December 10, 2005

Mr. Steven S.C. Lim
Carlsmith Ball LLP
121 Waianuenue Avenue
Hilo, Hawaii 96720

OCT 28 2005

Dear Mr. Lim:

SUBJECT: Conservation District Use Permit (CDUP) HA-3233

This is to inform you that on October 28, 2005, the Board of Land and Natural Resources approved your client's Conservation District Use Application (CDUA) for a one-story Single Family Residence as described in CDUA HA-3233 located at Keonepoko, Puna, island of Hawaii, TMK: (3) 1-5-009:040 subject to the following conditions:

1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;

2) The applicant, 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 or 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 applicant shall comply with all applicable Department of Health administrative rules;

4) The applicant shall remove the unauthorized tree house within 180 days of Board approval of CDUA HA-3233;

5) The single-family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;

6) All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit;

7) The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided

during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;

8) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

9) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his 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 applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

10) The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

11) The applicant will minimize visual impacts using appropriate lighting, house color and landscaping. Existing trees shall be maintained to screen the structure from the surrounding lands. No mature trees shall be removed without the approval of the Department;

12) No outdoor lighting shall be directed towards the sea;

13) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this 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/or the Department may, in addition, institute appropriate legal proceedings;

14) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;

15) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

16) Potable water supply and sanitation facilities shall have the approval of the appropriate agencies;

17) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;

18) The applicant 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;

19) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the aquatic environment, off-site roadways, utilities, and public facilities;

20) Cleared areas shall be re-vegetated within thirty days of the completion of construction as described in a landscaping plan on file with the Department;

21) Obstruction of public roads, trials, and pathways shall be minimized. If obstruction is unavoidable, the applicant shall provide roads, trails, or pathways acceptable to the department;

22) The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules, Title 13-5;

23) Other terms and conditions as may be prescribed by the Chairperson; and

24) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, please feel free to contact Tiger Mills at 587-0382.

Sincerely,

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

Applicant's Signature

Date 11-3-05

c: Chairperson
Hawaii District Land Office
County of Hawaii, Department of Planning

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 1533 to Kekoa) situate, lying and being at Keonopoko Iki, District of Puna, Island and County of Hawaii, State of Hawaii, being LOT 7, same being a subdivision of Lots 1 to 8, inclusive, and thus bounded and described:

Beginning at the southwest corner of this parcel of land at the southeast corner of Lot 6 and on the north side of the existing Government Beach Road (Kapoho-Maku), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPOHO" being 23,695.90 feet north and 17,322.18 feet west and running by azimuths measured clockwise from true South:

1.	201°	30'	30"	899.19	feet along Lot 6;
2.	302°	13'	40"	594.64	feet along sea shore;
3.	40°	15'	20"	349.15	feet along Lot 8;
4.	310°	15'	20"	110.71	feet along Lot 8;
5.	40°	15'	20"	427.54	feet along Lot 8;
6.	108°	48'		389.65	feet along existing Government Beach Road (Kapoho-Maku);
7.	112°	31'		50.30	feet along the same to the point of beginning and containing an area of 10.005 acres, more or less.

EXHIBIT B

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of Conservation District Use Permit Application Nos. HA-3981 and 3982; Applicants Opunaha, LLC (Ryan Pastorek) and Paul Pastorek, Tax Map Key Nos. (3) 1-5-010: 026 and 027, Puna, County and Island of Hawai'i	CDUA NOS. HA-3981 AND HA-3982 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following parties by hand-delivery at the address and on the date indicated below:

Dawn Chang
Chair
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, 1st Floor
Honolulu, Hawai'i 96813

Michael Cain
Administrator
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
1151 Punchbowl Street, 1st Floor
Honolulu, Hawai'i 96813

DATED: Honolulu, Hawai'i, November 21, 2025.

KATHERINE A. GARSON
PUANANIONAONA P. THOENE

Attorneys for Applicants
Opunaha, LLC (Ryan Pastorek) and Paul Pastorek

STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	**Date Received**
Board Action Date / Item No.	**Division/Office**

INSTRUCTIONS:

1. File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:

   Department of Land and Natural Resources
   Administrative Proceedings Office
   1151 Punchbowl Street, Room 130
   Honolulu, Hawaii 96813
   Phone: (808) 587-1496, Fax: (808) 587-0390

2. DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (http://dlnr.hawaii.gov/forms/contested-case-form/). Please review these rules before filing a petition.

3. If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.

4. Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a $100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

5. All materials, including this form, shall be submitted in **three (3)** photocopies.

A. PETITIONER (If there are multiple petitioners, use one form for each.)		
1. Name Opunaha, LLC (Ryan Pastorek)	**2. Contact Person** Ryan Pastorek	
3. Address 533 Fernwood Pacific Drive	**4. City** Topanga	**5. State and ZIP** CA 90290
6. Email ryanpastorek@gmail.com	**7. Phone** (310) 623-2312	**8. Fax**

B. ATTORNEY (if represented)		
9. Attorney Name Onaona P. Thoene and Katherine A .Garson	**10. Firm Name** Carlsmith Ball LLP	
11. Address 1001 Bishop Street, Suite 2100	**12. City** Honolulu	**13. State and ZIP** HI
14. Email pthoene@carlsmith.com &	**15. Phone** (808) 523-2500	**16. Fax** (808) 523-0842

kgarson@carlsmith.com		

C. SUBJECT MATTER

17. Board Action Being Contested
Action to deny Conservation District Use Permit Application ("CDUA") No. HA-3981 (the "Application").

18. Board Action Date	**19. Item No.**
November 14, 2025	K-1

20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case
Hawaii Revised Statutes ("HRS") §§ 183C-6, 183C-9
Hawaii Administrative Rules ("HAR") §§ 13-1-28, 13-1-31(b), 13-5-42
Constitution of the State Hawaii Article I, Section 5 (The rights of due process and equal proteciton of laws)

21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection
Petitioner is the owner of TMK No. (3) 5-1-010-026 (the "Property") and the applicant under CDUA HA-3981 to develop a single-family residence ("SFR") and related infrastructure. The Board's denial of the Application deprives Petitioner of his due process rights. Under HAR § 13-1-31(b)(2), all persons who have a property intrest in the land, or who lawfully reside on the land, "shall be admitted as parties[.]"

22. Any Disagreement Petitioner May Have with an Application before the Board

The Board's decision to deny the Application was arbitrary and capricious, an abuse of the Board's discretion, in excess of the Board's authority, and clearly erroneous in light of the evidence supporting the Application and information presented to the Board.

In denying the Application, the Board expressed two reasons: First, the Board adopted OCCL's unfounded characterization of the Property, and second, the Board stated that size of the proposed SFR was too large despite being below the 5,000 s.f. Maximum Developable Area ("MDA") in the HAR Title 13, Chapter 5 (the "Conservation District Rules") and similar in size to neighboring homes in the area. The Board's decision to deny the Application based on the perception that the proposed SFR was "too large" for the area was based on inaccurate statements by OCCL staff that neighboring homes in the area were in the 2,000 and 3,000 s.f. range.

I. The Board's Decision was Made Based on Incorrect Information.

At the November 14, 2025 meeting, the Board's stated reason for denying the Application was that the proposed home was too large for the area. Applicant's counsel noted that, just months prior (in March of 2025), the Board approved a second extension of time on a Conservation District Use Permit ("CDUP") for a home whose approved MDA was thought to be around 4,900 s.f. range. (Upon further research, the second extension of time for CDUP HA-3868 relates to an approved MDA of 4,695 s.f.) OCCL Administrator Michael Cain testified that OCCL had identified five (5) CDUPs that were issued for properties that are on both sides of Parcels 026 and 027, and are also located between the two large subdivisions (i.e., HPP and Hawaiian Beaches), and represented the square footage of the maximum developed area as: (a) 3,705 s.f.; (b) 3,013 s.f.; (c) 2,644 s.f.; (d) 3,847 s.f.; and (d) 3,868 s.f. Administrator Cain also stated that OCCL's position was that the dwelling units requested by the Applications were "significantly bigger" than the neighboring homes in the area. OCCL, however, did not provide that information in writing to the Board in the Staff Submittal. This information was the most significant, if not determinative, factor in the Board's decision to deny the Application. Chair Chang indicated that her decision not to approve the Application was based on "the size of the dwellings," that they were "not in alignment," and would

"change the character of the area."

Administrator Cain's statement was demonstrably incorrect. Administrator Cain read the permit numbers for the neighboring properties, not the approved square-footage developed area (or size) of the existing previously approved SFRs. The actual number of CDUPs for SFRs that the Applicant was able to locate between HPP and Hawaiian Beaches was double what Mr. Cain represented.

The SFR that Administrator Cain represented as having an approved developable area of 3,705 s.f. was CDUP HA-3705 approved for 4,322 s.f.; the permit that Administrator Cain identified as being 3,013 s.f. is actually CDUP HA-3013 & HA-3482 approved for 4,154 s.f.; and the permit represented as being 3,868 s.f. is actually CDUP HA-3868 approved for 4,695 s.f. Thus, the actual CDUPs that have been granted for homes along Government Beach Road are, in fact, similar in size to what the Applicant is proposing.

The Staff Recommendation and some Board members made statements that the general area in which the Property is located is "remote" and "rural". Denying the Application for this reason was arbitrary and capricious and made in error. As the Applicant pointed out in his written testimony and presentation to the Board, this characterization of the Property is not accurate. In reality, as recognized by the County of Hawai'i Planning Department in its recommendation to approve the Special Management Area permit for the SFR on the Property, "[t]he subject parcels are within an established residential community that [sic] both agricultural and residential uses, as well as the fully developed Hawaiian Paradies [sic] Park located north of the project site." (Emphasis added.)

II. The Board Did Not Have Sufficient Time to Consider the Application and Applicant Was Not Given Sufficient Time to Present the Application and Counter the Staff Recommendation.

As a foundational matter, the Board did not have sufficient time to consider the Application. Prior to the November 14, 2025 meeting, Applicant requested that the Board allow Applicant to make a presentation on the Application, particularly because the staff recommendation was to deny the permit. The Applicant was informed that his presentation would be limited to just five minutes. While the Applicant also submitted written testimony in support of the Application and to rebut the matters raised in the Staff Submittal, this is not a substitute for allowing Applicant to present its full case to the Board. A copy of the Applicant's November 12, 2025 written testimony is enclosed as Enclosure 1.

In September 2025, Applicant's' consultant was told by OCCL staff that the Application would likely be scheduled for decision making at the Board's October 24, 2025 meeting. This would have given Applicant the opportunity to initially present the Application to the Board at the October 24, 2025 meeting, and if necessary, address any concerns raised by the Board at the November 14, 2025 meeting. The only reason given to Applicant's consultant for not scheduling the Application at the October 24th meeting was that OCCL staff could not complete the submittal in time. Instead, OCCL put the Applicant in the untenable position of scheduling the Application at a Board meeting just 4 days before the automatic approval deadline and on a very packed agenda with other controversial items, thereby forcing the Board to rush through the limited materials provided by OCCL and vote to deny the permit, even if there were any unanswered questions on the project, to avoid an automatic approval. This also resulted in leaving Applicant with no choice but to request a contested case hearing.

When HRS § 183C-6 was amended in 2016 to allow for the extension of the 180-day review period of CDUAs by an additional 90 days in the case where environmental review or a contested

case proceeding was required, former Board member Christopher Yuen testified in favor of the measure and aptly noted that "[n]ormally, BLNR's staff has been very good at bringing such applications to the board for a decision at a meeting a month or two before the 180-day deadline." Mr. Yuen further noted that "[d]ecisions involving our conservation lands should be made on the merits, not because of an arbitrary deadline." Id.

While the Applicant is appreciative that the Board gave Applicant more than five minutes to present the Application, the time provided was not sufficient to counter OCCL's negative recommendation and the incorrect and incomplete information provided to the Board. This was a clear violation of Applicant's due process rights. Indisputably, Applicant was not given a meaningful opportunity to be heard or any opportunity to refute the incorrect information provided by OCCL. See Sandy Beach Defense Fund v. City Council of Honolulu, 70 Haw. 361, 377, 773 P.2d 250, 260-61 (1989) ("The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest."); Mauna Kea Anaina Hou v. Bd. of Land and Natural Res., 136 Hawai'i 376, 389, 363 P.3d 224, 237 (2015) (identifying two instances in which a property interest is considered sufficiently substantial to trigger due process protections, including "where an agency denies an applicant's proposed property use").

III. The Application Was Not Reviewed by the Board Prior to Denying It.

The Board's decision to deny the Application was arbitrary and capricious and made in error because the Board was not provided a copy of the Application as part of the Staff Submittal for Agenda Item K-1. This deprived the Board of any opportunity to review the actual Application it was rendering a decision on. Instead, the Board relied entirely on the analysis provided by OCCL staff, including the incorrect information that was apparently dispositive in the Board's decision to deny the Application. See Part I, supra; see also Mauna Kea Anaina Hou, 136 Hawai'i at 391, 363 P.3d at 239 (holding that the Board's process of ruling on the merits of a CDUA before the factual record was developed failed to satisfy the appearance of justice).

IV. The Application Complies with the SFR Standards in the Conservation District Rules.

There is no valid, defensible reason for denying the Application. The proposed SFR complies with the Conservation District Rules, is below the MDA of 5,000 s.f., and is similar in size and scale to other SFRs the Board has approved in the same area. See HAR § 13-5-41 and Exhibit 4 to the Conservation District Rules (providing that the MDA for lots larger than one (1) acre is 5,000 s.f.). Treating Applicant differently from similarly situated neighbors with approved CDUPs for their SFRs is arbitrary, capricious, and a violation of Applicants' due process rights. See DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC., 134 Hawai'i 187, 219, 20, 339 P.3d 685, 717-18 (2014) (discussing that the equal protection clauses of the United States and the Hawai'i Constitutions "mandate[] that all persons similarly situated shall be treated alike, both in privileges conferred and in the liabilities imposed" and recognizing an equal protection claim may be brought by a "class of one," "where the plaintiff alleges that [he/she] has ben intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment") (citations omitted).

The design standards contained in Exhibit 4 to the Conservation District Rules are intended to guide the Board and prevent the very kind of subjective and arbitrary decision-making that occurred at the November 14, 2025 meeting. The January 1991 Auditor report to the Hawai'i Legislature on the regulation of SFR construction in the Conservation District, serious concerns were raised that in the absence of specific standards, it would be hard for the Board to determine whether certain

residences were "compatible with the locality and surrounding areas" or violated the subjective condition that "natural beauty and open space be preserved". See Review of the Regulation of Residential Construction in the Conservation District, A report to the Governor and the Legislature of the State of Hawai'i, Report No. 91-1, January 1991 by the Auditor of the State of Hawai'i. Despite the adoption of detailed construction standards, those concerns provided true in the Board's denial of the Application.

HAR § 13-5-41(a) provides that SFR uses approved by the Board must comply with the SFR standards in Exhibit 4 to the Conservation District Rules:

> Single family residential uses approved by the board shall comply with the design standards contained in Exhibit 4, entitled "Single Family Residential Standards: August 12, 2011", located at the end of this chapter and made a part of this section, except as may be allowed by the board upon finding that prevailing conditions warrant the deviation from specific standards, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen percent.

(Emphases added.)

Exhibit 4 provides only one exception that allows for a reduction of the permissible MDAs: "Site characteristics and the degree of pre-existing site disturbance may be a further limiting factor in the calculation of maximum developable area when so determined by the board." (Emphases added.) Thus, by its own rules, the Board can only reduce the permissible MDA if it makes explicit determination that such a reduction is warranted based on "site characteristics" and "the degree of pre-existing site disturbance." The Board made no such determination that could justify its decision to deny the Application. Instead, the Board denied the Application based on: (a) certain members' subjective belief about what the right size of the SFR should be (without providing any guidance as to what that would be), and (b) the incorrect information provided by the OCCL Administrator on the sizes of the neighboring homes.

The Board's decision to deny the Application is a clear abuse of the Board's discretion. See Enclosure 2, a copy of the Motion for Reconsideration filed with the Board on November 21, 2025, which arguments and exhibits are incorporated herein by reference.

23. Any Relief Petitioner Seeks or Deems Itself Entitled to

1. Granting of this Petition for Contested Case Hearing to provide Applicant with the opportunity to address the Board's stated reasons for denying the Application;
2. Reversal of Board's November 14, 2025 decision to deny CDUA HA-3981 (or in the alternative, recission of the Board's November 14, 2025 decision it decision to deny the Application so that the Application would be automatically granted by operation of HRS § 183C-6(b), subject to the conditions agreed upon at the November 14, 2025 meeting between Applicants and OCCL; and
3. Approval of CDUA No. HA-3981.

24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

Petitioner's participation will serve the public interest because the contested case proceeding will identify issues with the Board's decision on Agenda Item K-1 and ensure that the Board makes decsions on Conservation District Use Permits on the merits and with correct information.

25. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

See Enclosure 2 - Motion for Reconsideration filed with the Board on November 21, 2025.

☒ Check this box if Petitioner is submitting supporting documents with this form.

☐ Check this box if Petitioner will submit additional supporting documents after filing this form.

Onaona P. Thoene	Onaona P. Thoene	November 24, 2025
Petitioner or Representative (Print Name)	Signature	Date

ENCLOSURE 1

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2100
1001 BISHOP STREET
HONOLULU, HAWAII 96813
TELEPHONE 808.523.2500 FAX 808.523.0842
WWW.CARLSMITH.COM

DIRECT DIAL NO. 808.523.2596 | PTHOENE@CARLSMITH.COM | OUR REFERENCE NO. 072076-1

November 12, 2025

Via email to blnr.testimony@hawaii.gov
Dawn Chang
Chair, Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, 1st Floor
Honolulu, Hawai‘i 96813

Re: BLNR Meeting November 14, 2025 - Testimony in Support of **Approving** Agenda Items K-1 (CDUA HA-3981) and K-2 (CDUA HA-3982)

Dear Chair Chang and Members of the Board of Land and Natural Resources ("**Board**"):

The Applicants, Mr. Ryan Pastorek, the sole member of Opunaha, LLC, and owner of Tax Map Key ("**TMK**") No. (3) 1-5-010: 026 ("**Parcel 026**") and Ryan's father, Mr. Paul Pastorek, owner of TMK No. (3) 1-5-010: 027 ("**Parcel 027**"), submit this testimony in support of **approving** the Conservation District Use Permit Applications ("**CDUAs**") that are the subject of Agenda Items K-1 and K-2.

The Applicants vehemently disagree with the Office of Conservation and Coastal Lands ("**OCCL**") staff's recommendation to deny CDUA Nos. HA-3981 and HA-3982 and the characterization of the actions requested by the respective Applicants, and respectfully request that the Board grant both CDUAs subject to the standard conditions in Hawai‘i Administrative Rules ("**HAR**") § 13-5-42.

A. Background

Ryan Pastorek has been interested in the area of Puna since 2012. From 2012-2019, he consistently visited the Big Island a few times per year and stayed in Kalapana or Hawaiian Paradise Park, primarily to photograph to the Kilauea lava flows. He fell in love with the Hawai‘i way of life and resolved to eventually move full time to Puna and immerse himself in the Hawai‘i culture. Ryan purchased the Properties in 2019 (Parcel 26 in March, and Parcel 27 in September) with the intent that Parcel 27 contain a single family residence for his parents.

Parcel 27 was subsequently transferred to his father, Paul Pastorek, who fell in love with Hawai‘i as well.

Ryan and Paul support the protection of nature and its flora and fauna and respect the natural environment. Ryan is an avid nature photographer and has traveled the world to capture its landscapes and wildlife. He is a national and state park enthusiast and an animal lover and contributes to the Sierra Club and World Wildlife Fund. Paul is a member of the Greater New Orleans Iris Society and has been instrumental in preserving and reviving nearly extinct native Louisiana iris. He owns a 55 acre rural property in Louisiana on which he has been clearing invasive species and planting native Louisiana plants (including long leaf pine and rare nelsonii iris) to rebuild Louisiana native swampland.

Ryan was integral to the development of the local neighborhood watch which includes Parcel 026 and Parcel 027, facilitated by former Hawai‘i County police officer Duane Waipa. Ryan has been and remains active in organizing and participating in Beach Road cleanup efforts, and he assists with numerous neighborhood projects. Despite not having a home on the island yet, Ryan has continued to invest in his life in Hawai‘i and travels to Beach Road at least five times per year and stays with his neighbors. He has built and continues to build a wonderful community of adopted ‘ohana all over Hawai‘i.

There are two separate CDUAs before the Board for consideration, each for a single-family residence ("**SFR**") on neighboring lots, Parcel 026 and Parcel 027 (together the "**Properties**") owned by a father and son who also wish to adjust the lot line between their lots through a consolidation and resubdivision action.

The Properties are located in the Puna District on the Island of Hawai‘i, and **are located between two large subdivisions**, Hawaiian Paradise Park ("**HPP**") which consist of approximately 8,800 lots and a population nearing 15,000,[1] and which is one of the largest subdivisions in Hawai‘i, and Hawaiian Beaches, which consists of approximately 1,300 lots. The Properties are approximately one mile from the HPP subdivision, and two miles from the Hawaiian Beaches subdivision, and are located makai of Government Beach Road which runs between the two subdivisions. While this area may be considered "remote", "rural" and "rugged" to some from more populated islands, Puna is one of the fastest growing areas in State. This area is considered to be a well-established residential area. Thousands of people live in the area and the dwelling types and styles are varied.

There are improved lots with residences on either side of the Properties - also in the State Land Use Conservation District - pursuant to their own Conservation District Use Permits ("**CDUPs**"). For example, on March 14, 2025, the Board granted a second extension of time to build a single family residence on TMK No. (3) 1-5-010:009 (2 lots north of Parcel 026) (Item K-1 of the March 14, 2025 BLNR Agenda), and on September 12, 2025, the Board heard and granted a third request for an extension of time to build a single family residence on TMK No.

[1] COUNTY OF HAWAI‘I RESEARCH AND DEVELOPMENT, *Census Community Profiles, available at* https://www.rd.hawaiicounty.gov/data-information/community-profiles (last visited Nov. 10, 2025).

(3) 1-5-010:031 (4 lots south of Parcel 027) (Item K-1 of the September 12, 2025 BLNR Agenda).

A Final Environmental Assessment and Finding of No Significant Impact Determination ("**FEA/FONSI**") was published in the March 8, 2024 edition of *The Environmental Notice*.[2] The FEA/FONSI analyzed the environmental impacts of the development of both proposed SFRs and the corresponding consolidation/resubdivision. FEA/FONSI § 2.1. The FEA/FONSI also explored the alternative of developing a single SFR on either Parcel 26 or Parcel 027.

The Properties are within the Resource subzone, and pursuant to HAR § 13-5-24 (R-7), a SFR that conforms to design standards as outlined in the HAR Title 13, Chapter 5 (the "**Conservation District Rules**") is permitted with a Board permit. The fact that CDUPs are being requested on neighboring lots does not turn these projects into an "estate" (as the Staff Recommendation opines). First, there is no prohibition in any Conservation District law, rule or regulation (or any other law, rule or regulation) on building single family residences on adjoining lots or living next door to your parents. In Hawai‘i, it is common to live near or next to ‘ohana. Second, the intent is that both residences are built at the same time to significantly reduce costs, take advantage of the same contractors to hopefully cut down on delays, and to reduce impacts (such as noise) to neighboring properties that would be caused by two separate construction periods.

The Staff Recommendation for CDUA: HA-3981 (Item K-1) and CDUA: HA-3982 (Item K-2) is disappointing in its characterization of the projects and seeming lack of understanding of the Puna area. It is the Applicants' opinion that the Staff Recommendation neglects to emphasize certain factual and important information, so the Applicants offer this testimony.

For the reasons discussed herein, as supported by the CDUAs and FEA/FONSI, the Board should find that the criteria established in HAR § 13-5-30(c) have been met, and CDUAs: HA-3981 and HA-3982 should be issued.

B. <u>The CDUAs Satisfy the Criteria Established in HAR § 13-5-30(c)</u>.

1. The proposed use is consistent with the purpose of the Conservation District (HAR § 13-5-30(c)(1)).

The purpose 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," of the area. HRS § 183C-1.

[2] The FEA/FONSI is available on the Environmental Law Program's website at https://files.hawaii.gov/dbedt/erp/Doc_Library/2024-03-08-HA-FEA-Pastorek-Single-Family-Residences-in-Makuu,-Puna.pdf.

The Staff Recommendation agrees that the proposed uses, residential development, small-scale agriculture, removal of invasive species, and landscaping, are identified permitted uses within the Resource Subzone, yet objects to "the overall intensity and scope of the proposed actions". See page 15 of the Staff Recommendation for CDUA HA-3981, and page 17 of the Staff Recommendation for CDUA HA-3982. The Staff Recommendation indicates that the proposed uses will "contribute to the incremental loss of open space, visual integrity, and natural coastal character, along this portion of the Puna and Popoki coastlines, and are therefore inconsistent with the purpose of the Conservation District to conserve, protect, and preserve the State's natural and cultural resources[.]"

The Staff Recommendation seems to object to development of any residences on the Properties since they are now structure free, referring to the Properties as pristine pastures. However, the Properties are between two large subdivisions, resulting in the immediate area (much of it within the Conservation District) being used as a dumping ground for cars, mattresses, trash bags, furniture, dishwashers, etc. *See* Exhibit A. On the contrary, having people living on the Properties, planting native plants and managing landscaping, and being present to keep away illegal dumping helps the existing natural resources and protects the visual integrity of the Conservation District. In addition, the Applicants modified the proposed landscape plans in response to OCCL staff comments. For example, the number of trees have been significantly reduced, and tree specifics, including sizes and locations, have changed. *See* FEA/FONSI at 99, and *compare with* Figure 3 of the CDUA at 14-15.

As noted in the FEA/FONSI, while minor and temporary impacts may occur during construction, no long-term or significant adverse impacts are expected. The proposed SFRs are designed to conform to the SFR standards in Exhibit 4 to the Conservation District Rules, with the SFR (and related improvements) on Parcel 26 being approximately 4,738 s.f. (4,010 s.f. home under roof) and the SFR (and related improvements) on Parcel 27 being approximately 4,984 s.f. (2,750 s.f. under roof) There are existing SFRs on both sides of the Properties (TMK Nos. (3) 1-5-010: 025 and 028). Note also that the purpose of the consolidation and resubdivision is to plant more native plants (which will hopefully bring back native birds), have less impact on scenic views, and less noise impacts to the neighboring residences, amongst other matters.

Both Ryan and Paul have spent time on the Properties and have focused on the upkeep, maintenance and preservation of the Properties, always trying to do right by the land. Ryan has organized and participated in efforts to clean and fix the roadway fronting the Properties, building deep relationships with the neighbors, and helping to develop the community neighborhood watch. Ryan and Paul are pushing forward in their efforts to be good stewards of the land and hope to revitalize native species there.

The families that occupy the residences on both sides of the Properties **support** the proposals for the SFRs and are excited to have the Pastoreks as neighbors. *See* pages 13-14 of Staff Recommendation for CDUA HA-3981 and pages 14-15 of Staff Recommendation for CDUA HA-3982.

There is nothing in the record to support a finding that the permitted building of the SFRs would disrupt the "visual integrity" or "natural coastal character" of the area. While there will be an incremental loss of open space due to the development of the SFRs, as discussed in more detail below, the SFRs will conform to the required standards set forth in the Conservation District Rules and are in keeping with the character of the existing SFRs on either side of the Properties, and the large subdivisions within the surrounding area. The plans specifically situate the structures on the Properties to maintain visual viewpoints to the ocean from the roadway, which was done in concert with the neighbors. Furthermore, approximately 483 acres of the Department of Hawaiian Home Lands ("**DHHL**") parcel mauka of Government Beach Road, designated as Makuʻu Makai in DHHL's 2025 Makuʻu Regional Plan, is slated for kuleana homestead lots "where beneficiaries can lease un-improved, off-grid homestead lots[.]" Thus, more residential development is planned for this area and the SFRs proposed here will not be out of place.

Additionally, as reinforced by the letters of support provided by neighboring community members mentioned above, development of the SFRs on the Properties will positively support public health, safety, and welfare in the area through an increased presence on and ongoing stewardship of the Properties.

Water Source for the Properties. In support of its negative recommendation on the CDUAs and concern regarding long term viability and impacts on groundwater and coastal resources, the Staff Recommendation raises on multiple occasions the absence of a confirmed sustainable water source for the SFRs. While a well is being proposed, if the well does not produce adequate water or a well drilling permit is not issued, the Applicants are proposing, as an alternative source, a rainwater catchment system (one for each of Parcel 026 and Parcel 027). *See* CDUA HA-3981 at 17; CDUA HA-3982 at 16. Rainwater catchment systems are the primary water source for residences in Puna and many other areas throughout the Island of Hawaiʻi. The County of Hawaiʻi ("**County**") generally allows water catchment systems where a County system is not available[3] and there is sufficient rainfall.[4] The Staff Recommendation states that the area has historically received approximately 120 to 200 inches of rain per year. *See* Staff Recommendation at 2. This is almost 10 times the annual rainfall in Honolulu, and more than double what the County typically requires for a catchment system. For these reasons, the concerns regarding a water source and water waste (related to the proposed pool and hot tub) are exaggerated and misplaced. The proposed SFRs have two possible water sources.

2. The proposed land use is consistent with the objectives of the Resource Subzone (HAR § 13-5-30(c)(2)).

The purpose of the Resource Subzone is "to ensure, ***with proper management***, the sustainable ***use*** of the natural resources" of the area. HAR § 13-5-13(a) (emphases added). The

[3] The County also allows rain water catchment systems for accessory dwelling units even where served by a public or private water system. *See* Hawaiʻi County Code § 25-6-30.

[4] The County has determined that a minimum of 60 inches of rainfall annually is sufficient to grant a variance from County water system requirements. Hawaiʻi County Planning Department Rule 22-4.

purpose of the Resource Subzone is not to prohibit any use that *may* have an adverse impact on natural resources.

The Staff Recommendation opines that the proposed uses "are not appropriate for this rural and rugged shoreline setting and would require ongoing resource input, maintenance and management" and are therefore inconsistent with the objectives of the Resource Subzone, however, no specific resources are identified. As noted above, however, SFRs are appropriate and allowed in the Resource Subzone with a Board permit. HAR § 13-5-24. The Applicants are committed to ongoing stewardship of the Properties.

The proposed SFRs under the CDUAs here allow for the sustainable use of the Conservation District resources in the area through development of SFRs that will conform with the standards and parameters of the Conservation District Rules. Development of the SFRs will also implement landscaping with more native species to replace the existing invasives. In the construction of the SFRs, the Applicants plan to use local and sustainably sourced materials as much as possible, including local hardwoods and stone. Each SFR would be equipped with solar power and battery systems to increase energy independence and reduce demand on the power grid.

Furthermore, there are very large developments within one to two miles of either side of these Properties, along with SFRs on at least 4 of the immediately adjacent properties, all with the same "rural and rugged shoreline" that is characteristic of the Puna area. As noted previously, allowing people to live on and steward these Properties actually helps to maintain the area by curbing illegal dumping and crime.

As discussed above, the Applicants have already been active in stewarding the Properties and the area through Government Beach Road clean ups and clearing of illegal dumping, increasing security via neighborhood watch, and fostering relationships with the community. Development of the SFRs is also expected to increase the native plantings on the Properties as the existing invasive vegetation is replaced over time.

The CDUAs therefore satisfy the second criterion of HAR § 13-5-30(c).

3. The proposed land use complies with the provisions and guidelines contained in HRS Chapter 205A (Coastal Zone Management), where applicable (HAR § 13-5-30(c)(3)).

As discussed in detail on pages 52-56 of CDUA HA-3981 and pages 51-55 of CDUA HA-3982, the proposed SFRs are supportive of the Coastal Zone Management policies, objectives and guidelines, as well as the State Planning Act (HRS Chapter 226). In particular, development of the SFRs will allow for a more regular presence on the Properties and will preserve clean, scenic views. In addition, development of the proposed SFRs would provide temporary employment for local construction workers and would support the local economy through the contracting of local labor and purchasing of local materials (where available).

Overall, the project would stimulate and support the general economic stability and development of Hawai‘i Island and more specifically the Maku‘u community.

The Staff Recommendation seems concerned that siting a home on a shoreline parcel does not reduce coastal hazards and that the SFRs will "introduce urban residential uses that may negatively impact a relatively open coastal view area." Staff Recommendation at 17 (CDUA HA-3981); Staff Recommendation at 18 (CDUA HA-3982). The Applicants respectfully disagree with the Staff Recommendation. As discussed above, there are already urban residential uses immediately to the north and south of the Properties along the shoreline, with more intense urban residential uses within 1 to 2 miles in either direction of the Properties (i.e., the HPP and Hawaiian Beaches subdivisions). The County Planning Department in its recommendation to approve the Special Management Area ("**SMA**") permit for the SFRs on Parcels 026 and 027 indicated that "[t]he subject parcels are within an ***established*** residential community that [sic] both agricultural and residential uses, as well as the fully developed Hawaiian Paradies [sic] Park located north of the project site."[5] Further urban residential uses are planned for approximately 483 acres of the DHHL parcel that is directly mauka of Government Beach Road across the street from the Properties, designated as Maku‘u Makai in DHHL's 2025 Maku‘u Regional Plan, which is slated for kuleana homestead lots. Thus, more residential development is planned for this area and the SFRs proposed here will not be out of place.

According to the Staff Recommendation, the purpose of the CZM program is to direct development away from the shoreline and "hazardous areas". The FEA/FONSI contained a coastal erosion study, and analyzed sea level rise, and found that although wave action could contribute to more coastal erosion over time, any significant impact will occur outside of the expected lifespan of the homes (40 - 70 years) and well outside of the development area, which is set back no less than 130 feet from the shoreline. *See* FEA/FONSI at 67; CDUA HA-3981 at 37 (Figure 16 3.2 Foot Sea Level Rise Exposure Map); CDUA HA-3982 at 36 (Figure 15).

To mitigate the impacts from the proposed SFRs, the proposed structures will be setback a minimum of 130 feet from the certified shoreline - more than double what the rules promulgated by this Board require based on the average annual erosion rate for the Properties. *See* page 54 of the CDUA for Parcel 026, and page 53 of the CDUA for Parcel 027.

The Staff Recommendation also criticizes "large dwellings" with "luxury accessory structures," as being inconsistent with the objective and polices of the HRS Chapter 205A. There is no cost ceiling on materials used for structures in the CZM area. The proposed SFRs and accessory structures are within the guidelines and rules propounded by this Board. There is no prohibition against furo baths or any other perceived "urban" or "luxury" amenities in the Conservation district. The Applicants appreciate staff's concern regarding the availability of water in the area for certain accessory uses and understand that if sufficient water is not available, some or all of the accessory uses may not ultimately be developed or used on a regular

[5] County Planning Department Recommendation - Ryan & Paul Pastorek Special Management Area Use Permit Application (PL-SMA-2024-000055) at 4 (May 2024), *available at* https://records.hawaiicounty.gov/weblink/1/doc/135597/Page1.aspx (emphasis added).

basis. The comparison to the moratorium on pools on Maui is, however, misplaced. The water availability (including natural rainwater) and climate conditions for the Properties, which OCCL staff indicates averages 120 to 200 inches of rain per year and are located on the windward side of the island, are very different from the dry, leeward side of Maui that averages 13.54 inches of rain per year.

On June 6, 2024, the County Windward Planning Commission approved a Special Management Area ("**SMA**") permit for the proposed SFRs (the "**SMA Permit**"). *See* Exhibit E to CDUA for Parcel 026 and Exhibit E to CDUA for Parcel 027. In determining whether to issue a SMA permit, the County must also assess whether a project complies with the HRS Chapter 205A guidelines, which the County did here. The SMA Permit was approved subject to 15 conditions of approval, most of which will directly address and/or ensure that coastal resources are protected. For example, the SMA Permit prohibits the construction of any wood, metal, or rope ladder, platform, steps, concrete pads, or other constructed appurtenances from the top of the pali (sea cliff) to access the ocean along the entire length of the shoreline of each parcel. This condition addresses both shoreline erosion concerns and public health, safety, and welfare concerns raised by OCCL staff. Accordingly, the County has analyzed and determined that the proposed SFRs are consistent with the HRS Chapter 205A policies and guidelines.

The Applicants understand that OCCL staff also have concerns with some of the vegetation proposed as part of the landscaping for the Properties. The Applicants are willing to work with OCCL to identify vegetation that would be appropriate for the Properties through the site plan approval process.

4. The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community or region (HAR § 13-5-30(c)(4)).

The Conservation District Rules define "natural resource" as "resources such as plants, aquatic life and wildlife, cultural, historic, recreational, geologic, and archeological sites, scenic areas, ecologically significant areas, watersheds, and minerals." The Staff Recommendation does not show that the proposed SFRs would have a substantial adverse impact to existing natural resources in the area, community, or region, but instead takes the position that because staff cannot "conclusively agree that the proposed land uses will not cause substantial adverse" impacts, the CDUAs do not satisfy this criterion. Staff Recommendation at 18 (CDUA Parcel 026); Staff Recommendation at 19 (CDUA Parcel 027).

OCCL staff indicated that they find "that the project raises concerns regarding its long term compatibility with the surrounding natural and visual environment." *Id.* Yet, it does not provide any detail about what specific concerns it has with long term compatibility. Again, these proposed SFRs are between 2 other existing residences - the owners of which submitted letters of support for the proposed projects. One of those residences was built more than twenty years ago, and there seems to be no issues with the surrounding natural and visual environment. Having people living on these properties, planting native plants, and being present, helps the existing natural resources, surrounding area and community.

The Staff Recommendation also inexplicably states in recommendation "d" that "*The proposed uses are likely to result in substantial adverse impacts to existing natural resources and the surrounding coastal environmental, given the site's proximity to the shoreline, porous geology, and well-drained soils, and exposure to multiple natural hazards*" even though OCCL staff admitted that they could not "conclusively agree that the proposed land uses will not" or conversely will, "cause substantial adverse" impacts. *See* Staff Recommendation at 17, 28 (CDUA HA-3981); Staff Recommendation at 19 (CDUA HA-3982). As discussed in detail in Section 4.2 of the FEA/FONSI and Section III(4) of the CDUAs, the proposed SFRs are not anticipated to result in significant adverse impacts to natural resources in the Conservation District.

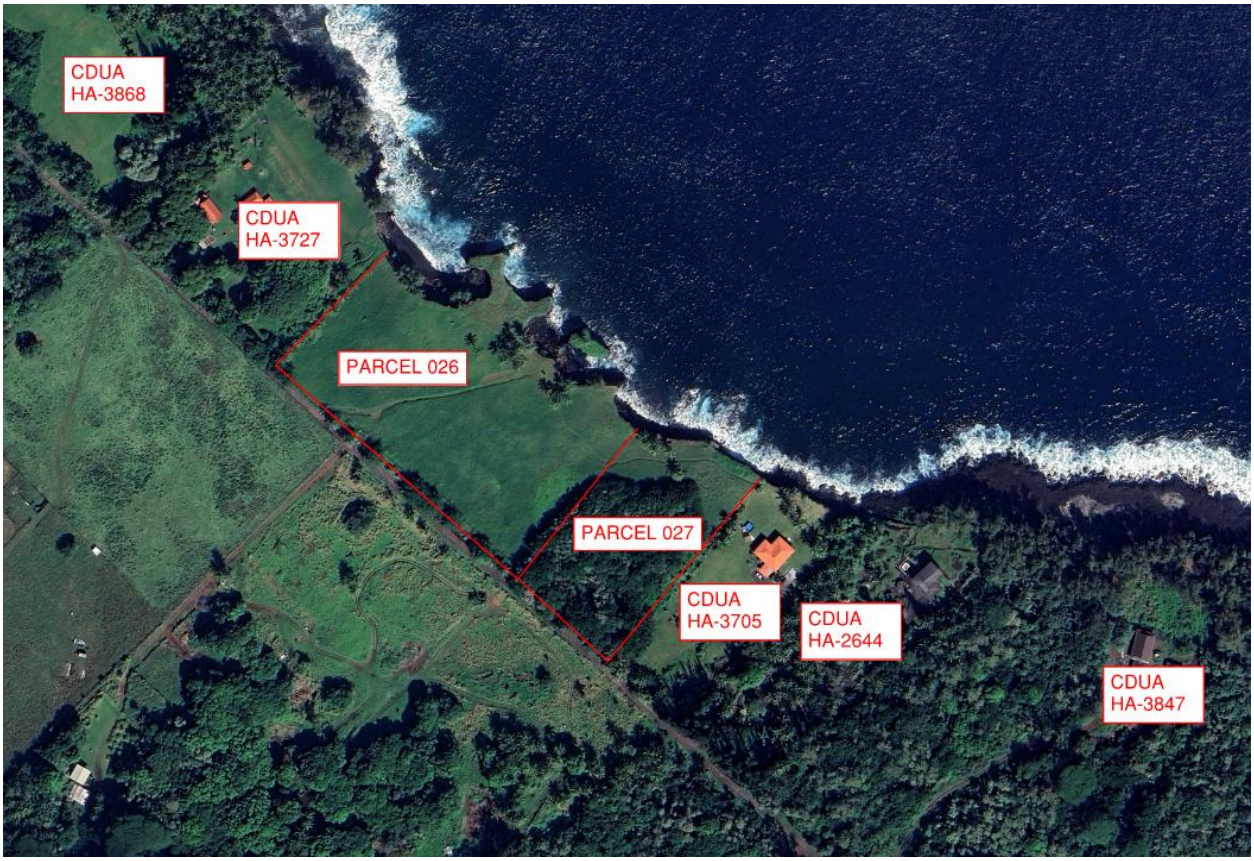
Furthermore, the FEA/FONSI found any impacts could be mitigated through proposed measures and conditions incorporated into the Conservation District Use Permits (e.g., the 130 foot setback, landscaping plans, preserving existing vegetation on Parcel 027 by consolidating and resubdividing the lots to move the lot line between Parcel 026 and 027, and orienting the SFRs to maximize natural light and ventilation to conserve energy, etc.). See Exhibit B for a description of proposed mitigation measures. It does not appear that the Staff Recommendations considered the proposed mitigation measures for the project, but the Board should take them into account when considering whether the CDUAs satisfy the HAR § 13-5-30(c) criteria. *See* In *Matter of Conservation District Use Permit Application HA-3568*, 143 Hawai‘i 379, 404-05, 431 P.3d 752, 777-78 (2018) ("***Matter of CDUA***") (holding that the Board properly considered measures designed to address environmental impacts generated by the proposed project in approving a CDUA).

5. **The proposed land use is compatible and consistent with the character of the existing area and appropriate to the physical conditions of the Properties (HAR § 13-5-30(c)(5)).**

The fifth criterion set forth in HAR § 13-5-30(c)(5) requires that the proposed 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 Staff Recommendation states that the proposes uses "have the potential to change the character of the existing surrounding community of modest rural dwellings and open coastal space to a multi-residential large estate, and therefore are not consistent with the locality, surrounding areas, and purpose of the Conservation District." Staff Recommendation at 18 (CDUA Parcel 026); Staff Recommendation at 29 (CDUA Parcel 027). Staff also describes the general area as "undeveloped and isolated". *Id.* As discussed, the Applicants disagree with staff's characterization of the general area. While these specific parcels and some areas mauka may be described in that manner, the Properties are located between two very large subdivisions and there are existing residences on either side of the Properties, as shown below and Exhibits 1 and 3 to the Staff Recommendations. Those areas should be included in considering whether the proposed SFRs are compatible and consistent with the existing area. *See Matter of CDUA*, 143

Hawai‘i at 405-06, 431 P.3d at 778-79 (finding that there "must be a sound and rational basis for defining the relevant locale").



The photograph above is a satellite image of the Properties and neighboring lots on either side taken from Google Maps with the associated CDUPs noted on the neighboring parcels. Below are a satellite image from Google Maps and County GIS map showing some of the residences in Hawaiian Paradise Park, approximately one mile away from the Properties:





As demonstrated by the area maps, the area is surrounded by a variety of rural and urban dwellings, some modest, some not. As such, the proposed SFRs are certainly consistent with the surrounding area both in design and function - as single family residences. Again, these dwellings are designed in accordance with the Conservation District Rules for single family residences.

6. The existing physical and environmental aspects of the land will be preserved or improved upon (HAR § 13-5-30(c)(6)).

The Applicants acknowledge that there will be some visual impacts by the addition of the SFRs on the now-vacant properties, however, the proposed design and siting of the SFRs, and landscaping are intended to preserve as much of the existing environmental aspects of the Properties. Again, the plans specifically situate the structures on the Properties to maintain visual viewpoints to the ocean from the roadway, which was done in consultation with the neighbors. If the proposed consolidation and resubdivision is not approved, the only realistic opportunity for Mr. Paul Pastorek to develop a SFR on Parcel 027 would result in greater environmental impacts than what is being proposed now because he would be required to remove

much more (approximately 50%) of the existing vegetation on that parcel, which in turn would not be planted with native vegetation. In contrast, the consolidation and resubdivsion will preserve nearly all of that existing vegetation in the short term, which will eventually be revitalized to the extent possible to include native species in accordance with Paul Pastorek's plans and allow for greater view and air corridors between the SFR on Parcel 027 and the existing residence on Parcel 028.

Development of the SFRs will ultimately improve stewardship of the Properties by having a regular presence on the Properties. As detailed above, Ryan and Paul have cleared areas of Conservation District property and the roadway of prior illegally dumped materials and they continue to maintain the Properties. *See Matter of CDUA*, 143 Hawai‘i at 406, 431 P.3d at 779 (affirming the Board's decision to consider other measures, such as the removal of prior structures, to satisfy this criterion).

The Staff Recommendation mentions a few other reasons why this criterion has not been met, in staff's opinion, including concerns with proposed landscaping that may reduce the existing open space characteristics, particularly for landscaping planted along Government Beach Road. As mentioned previously, the Applicants have already worked with their neighbors to address this, and they are willing to work with OCCL to adjust landscaping plans through the site plan approval process.

Staff also identify natural hazards, such as the conditions of the existing shoreline, trade winds, seismic activity, and potential for vog in the area as reasons why the existing physical characteristics of the Properties will not seemingly be preserved or improved upon, stating that: "*The subject property and project area are exposed to multiple overlapping natural hazards - including land subsidence, tsunami, storms, seal level rise, seismic and volcanic activity - that pose substantial risks to the proposed improvements and to life, property, and the environmen*t." Staff Recommendation at 25-28 (CDUA HA-3981); Staff Recommendation at 26-29 (CDUA HA 3982). It is noted that these common characteristics of Hawai‘i island are what they are - but they do not support a finding that the proposed CDUAs do not meet this criterion. Natural hazards are the natural condition and way of life on Hawai‘i island and Applicants have no control over these natural conditions. If proposed projects were denied because of the potential for tsunami, seismic, and volcanic activity, there would be few housing options in Hawai‘i and certainly further housing shortages in this State.

As described in Sections 3.1 and 3.2 of the FEA/FONSI and Section III (3) of the CDUAs, the proposed SFRs are not anticipated to exacerbate environmental impacts resulting from natural hazards.

7. Subdivision of land is not being utilized to increase the intensity of land uses in the Conservation District (HAR § 13-5-30(c)(7)).

The Applicants take issue with staff's statement that the proposed consolidation and resubdivision is "irrelevant" because the Applicants "*will treat the property or properties as an approximately 10.45-acres multi-dwelling estate irrespective of property boundaries. In this*

regard, staff finds that the proposed consolidation and re-subdivision and the proposed uses to construct two large residential dwellings and accessory uses or structures in close proximity will increase density and the intensity of land uses in the Conservation District." Staff Recommendation at 21 (CDUA HA-3981); Staff Recommendation at 21 (CDUA HA-3982). This statement directly contradicts staff's factual statement 3 paragraphs prior that the Applicants could proceed with building SFRs of the same size on the existing parcels *without* consolidating and resubdividing. As detailed above, the primary reason for requesting the consolidation and resubdivision is to avoid greater environmental impacts that are anticipated if the consolidation and resubdivision is not approved.

Parcels 026 and 027 are two separate existing legal lots of record. The Staff Recommendation acknowledges that the parcels are, without the consolidation and resubdivision, each of sufficient size to allow for a CDUA to construct an SFR of the same size proposed by the CDUAs (5,000 s.f. or less). Staff Recommendation at 19-20 (CDUA Parcel 026); Staff Recommendation at 20 (CDUA Parcel 027). Therefore, the proposed CDUAs to consolidate and resubdivide and develop the SFRs will not increase the intensity of land uses in the Conservation District.

As discussed in more detail in Section 2.1.1 of the FEA/FONSI and Section I, pages 7-8 of CDUA HA-3982 (Parcel 027), the proposed consolidation and resubdivision is expected to result in less adverse impacts than proceeding with an SFR without the consolidation and resubdivision because it will allow for siting the home on Parcel 027 in an area that would require less site work (i.e., clearing of existing vegetation and grading). Additionally, the proposed project allows for more natural/open space and less density between the proposed SFR on Parcel 027 and the existing residence on Parcel 028.

8. The proposed land use will not be materially detrimental to the public health, safety and welfare (HAR § 13-5-30(c)(8)).

The proposed SFRs will not be materially detrimental to the public health, safety, and welfare. The Staff Recommendation posits that the proposed SFRs will create unacceptable risks for residents, the surrounding community, and emergency responders due to the remote location which lacks public infrastructure, limited emergency services, and reliably maintained access, but does not identify what those risks might be. The Applicants acknowledge and understand the inherent risks with living on the Properties. The Applicants are aware that Fedex and UPS deliver to homes along Government Beach Road and they have regularly observed the presence of fire trucks (the HPP fire station is located approximately 5 miles away), rescue crews, and police patrols in the area. The County Department of Public Works grades Government Beach road at least twice a year. Some of the Applicants' neighbors are also in the kupuna age range so it would be helpful to have the Applicants around to offer assistance.

As detailed previously, the Properties are between and in relatively close proximity to two large subdivisions. It is anticipated that having regular residents on the Properties will, as it already has, keep the area, including the Government Beach Road, clean and maintained which would help the community in the event of a natural disaster.

C. Other Points Raised in the Staff Recommendation

It is noted that the "art studio" space referenced in the Staff Recommendation is intended to be a multiuse space for non-commercial photography work, woodworking, pottery, and planting. Most of the time it will likely function as storage (e.g., for the lawnmower).

Although the Properties are not currently serviced with electrical power, HELCO has lines servicing Government Beach Road and all of the neighbors are hooked up to HELCO's grid. There is at least one electric pole fronting the Properties. (The County Planning Department's Background Report on the Applicants' SMA permit notes that there is an electrical easement along Government Beach Road covering 12 parcels, including the Properties.) Telephone and cable services are also available to the Properties. The Applicants anticipate that they will likewise be able to obtain HELCO and other services for the Properties, along with solar panels.

D. Conclusion

The Applicants appreciate the opportunity to submit this testimony in support of approving the CDUAs that are Agenda Items K-1 and K-2 and request that the Board approve CDUA HA-3981 and CDUA HA-3982 subject to the standard conditions set forth in HAR § 13-5-42. Applicant is also agreeable to the conditions suggested by the Staff Recommendation on pages 8, 21, and 23 that would prevent future shoreline hardening, prohibiting the use of the SFRs as transient vacation rentals, or impeding lateral shoreline access.

Sincerely,



Onaona P. Thoene

EXHIBIT A
Photographs of illegal dumping fronting the Properties along Government Beach Road









EXHIBIT B

	Mitigation Measures
Erosion and Coastal Hazards	- 130 ft + setback exceeds the recommendation of the coastal erosion study. - Building sites outside of areas affected by most coastal hazards/sea level rise area. - No work, activities, storage, or staging of materials will occur within the minimum shoreline setback, including fencing, animal husbandry, or minor construction. - Proposed condition to restrict future shoreline hardening/ require movement or dismantling of the house if threatened by hazards. - Construction would comply with all provisions of Hawai‘i County Building Code including wind and seismic resilience criteria. - The residences will not be impacted by storm surge based on the elevation and distance from the shoreline. - The proposed development will not contribute to further erosion of the shoreline and is not expected to be impacted significantly by erosion events during the lifespan of the residences.
Flora and Fauna	- Minimal ground disturbance is proposed. - Mitigations for the prevention of ROD and Coconut beetles will be implemented. - Best Management Practices created by the University of Hawai‘i-Manoa, College of Tropical Agriculture and Human Resource’s Best Management Practices to Manage Non-Point Pollution in Agriculture will be used for landscaping practices - Replanting will be appropriate to the site location and will utilize flora designated as “Pono Plants.” - Mitigation measures to prevent impacts to endangered birds will be implemented. - Project construction will adhere to Hawai‘i County Code Chapter 14-50 to minimize the potential for disorientation of seabirds. - Any clearing could be timed to avoid impacts to native Hawaiian Hawks and Hoary Bats according to DOFAW recommendations.
Land Clearing	- Consolidation and resubdivision allows the preservation of forest area on Parcel 27, reduces grading area by 2-acres - Buildings sited with consideration of previously cleared land - County Grading and Grubbing regulations will be followed, and a list of Best Management Practices will be established to properly manage storm water runoff.
Noise, Air Quality, and Scenic Resources	- All County noise restriction guidelines will be followed. - The project will take reasonable measures to control airborne, visible fugitive dust from roadways as outlined in the Department of Health’s Clean Air Branch Standard Comments for Land Use Reviews.

	- Landscaping has been planned to minimize potential impacts to scenic resources, ocean views from Government Beach Road, and the natural flow of the tradewinds. - A landscaping schedule will be followed to ensure conformity with HAR Chapter 13-5 guidelines
Hazardous Substances, Toxic Waste, and Hazardous Conditions	- Construction activities with the potential to produce polluted runoff will be limited to periods of low rainfall. - During construction, emergency spill treatment, storage, and disposal of all hazardous materials, will be explicitly required to meet all State and County requirements, and the contractor will adhere to "Good Housekeeping" for all appropriate substances. - Unused materials and excess fill (if any) will be properly disposed of at an authorized waste disposal site.
Public Shoreline Access	- Given the likely presence of the historic trail on property, lateral access will be allowed. - SMA Condition 4 requires that the Applicants shall not construct any wood, metal, or rope ladder, platform, steps, concrete pads, or other constructed appurtenances from the top of the pali to access the ocean along the entire length of shoreline of each parcel.
Roads and Access	- Government Beach Road will be accessible to local traffic and will never be blocked by machinery.
Water Resources	- Rainwater catchment proposed as backup to well if the water source is inadequate or well permit is not granted. - Historic rainfall in the area is over double the required amount for catchment allowance per County guidelines. Even in dryer years, the area has sufficient rainfall to support catchment systems. - If sufficient water is not available, some or all of the accessory uses may not ultimately be developed or used on a regular basis.

ENCLOSURE 2

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DEPT OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

CARLSMITH BALL LLP

KATHERINE A. GARSON 5748
PUANANIONAONA P. THOENE 10005
121 Waianuenue Avenue
P.O. Box 686
Hilo, HI 96721-0686
Tel No. 808.935.6644
Fax No. 808.935.7975
kgarson@carlsmith.com
pthoene@carlsmith.com

Attorneys for Applicants
OPUNAHA, LLC (RYAN PASTOREK) AND PAUL PASTOREK

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of Conservation District Use Permit Application Nos. HA-3981 and 3982; Applicants Opunaha, LLC (Ryan Pastorek) and Paul Pastorek, Tax Map Key Nos. (3) 1-5-010: 026 and 027, Puna, County and Island of Hawai'i	CDUA NOS. HA-3981 AND HA-3982 MOTION FOR RECONSIDERATION OR RECISSION OF THE BOARD OF LAND AND NATURAL RESOURCES' NOVEMBER 14, 2025 DECISIONS ON AGENDA ITEMS K-1 AND K-2; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF COUNSEL; EXHIBITS "A" - "E"; CERTIFICATE OF SERVICE

MOTION FOR RECONSIDERATION OR RECISSION OF THE BOARD OF LAND AND NATURAL RESOURCES' NOVEMBER 14, 2025 DECISIONS ON AGENDA ITEMS K-1 AND K-2

Applicants OPUNAHA, LLC (RYAN PASTOREK) and PAUL PASTOREK (collectively, "**Applicants**"), through its undersigned counsel, respectfully moves the Board of Land and Natural Resources of the State of Hawai'i ("**Board**") to reconsider or rescind its decisions taken at its November 14, 2025 meeting to deny Conservation District Use Permit Application Nos. HA-3981 (Agenda Item K-1) and HA-3982 (Agenda Item K-2). This Motion

for Reconsideration ("**Motion**") is made pursuant to Hawai'i Administrative Rules §§ 13-1-34 and 13-1-39, and is supported by the attached Memorandum in Support and exhibits thereto. Applicants request that the Board agendize this Motion for hearing at the Board's next regularly scheduled meeting on December 12, 2025.

DATED: Honolulu, Hawai'i, November 21, 2025.

KATHERINE A. GARSON
PUANANIONAONA P. THOENE

Attorneys for Applicants
Opunaha, LLC (Ryan Pastorek) and Paul Pastorek

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of Conservation District Use Permit Application Nos. HA-3981 and 3982; Applicants Opunaha, LLC (Ryan Pastorek) and Paul Pastorek, Tax Map Key Nos. (3) 1-5-010: 026 and 027, Puna, County and Island of Hawai'i	CDUA NOS. HA-3981 AND HA-3982 MEMORANDUM IN SUPPORT OF MOTION

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

I. INTRODUCTION

At its regular meeting on November 14, 2025, the Board of Land and Natural Resources of the State of Hawai'i ("**Board**") heard and considered Conservation District Use Permit Application ("**CDUA**") Nos. HA-3981 (Agenda Item K-1) and HA-3982 (Agenda Item K-2) (collectively, the "**Applications**"). The Applications seek the Board's approval to consolidate and resubdivide Tax Map Key ("**TMK**") Nos. (3) 1-5-010: 026 ("**Parcel 026**") and (3) 1-5-010: 027 ("**Parcel 027**") (collectively, the "**Properties**"), and develop one single-family residence ("**SFR**") on each of Parcel 026 and Parcel 027, as permitted under Hawai'i Administrative Rules ("**HAR**") Title 13, Chapter 5 (the "**Conservation District Rules**"). Under HAR § 13-5-42 and Exhibit 4 (Single-Family Residential Standards), properties that are one (1) acre or greater in size have a maximum developable area[1] ("**MDA**") of 5,000 square feet ("**s.f.**"). Under the Applications, the proposed MDA for Parcel 026 is approximately 4,739 s.f. on 4.048 acres (post-consolidation/resubdivision) and the proposed MDA for Parcel 027 is approximately 4,984 s.f. on 6.402 acres (post-consolidation/resubdivision). Thus, both indisputably satisfy the MDA

[1] MDA "[m]eans the total floor area in square feet allowed under the approved land use. The floor area computation shall include: all floor areas under roof, including first, second, and third story areas, decks, pools, saunas; garage or carport, and other above ground structures." Exhibit 4 to the Conservation District Rules.

requirements under the Conservation District Rules.

The Properties are located in the Puna District on the Island of Hawai'i, and **are located between two large subdivisions**, Hawaiian Paradise Park ("**HPP**") which consist of approximately 8,800 lots and a population nearing 15,000,[2] making it one of the largest subdivisions in Hawai'i, and Hawaiian Beaches, which consists of approximately 1,300 lots. The Properties are approximately one mile from the HPP subdivision, and two miles from the Hawaiian Beaches subdivision, and are located makai of Government Beach Road, which runs between the two subdivisions.

The Department of Land and Natural Resources ("**DLNR**") Office of Conservation and Coastal Lands ("**OCCL**") staff recommendation to the Board was to deny both Applications, generally stating, but without providing sufficient analysis, that the Applications did not satisfy the eight criteria set forth in Hawai'i Administrative Rules ("**HAR**") § 13-5-30(c). The primary basis for recommending denial, however, was OCCL's opinion that the proposed SFRs were purportedly not appropriate for the area.

In denying the Applications, the Board expressed two reasons: First, the Board adopted OCCL's unfounded characterization of the Properties, and second, the Board stated that sizes of the proposed SFRs were too large despite being below the 5,000 s.f. MDA in the Conservation District Rules and similar in size to neighboring homes in the area. The Board's decisions to deny the Applications based on the perception that the proposed SFRs were "too large" for the area were based on inaccurate statements by OCCL staff that neighboring homes in the area were in the 2,000 and 3,000 s.f. range.

Following the Board's decisions to deny the Applications, Applicants made a timely

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[2] COUNTY OF HAWAI'I RESEARCH AND DEVELOPMENT, *Census Community Profiles*, *available at* https://www.rd.hawaiicounty.gov/data-information/community-profiles (last visited Nov. 10, 2025).

verbal request for a contested case hearing on Agenda Items K-1 and K-2 pursuant to HAR § 13-5-29(a).

The Board's decisions to deny the Applications were arbitrary and capricious, an abuse of the Board's discretion, in excess of the Board's authority, and clearly erroneous in light of the evidence supporting the Applications and information presented to the Board. For the reasons set forth herein, Applicants request that the Board reconsider its decisions to deny the Applications and grant the Conservation District Use Permits for Parcels 026 and 027 ("**CDUPs**") subject to the conditions agreed upon at the November 14, 2025 meeting between Applicant and OCCL (which include all of the standard conditions in HAR § 13-5-42 and additional conditions requested by OCCL). In the alternative, the Applicants request that the Board rescind its decisions to deny the Applications made at the November 14, 2025, after which the Applicants will withdraw their requests for contested case hearings. The result would be that the Applications would be automatically granted by operation of Hawai'i Revised Statutes ("**HRS**") § 183C-6(b). In the event the Board rescinds its decisions, the Applicants will agree to the conditions agreed upon at the November 14, 2025 meeting between Applicants and OCCL.

II. LEGAL STANDARD

Under HAR § 13-1-39(a), the Board may reconsider a prior decision it made on the merits if the movant shows that: "(1) New information not previously available would affect the result; or (2) A substantial injustice would occur."

III. ARGUMENT

A. The Motion Should be Granted Because the Applications and Information on the Sizes of the Neighboring Homes were Misstated by OCCL.

At the November 14, 2025 meeting, the Board's stated reason for denying the Applications were that they were too large for the area. Applicants' counsel noted that, just

months prior (in March of 2025), the Board approved a third extension of time on a CDUP for a home whose MDA was in excess of 4,900 s.f. OCCL Administrator Michael Cain testified that OCCL had identified five (5) CDUPs that were issued for properties that are on both sides of Parcels 026 and 027, and are also located between the two large subdivisions (i.e., HPP and Hawaiian Beaches), and represented the square footage of the maximum developed area as: (a) 3,705 s.f.; (b) 3,013 s.f.; (c) 2,644 s.f.; (d) 3,847 s.f.; and (d) 3,868 s.f. Administrator Cain also stated that OCCL's position was that the dwelling units requested by the Applications were "significantly bigger"[3] than the neighboring homes in the area. OCCL, however, did not provide that information in writing to the Board in the Staff Submittal. This information was the most significant, if not determinative, factor in the Board's decision to deny the Applications. Chair Chang indicated that her decision not to approve the Applications was based on "the size of the dwellings," that they were "not in alignment," and would "change the character of the area."

Administrator Cain's statement was demonstrably incorrect. Administrator Cain read the ***permit numbers*** for the neighboring properties, not the approved ***square-footage*** developed area (or size) of the existing previously approved SFRs. The actual number of CDUPs for SFRs that the Applicant was able to locate between HPP and Hawaiian Beaches was double what Mr. Cain represented and are set forth in the chart below and supported by Figures 1 - 3 and Exhibits A and B.

The SFR that Administrator Cain represented as having an approved developable area of 3,705 s.f. was CDUP HA-3705 approved for **4,322** s.f.; the permit that Administrator Cain identified as being 3,013 s.f. is actually CDUP HA-3013 & HA-3482 approved for **4,154** s.f.; and the permit represented as being 3,868 s.f. is actually CDUP HA-3868 approved for **4,695** s.f.

[3] Video recording of the Board's November 14, 2025 meeting is available at https://www.youtube.com/watch?v=s0Iu5QfSlc0&list=PLDh6ZXzdUvQkHtqVoauOkfa26NfNLh2pK. *See* the recording at around the 1:54:00 mark.

Thus, the actual CDUPs that have been granted for homes along Government Beach Road are, in fact, similar in size to what the Applicants are proposing. The chart below details the sizes of the neighboring homes, as shown on Figures 1 - 3.

	TMK No./ Current Owner Name per COH RPT Website	Size	CDUP No.	Date Approved	MDA Per Conservation District Rules in Effect on Date Approved (in sq. ft.)	Approved Development Area
1.	(3) 1-5-010-009 Garrett / Kamahele Farms LLC	13.43 acres	HA-3868	Oct. 9, 2020 (2nd time extension approved March 14, 2025)[4]	5,000	**4,695** SFR and 680 s.f. Farm/utility shed[5]
2.	(3) 1-5-010-025 Wood	5.43 acres	HA-3482	Nov. 25, 2008	5,000	**4,154**[6] (originally HA-3013 approved on May 11, 2001 for 3,700 s.f.)
3.	(3) 1-5-010-028 Melella	3.5 acres	HA-3705	Aug. 22, 2014	5,000	**4,332**[7] as of February 16, 2022, SFR and accessory uses (originally approved 3,371 s.f.)
4.	(3) 1-5-010-029 Robinson	3.6 acres	HA-2644	Sept. 10, 1993	No MDA limit	2,600
5.	(3) 1-5-010-031 Moore	8.75 acres	HA-3847	Nov. 8, 2019 (3rd time extension approved Sept. 12, 2025)[8]	5,000	(originally approved **4,301**) currently 3,592 Developable Area and a 769 sq. ft. farm shed after alterations and additions[9]
6.	(3) 1-5-009-035 Yermian	2.181 acres	HA-3676	Dec. 13, 2013[10]	5,000	**4,470**[11]
7.	(3) 1-5-009-036 Ray	1.6310 acres	HA-3/15/82-1466	On or about Aug. 13, 1982	No MDA limit	2,200 s.f.[12] (COH RPT drawing shows 2,662 s.f. including "porch unceiled shed roof")
8.	(3) 1-5-009-040 Gadler Family Trust	10.005 acres	HA-3233	Oct. 28, 2005	5,000	**4,096** SFR approx. 2,849 s.f, covered lanais (594.5 s.f.), arcade, breezeway (approx. 352.5 s.f.), utility, storage area (approx. 300.68 s.f.)[13]

[4] https://dlnr.hawaii.gov/wp-content/uploads/2025/05/Minutes-250314.pdf (Item K-1).
[5] https://dlnr.hawaii.gov/wp-content/uploads/2025/03/K-1.pdf (page 1).
[6] *See* Exhibit A (CDUP HA-3482 and Staff Submittal at 6).
[7] *See* Exhibit B (After the Fact Site Plan Approval).
[8] https://dlnr.hawaii.gov/wp-content/uploads/2025/09/K-1.pdf
[9] *Id.* at 15.
[10] https://dlnr.hawaii.gov/wp-content/uploads/2020/11/131213-minutes.pdf (Item K-5).
[11] https://files.hawaii.gov/dlnr/meeting/submittals/131213/K-5.pdf (page 3).
[12] *See* Exhibit C (CDUA HA-3/15/82-1466, dated August 13, 1982).
[13] *See* Exhibit D (Staff Recommendation) and Exhibit E CDUP HA-3233.

9.	(3) 1-5-009-053 Grossbard & Bourzat	6.91 acres	HA-3851	Dec. 13, 2019[14]	5,000	**3,418** (2,560 SFR, 858 carport and utility shed[15])
10.	(3) 1-5-009-055 Dearing	6.79 acres	HA-3797	Oct. 13, 2017[16]	5,000	**4,922**[17]
	Applicants' Proposal					
11.	(3) 1-5-010-026	4.048 acres	HA-3981	N/A	5,000	**MDA 4,739** 4,010 s.f. SFR
12.	(3) 1-5-010-027	6.402 acres	HA-3982	N/A	5,000	**MDA 4,984 s.f.** 2,750 SFR + landscaping, pool, art studio

Figure 1



[14] https://dlnr.hawaii.gov/wp-content/uploads/2019/12/Agenda-191213-D.pdf (Item K-1).
[15] https://dlnr.hawaii.gov/wp-content/uploads/2019/12/K-1.pdf (p. 4)
[16] https://dlnr.hawaii.gov/wp-content/uploads/2018/02/Minutes-171013.pdf (pgs. 12-13)
[17] https://dlnr.hawaii.gov/wp-content/uploads/2017/10/K-1.pdf (p. 4).

Figure 2
(Identifying Approved Developed Area and CDUP Nos.)

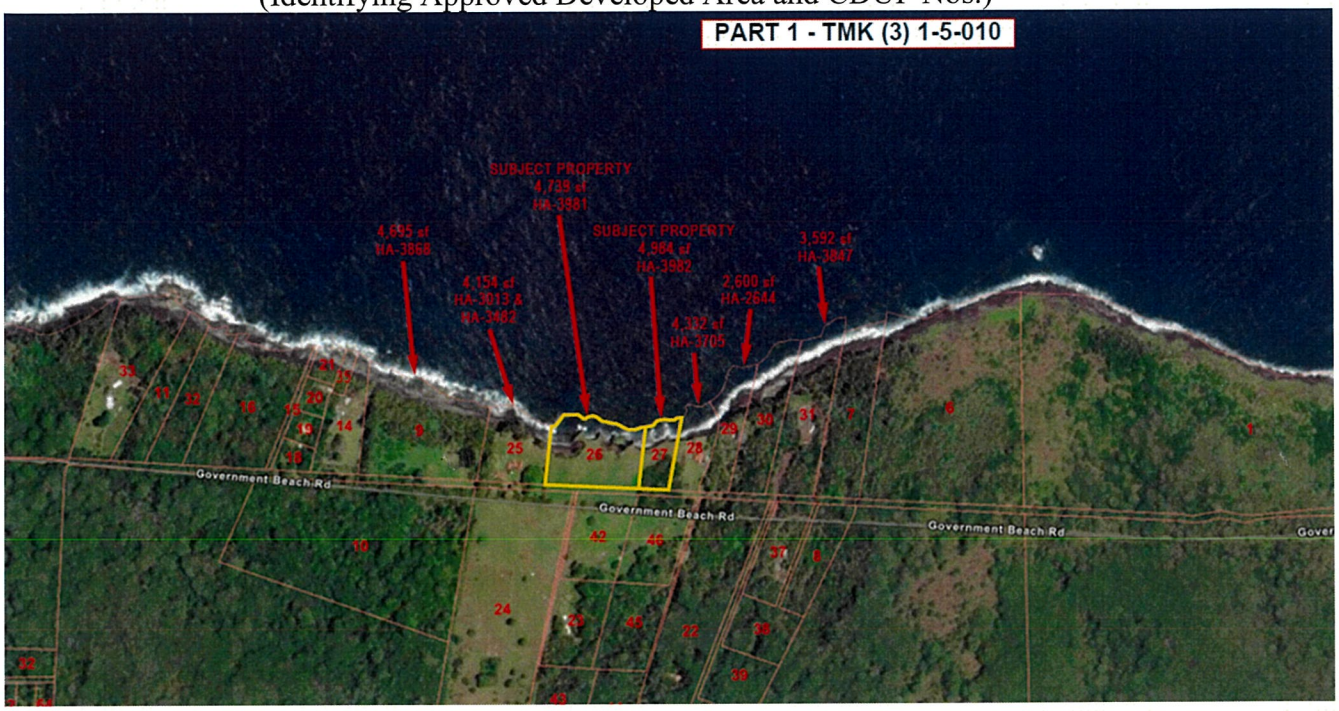
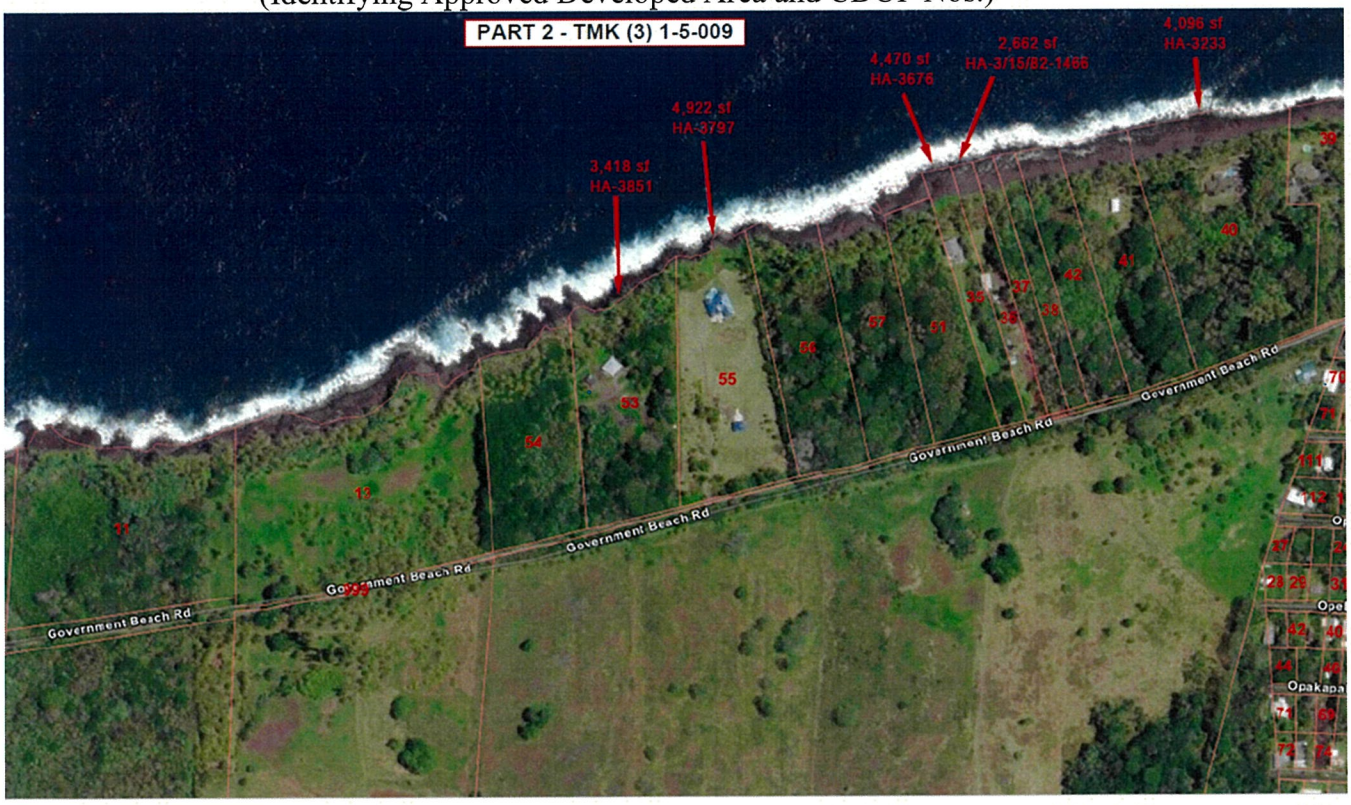


Figure 3
(Identifying Approved Developed Area and CDUP Nos.)



The Staff Recommendation and some Board members made statements that the general area in which the Properties are located is "remote" and "rural". Denying the Applications for this reason was arbitrary and capricious and made in error. As the Applicants pointed out in their written testimony and presentation to the Board, and as shown on Figures 1 -3 above, this characterization of the Properties is not accurate. In reality, as recognized by the County of Hawai'i Planning Department in its recommendation to approve the Special Management Area permit for the SFRs on Parcels 026 and 027, "[t]he subject parcels are within an ***established*** residential community that [sic] both agricultural and residential uses, as well as the fully developed Hawaiian Paradies [sic] Park located north of the project site." (Emphasis added.)

B. The Motion Should be Granted Because a Substantial Injustice Has Occurred.

1. The Board Did Not Have Sufficient Time to Consider the Applications and Applicants Were Not Given Sufficient Time to Present the Applications and Counter the Staff Recommendations.

As a foundational matter, the Board did not have sufficient time to consider the Applications. Prior to the November 14, 2025 meeting, Applicants requested that the Board allow Applicants to make a presentation on the Applications, particularly because the staff recommendations were to deny the permits. The Applicants were informed that their presentations would be limited to just five minutes.

In September 2025, Applicants' consultant was told by OCCL staff that the Applications would likely be scheduled for decision making at the Board's October 24, 2025 meeting. This would have given Applicants the opportunity to initially present the Applications to the Board at the October 24, 2025 meeting, and if necessary, address any concerns raised by the Board had at the November 14, 2025 meeting. The only reason given to Applicants for not scheduling the Applications at the October 24th meeting was that OCCL staff could not complete the submittal in time. Instead, OCCL put the Applicants in the untenable position of scheduling the

Applications at a Board meeting just 4 days before the automatic approval deadline and on a very packed agenda with other controversial items, thereby forcing the Board to rush through the limited materials provided by OCCL and vote to deny the permits, even if there were any unanswered questions on the projects, to avoid an automatic approval. This also resulted in leaving Applicants with no choice but to request a contested case hearing.

When HRS § 183C-6 was amended in 2016 to allow for the extension of the 180-day review period of CDUAs by an additional 90 days in the case where environmental review or a contested case proceeding was required, former Board member Christopher Yuen testified in favor of the measure and aptly noted that "[n]ormally, BLNR's staff has been very good at bringing such applications to the board for a decision at a meeting a month or two before the 180-day deadline."[18] Mr. Yuen further noted that "[d]ecisions involving our conservation lands should be made on the merits, not because of an arbitrary deadline." *Id.*

While the Applicants are appreciative that the Board gave them more than five minutes to present the Applications, the time provided was not sufficient to counter OCCL's negative recommendation and the incorrect and incomplete information provided to the Board. This was a clear violation of Applicants' due process rights. Indisputably, Applicants were not given a meaningful opportunity to be heard or any opportunity to refute the incorrect information provided by OCCL. *See Sandy Beach Defense Fund v. City Council of Honolulu*, 70 Haw. 361, 377, 773 P.2d 250, 260-61 (1989) ("The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest."); *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.*, 136 Hawai'i 376, 389, 363 P.3d 224, 237 (2015) (identifying two

[18] Testimony of Christopher Yuen in support of HB2036, *available at* https://www.capitol.hawaii.gov/sessions/Session2016/Testimony/HB2036_TESTIMONY_WAL_02-01-16_.PDF.

instances in which a property interest is considered sufficiently substantial to trigger due process protections, including "where an agency denies an applicant's proposed property use").

2. The Applications Were Not Reviewed by the Board Prior to Denying Them.

The Board's decisions to deny the Applications were arbitrary and capricious and made in error because the Board was not even provided copies of the Applications as part of the Staff Submittals for Agenda Items K-1 and K-2. This deprived the Board of any opportunity to review the actual Applications it was rendering decisions on. Instead, the Board relied entirely on the analysis provided by OCCL staff, including the incorrect information that was apparently dispositive in the Board's decision to deny the Applications. *See* Part III.A, *supra*; *see also Mauna Kea Anaina Hou*, 136 Hawai'i at 391, 363 P.3d at 239 (holding that the Board's process of ruling on the merits of a CDUA before the factual record was developed failed to satisfy the appearance of justice).

3. The Applications Comply with the SFR Standards in the Conservation District Rules.

There is no valid, defensible reason for denying the Applications. The proposed SFRs comply with the Conservation District Rules, are below the MDA of 5,000 s.f., and are similar in size and scale to other SFRs the Board has approved in the same area. *See* HAR § 13-5-41 and Exhibit 4 to the Conservation District Rules (providing that the MDA for lots larger than one (1) acre is 5,000 s.f.). Treating Applicants differently from similarly situated neighbors with approved CDUPs for their SFRs is arbitrary, capricious, and a violation of Applicants' due process rights. *See DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC.*, 134 Hawai'i 187, 219, 20, 339 P.3d 685, 717-18 (2014) (discussing that the equal protection clauses of the United States and the Hawai'i Constitutions "mandate[] that all persons similarly situated shall be treated alike, both in privileges conferred and in the liabilities imposed" and recognizing an equal

protection claim may be brought by a "class of one," "where the plaintiff alleges that [he/she] has ben intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment") (citations omitted).

The design standards contained in Exhibit 4 to the Conservation District Rules are intended to guide the Board and prevent the very kind of subjective and arbitrary decision-making that occurred at the November 14, 2025 meeting. The January 1991 Auditor report to the Hawai'i Legislature on the regulation of SFR construction in the Conservation District, serious concerns were raised that in the absence of specific standards, it would be hard for the Board to determine whether certain residences were "compatible with the locality and surrounding areas" or violated the subjective condition that "natural beauty and open space be preserved". *See Review of the Regulation of Residential Construction in the Conservation District*, A report to the Governor and the Legislature of the State of Hawai'i, Report No. 91-1, January 1991 by the Auditor of the State of Hawai'i.[19] Despite the adoption of detailed construction standards, those concerns provided true in the Board's denial of the Applications.

HAR § 13-5-41(a) provides that SFR uses approved by the Board must comply with the SFR standards in Exhibit 4 to the Conservation District Rules:

> Single family residential uses approved by the board ***shall comply with the design standards contained in Exhibit 4***, entitled "Single Family Residential Standards: August 12, 2011", located at the end of this chapter and made a part of this section, ***except*** as may be allowed by the board ***upon finding that prevailing conditions warrant the deviation from specific standards***, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen percent.

(Emphases added.)

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[19] THE AUDITOR, STATE OF HAWAI'I, *RESIDENTIAL CONSTRUCTION IN THE CONSERVATION DISTRICT, REPORT NO. 91-1* (Jan. 1991), *available at* https://files.hawaii.gov/auditor/Reports/1990-1995/91-1.pdf.

Exhibit 4 provides only one exception that allows for a reduction of the permissible MDAs: "***Site characteristics*** and the ***degree of pre-existing site disturbance*** may be a further limiting factor in the calculation of maximum developable area ***when so determined by the board.***" (Emphases added.) Thus, by its own rules, the Board can only reduce the permissible MDA if it makes explicit determination that such a reduction is warranted based on "site characteristics" and "the degree of pre-existing site disturbance." The Board made no such determination that could justify its decision to deny the Applications. Instead, the Board denied the Applications based on: (a) certain members' subjective belief about what the right size of the SFRs should be (without providing any guidance as to what that would be), and (b) the incorrect information provided by the OCCL Administrator on the sizes of the neighboring homes.

The Board's decisions to deny the Applications are clear abuses of the Board's discretion.

III. CONCLUSION

For the reasons set forth above, the Motion should be granted and the Board should approve CDUA HA-3981 and CDUA HA-3982 subject to the standard conditions in HAR § 13-5-42 and the additional conditions proposed by OCCL at the November 14, 2025 meeting. In the alternative, the Board should rescind its prior actions denying the Applications so that the Applicants can withdraw their requests for contested cases hearings and the CDUPs can be issued by operation of law.

DATED: Honolulu, Hawai'i, November 21, 2025.

KATHERINE A. GARSON
PUANANIONAONA P. THOENE

Attorneys for Applicants
Opunaha, LLC (Ryan Pastorek) and Paul Pastorek

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of Conservation District Use Permit Application Nos. HA-3981 and 3982; Applicants Opunaha, LLC (Ryan Pastorek) and Paul Pastorek, Tax Map Key Nos. (3) 1-5-010: 026 and 027, Puna, County and Island of Hawai'i	CDUA NOS. HA-3981 AND HA-3982 DECLARATION OF COUNSEL; EXHIBITS "A" - "E"

DECLARATION OF COUNSEL

I, PUANANIONAONA P. THOENE, hereby declare as follows:

1. I am an attorney with the law firm of Carlsmith Ball LLP, counsel of record for Applicants Opunaha, LLC (whose sole member is Ryan Pastorek) and Paul Pastorek (collectively, "**Applicants**"). This declaration is made on my personal knowledge and I am competent in all respects to make this declaration.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts from a file labeled CDUA #HA-3482 TMK: 3-1-5-10:25 obtained from the State of Hawai'i, Department of Land and Natural Resources, Office of Conservation and Coastal Lands ("**OCCL**") files on November 20, 2025.

3. Attached hereto as Exhibit B is a true and correct copy of a letter dated February 16, 2022 from OCCL to Kim Chiodo at Land Planning Hawaii LLC regarding an After-the-Fact Site Plan Approval (SPA) for the placement of a portable spa on an existing 17' x 17' concrete slab and the partial removal of a pre-existing concrete slab at 2225 Government Beach Road, Puna, Hawaii, Tax Map Key No.: (3) 1-5-010:028.

4. Attached hereto as Exhibit C is a true and correct copy of the OCCL staff submittal dated August 13, 1982 in File No.: HA-3/15/82-1466, obtained from OCCL files on November 21, 2025.

5. Attached hereto as Exhibit D is a true and correct copy of the OCCL staff submittal dated October 28, 2025 in File No.: HA-3233, obtained from OCCL files on November 21, 2025.

6. Attached hereto as Exhibit E is a true and correct copy of Conservation District Use Permit HA-3233 dated October 28, 2025, obtained from OCCL files on November 21, 2025.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawai'i, November 21, 2025.

PUANANIONAONA P. THOENE

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of Conservation District Use Permit Application Nos. HA-3981 and 3982; Applicants Opunaha, LLC (Ryan Pastorek) and Paul Pastorek, Tax Map Key Nos. (3) 1-5-010: 026 and 027, Puna, County and Island of Hawai'i	CDUA NOS. HA-3981 AND HA-3982 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following parties by hand-delivery at the address and on the date indicated below:

Dawn Chang
Chair
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, 1st Floor
Honolulu, Hawai'i 96813

Michael Cain
Administrator
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
1151 Punchbowl Street, 1st Floor
Honolulu, Hawai'i 96813

DATED: Honolulu, Hawai'i, November 21, 2025.

KATHERINE A. GARSON
PUANANIONAONA P. THOENE

Attorneys for Applicants
Opunaha, LLC (Ryan Pastorek) and Paul Pastorek

EXHIBIT A

CDUA# HA-3482

TMK: 3-1-5-10:25

Isl./Dist. Hawaii, Makuu, Puhoo

Applicant: Donald & Susan Wood

Landowner: Same as above

Use: Additions to a Single Family Residence

Board Action: Approved 11/25/2008 w/16 conditions

CONSERVATION DISTRICT USE APPLICATION HA-3182

SUBZONE: RESOURCE

180-DAY EXP. DATE: 17 FEB 09

Acceptance: 20 AUG 2008

APPLICANT:

DONALD & SUSAN WOOD

Agent: Greg Moovers

tel 880-1455

USE REQUESTED: Additions to SFR

DISTRICT/ISLAND: Makuu, Puna, Hawai'i

TAX MAP KEY: (3) 1-5-10:25

AREA/PARCEL: 5.43 acres **AREA/USE:** +2400 ft²

PUBLIC HEARING: ____YES ✓ NO **PUBLIC HEARING DATE:** _____

BOARD ACTION:

Chair Approved 11.25.08

VIOLATION ____YES ____NO

FINE IN AMOUNT OF: $ _____

INDEXED _____

LINDA LINGLE
GOVERNOR OF HAWAII





BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2009 JUN -2 A 8:30
DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:MC

CDUP: HA-3482

MAY 13 2009

Mr. Don Wood
HCR3 Box 10020
Kea`au, HI 96749

SUBJECT: CONSERVATION DISTRICT USE PERMIT (CDUP) NO. HA-3482
Additions to the Wood Single Family Residence
Maku`u, Pahoa, Puna District, Hawai`i
TMK (3) 1-5-10:25

This is to inform you that on November 25, 2008, the Chair of the Board of Land and Natural Resources approved this Conservation District Use Application (CDUA) HA-3482 for additions to the single-family residence at Maku`u, Pahoa, Hawai`i, TMK (3) 1-5-10:25, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of HAR §13-5-42;

2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai`i harmless from and against any loss, liability, claim or demand for property damage, personal injury or 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 applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to HAR §11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;

4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans to the Chairperson or her authorized representative for approval. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction of the residence and infrastructure must be completed within three years of the approval.

6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;

7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

8. The applicant will use Best Management Practices for the proposed project;

9. The applicant will give preference towards using native plants all landscaping work;

10. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

11. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this 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/or the Department may, in addition, institute appropriate legal proceedings;

12. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;

13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

14. The single family dwelling will not be used for rental or any other commercial purposes unless approved by the Board;

15. The applicant will contact OCCL for any permitting requirements should they change the scope of the project;

16. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, please feel free to contact Michael Cain at 587-0048.

Sincerely,

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged

Applicant's Signature

May 31, 2009
Date

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

FILE NO.: CDUA HA-3482
REF: OCCL: MC

Acceptance Date: August 20, 2008
180 Exp. Date: February 17, 2009

TO: Chairperson's Office, Department of Land and Natural Resources

REGARDING: Additions to a Single Family Residence

APPLICANT: Donald and Susan Wood
HCR Box 10020, Ke`eau, HI 96749

AGENT: Gregory Mooers, Mooers Enterprises
Post Office Box 1101, Kamuela, HI 96743

LOCATION: Maku`u, Puna, Hawai`i

TMK: (3) 1-5-10:25

AREA OF PARCEL: 5.43 acres

AREA OF USE: 2420 sqft.

SUBZONE: Resource

DESCRIPTION OF AREA AND CURRENT USE:

The 5.43 acre coastal property is located off of the Old Government Road that runs between the Hawaiian Paradise Park and Hawaiian Beaches subdivisions. The land was once used for grazing, and now consists of grassland with occasional trees.

On May 11, 2001 the Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) HA-3013 for a single family residence on the property. The plans allowed for a segmented, two-bedroom, one-story residence and a barn, with a total Developed Area of 3700 square feet. The proposal called for the residence and associated structures to be built in three phases.

The landowners completed Phase One of the original project, which included a great room, a bedroom, and a walled garden. The total developed area of the completed structure is 1734 square feet. The remainder of the house was not built. **Exhibit 1** shows the original site plan. Completed structures are outlined in green. Exhibit 2 shows a photograph of the residence.

The applicants built an outdoor courtyard and garden that was not shown on the original site plans. This is shown in **Exhibit 3**. The courtyard is not graded and is not paved; OCCL has concluded that this does not need to be counted when calculating the maximum developable area.

The landowners did not complete the remainder of the proposed project. CDUP HA-3013 contained the standard condition that construction begin within a year of approval and finish within 3 years. As the landowners did not request an extension of the permit, they were required to seek a new CDUP for the remainder of the work.

PROPOSED USE:

The landowners have chosen to modify their original plans, and have submitted an application to add a two-story 760 square foot bedroom, a 720 square foot art studio, and a 960 square foot detached garage to the existing residence.

The revised Site Plan is shown in **Exhibit 4**. Existing buildings are outlined in green, proposed elements are outlined in red. **Exhibits 5-9** contain floor plans for the proposed new elements to the residence.

None of the proposed additions will be closer than 150-200 feet from the shoreline.

The proposal does not involve any grubbing or grading.

The additions would result in a net increase of 2420 square feet, bringing the total developed area to 4154 square feet. This is within the Maximum Developable Area for this parcel as allowed under the Single Family Residential Standards outlined in Hawai`i Administrative Rules (HAR) §13-5.

There are no violations or enforcement cases pending against the property.

There are no known archaeological features at the site.

SUMMARY OF COMMENTS:

The Office of Conservation and Coastal Lands referred the application to the following agencies for review and comment: Department of Health; Office of Hawaiian Affairs; the County of Hawai`i Planning Department; and Department of Land and Natural Resources (DLNR) Land Division, Division of Forestry, Division of Conservation and Resource Enforcement, and Historic Preservation Division.

A notice of the application was placed in the September 8, 2008 edition of the Office of Environmental Quality Control's *Environmental Notice*. In addition, a copy was available for review at the Hilo Public Library.

Comments were received from the following agencies:

DLNR Land Division
No comment

DLNR DOCARE
No comment

DLNR Division of Forestry and Wildlife
No comment

DLNR Historic Preservation Division
The parcel was surveyed in October 2000, at which time it was determined that no historic properties would be affected by the development.

Planning Department
The project is in the Special Management Area. The original proposal was determined to be exempt from the definition of development. However, the Department believes that a new SMA application needs to be submitted to the office to determine if the additions are also exempt.

Applicant's Response
The applicant appealed this determination, and Planning concurred that the previous SMA assessment is adequate for the proposed additions. OCCL confirmed this decision by phone with the Department.

ANALYSIS:

Following review and acceptance for processing, the Applicant's Agent was notified, by letter dated March 17, 2008, that:

1. The addition was an identified land use within the Conservation District, pursuant to Hawai`i Administrative Rules (HAR) §13-5-22 *Identified land uses in the protective subzone,* P-9 STRUCTURES, EXISTING, (C-1) *Demolition, removal, or alteration of existing structures, facilities and equipment.*

2. Pursuant to HAR §13-5-40 *Hearings*, a public hearing was not required.

3. This project was exempt from conducting an Environmental Assessment pursuant to HAR §11-200-8 (4) *Minor alterations in the conditions of land, water, or vegetation.*

§13-5-30 CRITERIA:

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

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.

Staff is of the opinion that the proposed action will not negatively impact the natural resources of the area.

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

Pursuant to HAR §13-5-14, the objective of the Resource Subzone *is to designate open space where specific conservation uses may not be defined, but where urban use may be premature.*

The project in and of itself will not affect open space. It will increase the density on the subject parcel; however, the total developed area will remain less than the maximum set in the Administrative Rules.

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

The proposal is exempt from the definition of development, and will not need a Special Management Area permit

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

Staff notes that the project is similar in style to other residences in the neighborhood. The area is relatively isolated, and the development will be hid from general view. Staff does not foresee an adverse impact on the community.

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 renovations are similar in size and design to others in the community.

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.*

Staff is of the opinion that the natural beauty and open space characteristics of the portions of the lots within the Conservation District will be maintained.

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

The proposed project does not involve subdivision of Conservation District land.

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 addition will not be materially detrimental to the public health, safety and welfare.

DISCUSSION:

In 2001 the Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) HA-3013 for a 3700 square foot single family residence on the subject property. The proposal called for the residence and associated structures to be built in three phases. The landowners only completed the master bedroom and 'great room,' which totaled 1743 square-feet of developed area. Elements of the original plan that were not built included an additional bedroom, a gazebo, an art studio, a two-car garage, and a detached barn

In early 2008 the landowners requested permission to continue with construction. After reviewing the records, OCCL concluded that the original construction deadline had passed, and that the a new permit would be required.

The landowners chose to amend their original plan. OCCL had concerns with their amendments, as some of the structures were detached and could conceivably be converted to second residences or rental units. The landowners revised their plans to address these concerns by attaching the proposed second bedroom and proposed art studio to the main residence. The garage remains separate, but will not be connected to the plumbing system.

OCCL is satisfied that the proposed additions are consistent both with the design guidelines for residences in the Conservation District and with the original site plan that the Board approved.

Therefore:

RECOMMENDATION:

Based on the preceding analysis, Staff recommends that the Chair of the Board of Land and Natural Resources APPROVE this application for additions to the Wood residence at TMK (3) 1-5-10:25, Maku`u, Puna, Hawai`i, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of HAR §13-5-42;

2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai`i harmless from and against any loss, liability, claim or demand for property damage, personal injury or 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 applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to HAR §11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;

4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans to the Chairperson or her authorized representative for approval. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction of the residence and infrastructure must be completed within three years of the approval.

6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;

7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

8. The applicant will use Best Management Practices for the proposed project;

9. The applicant will give preference towards using native plants all landscaping work;

10. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

11. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this 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/or the Department may, in addition, institute appropriate legal proceedings;

12. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;

13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

14. The single family dwelling will not be used for rental or any other commercial purposes unless approved by the Board;

15. The applicant will contact OCCL for any permitting requirements should they change the scope of the project;

16. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully submitted,

Michael Cain
Staff Planner

Under the authority of §13-5-30(a) and 13-5-33, Hawai`i Administrative Rules, this request for a Departmental Permit for CDUA OA-3314 is hereby:

☑ Approved

☐ Disapproved

Dated at Honolulu, Hawai`i 11/25/08

for **LAURA H. THIELEN**, Chairperson
Board of Land and Natural Resources

EXHIBIT B

DAVID Y. IGE
GOVERNOR OF HAWAI'I

SUZANNE D. CASE.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHO'OLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAI'I 96809

Ref: OCCL:RB

SPA: HA 22-50

Feb 16, 2022

Kim Chiodo
Land Planning Hawaii LLC
194 Wiwoole St.
Hilo, HI 96720

SUBJECT: After-the-Fact Site Plan Approval (SPA) for the placement of a portable spa on an existing 17'x17' concrete slab and the partial removal of a pre-existing concrete slab at 2225 Government Beach Road, Puna, Hawaii
Tax Map Key: (3) 1-5-010:028

Dear Ms. Chiodo:

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your After-the-Fact SPA for the placement of a portable spa on an existing 17'x17' concrete slab and the partial removal of the pre-existing concrete slab. It should be noted that SPA HA 20-04 indicates, "the old cement slab was demolished and replaced with a new 17-foot x 17-foot cement slab." The applicant notes that this statement is incorrect as only a portion of the old (pre-existing) slab was removed as noted in their SPA HA 20-04 application, "a portion of an old cement slab was demolished and replaced with a new 17'x17' cement slab." The existing 17'x17' slab was permitted under SPA HA 20-04.

The therapy spa is prefabricated and portable; it measures 15'x15'. Approximately 360 square feet of the pre-existing slab was previously removed; it currently measures 357 square feet. The single-family residence and accessory uses are 4,332 square feet. Pursuant to HAR §13-5 Exhibit 4 the permitted Maximum Developable Area (MDA) on lots larger than one acre is a maximum of 5,000 square feet; therefore, the existing SFR and associated structures are within the permitted MDA.

This application is meant to resolve an enforcement action, HA 22-16, in which unauthorized land uses were discovered to have taken place at the subject property. Staff notes that according to the enforcement action, unauthorized land uses included the following: pool, new concrete pad, and a gazebo. The OCCL notes that the gazebo has been removed; that the pool is a portable spa; and the new concrete pad is the unremoved portion of the old (pre-existing) slab.

To resolve this matter, the landowner is required to apply for an after-the-fact SPA for the unauthorized land uses. The landowner states that because the SPA HA 20-04 acknowledged that the purpose of the 17'x17' concrete slab was to house the spa, the landowner believed this acknowledgement to imply that the spa was permitted under SPA HA 20-04. Thus, the applicant is submitting this after-the-fact SPA to obtain approval for the portable spa atop the 17' x 17' concrete slab and the old (pre-existing) concrete slab's partial removal.

Additionally, Condition #9 of SPA HA 20-04 states, *the permittee shall remove the hog wire fence within the designated easement area for Site No. 18418 as outlined in the preservation plan. The permittee is required to submit a copy of the preservation plan to the Department along with photographic evidence that the fence was removed in the required area.* The applicant has submitted photographic evidence that the fence was removed in the required area; the applicant has submitted a copy of the preservation plan. The OCCL notes that this condition has been fulfilled.

ANALYSIS

The project area is located within the Resource Subzone of the State Land Use Conservation District. Based on the project description provided, it would appear that the proposed project is consistent with the following:

- Hawai'i Administrative Rules (HAR) §13-5-22, P-9 STRUCTURES, ACCESSORY (B-1) *Construction or placement of structures accessory to existing facilities or uses;* and
- HAR §13-5-22, P-8 STRUCTURES AND LAND USES, EXISTING (B-1) *Demolition, removal, or minor alteration of existing structures, facilities, land, and equipment.*

Further, the proposed project may be considered an exempt action under the following:

- §11-200-8, HAR (a)(3) *Construction and location of single new, small facilities or structures and the alteration and modification of same and installation of new, small, equipment and facilities and the alteration and modification of same including but not limited to: (E) accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences.*
- §11-200-8(a)(4) *Minor alteration in the conditions of land, water or vegetation.* Specifically, the Exemption List for the Department under Exemption Class 4, No. 7 allows for *minor ground adjustments (e.g., grading, grubbing, cutting, or filling) that do not require grading permits.*

Staff notes that the Land Division was consulted with regard to the HRS §343, Exemption Determination and they concurred that the exemptions are appropriate for the proposed work.

Therefore, authorization is hereby granted to Lorraine A. Melella and Laura T. Melella for the after-the-fact SPA for the placement of a portable spa on an existing 17'x17' concrete slab and the partial removal of a pre-existing concrete slab at 2225 Government Beach Road, Puna, Hawaii Tax Map Key: (3) 1-5-010:028 and is 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. The permittee understands and agrees that this permit does not convey any vested rights or exclusive privilege;

5. In issuing the approval, the department has relied on the information and data, which the applicant has provided in connection with the application. If, subsequent to the issuance of the approval such information and data prove to be false, incomplete, or inaccurate, this approval may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;

6. 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;

7. 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 Hawai'i, and by Hawai'i statutory and case law;

8. Other terms and conditions as prescribed by the Department; and

9. Failure to comply with any of these conditions shall render a permit void under Chapter 13-5, as determined by the chairperson or board.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other. Should you have any questions, please feel free to contact Rachel Beasley at 798-0386.

Sincerely,

S Michael Cain

Michael Cain, Acting Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

Lauren Q. McClean

_____ Date 3-2-2022
Applicant's signature

c: Chairperson
Hawai'i Board Member
HDLO/DOCARE-Hawai'i
CoH, Planning Dept.

EXHIBIT C

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

FILE NO.: HA-3/15/82-1466
180-Day Exp. Date: 9/12/82

August 13, 1982

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

Gentlemen:

Conservation District Use Application for
Single Family Residential Use
at Puna, Hawaii

APPLICANT: Robert Gerald D'Anna
P. O. Box 1287
Pahoa, Hawaii 96778

LANDOWNERSHIP: Private, applicant

LOCATION: TMK: 1-5-9: 36

AREA OF PARCEL/USE: 1.631 acres/1.631 acres

SUBZONE: Resource

DESCRIPTION OF AREA:

The subject parcel is located approximately one-fourth mile north of Hawaiian Beaches Subdivision with frontage on the Government Beach Road. Access is via the Government Beach Road via Kahakai Boulevard or Makuu Drive.

The property has a slight slope towards the ocean, approximately 15 percent. Shoreline area consists of boulders and sand with small tidal pools at the waters edge. The remainder of the parcel consists of pahoehoe lava covered with varying amounts of soil supporting a variety of plant life: coconut, plumeria, banana, citrus trees, taro, sweet potatoe, exotic palms and wiliwili trees.

CURRENT USE:

Vacant; parcel is currently not served by utilities.
NOTE: See Division of Conservation and Resources' report (Appendix B) regarding current use.

PROPOSED USE:

The applicant proposes to construct a single-family, 2-story dwelling with loft area and a detached garage on parcel 36, with a combined floor space of 2,200 square feet. In addition, he also proposes to construct a pool-type water tank, 18 feet in diameter, 4 feet deep with an 8,000 gallon capacity; the garage roof will serve as catchment area to supply the tank.

Board of Land and
Natural Resources

The applicant intends to establish a self-sufficient farm on the remainder of the parcel. The proposed improvements are non-commercial and are for the owner's use only.

Sewerage disposal shall be accommodated by a regulation type cesspool (6 feet by 14 feet) to be located directly behind the dwelling no closer than 10 feet to any building or property line.

The applicant states that should he desire to have telephone service in the future, Hawaiian Telephone Company has indicated service can be provided with the permission of the owners of parcel 12, lying mauka of the Government Road. The telephone line would be run on overhead lines to the applicant's property and underground within the subject parcel.

A photo-electric, 12-volt battery system will be used to supply power for residence use and to operate the water tank pump.

The applicant would like to begin construction in August, 1982 and complete the project by October, 1982.

Preliminary plans for house and garage have been submitted for review.

The present access road on the property is posted as private-no trespassing.

This parcel is held in Fee Simple by the owners with no covenants or restrictions, except where provided for in Exhibit "A". (See Appendix A).

SUMMARY OF COMMENTS:

The application was sent to the following agencies for review and comment:

County of Hawaii Planning Department, Department of Water Supply, Department of Public Works, the State Department of Health, Office of Environmental Quality Control, Environmental Quality Commission, Office of Hawaiian Affairs and the following Department of Land and Natural Resources divisions: Aquatic Resources, Forestry and Wildlife, State Parks/Historic Sites, Land Management, Water and Land Development, Natural Area Reserves System and the Division of Conservation and Resources Enforcement.

Their comments follow:

County of Hawaii Planning Department:

Thank you for the opportunity to review the subject applicat
For your information, the subject parcel lies within the Spe
Management Area. However since development will be limited
a single family dwelling and cultivation for personal

Board of Land and
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HA-1466
August 13, 1982

Because the subject property lies within an agriculture one acre zoning district, the County has no objections to the intended development, but requests that the following conditions be attached to the application:

1. The front yard shall have a minimum depth of thirty (30) feet, and the rear yard a minimum dept of forty (40) feet in observance of the shoreline setback.

2. Side yards shall be a minimum of twenty (20) feet.

3. Non-attached accessory buildings, water tanks, and cesspool must be located at least ten (10) feet from the main structure.

The County Department of Water Supply:

We have no objections to the Conservation District Use Application inasmuch as there is no County water system in the area. Further, we do not anticipate developing any source in the area.

The Department of Public Works:

Should this application be approved, the applicant shall obtain a building permit.

The State Department of Health:

Our staff has reviewed this request and does not foresee any major adverse environmental effects arising from this project.

Please be informed that we have no objections to granting the permit.

The Office of Hawaiian Affairs, Land Division:

No adverse impacts on Hawaiian/Native Hawaiian Rights and/or Ceded Lands are anticipated from this proposed action.

The Office of Hawaiian Affairs is concerned about the preservation of Historical and Archaeological sites located on any property, and may take a stand to advocate for its protection.

The Department of Land and Natural Resources, Division of Aquatic Resources:

The applicant proposes to construct a single-family dwelling (total floor space of 2,200 square feet) on a 1.631 acre beachfront parcel in Puna, Hawaii. Also proposed is the establishment of a farm on the remainder of the parcel. All proposed improvements are non-commercial and intended for the owner's use.

The applicant states that a regulation type (6 feet by 14 feet) cesspool, to be located directly behind the dwelling, will be used for sewage disposal.

Comments:

Inasmuch as the dwelling will be located at least 300 feet from the ocean, no significant adverse impact upon the area's aquatic resources is anticipated. However, appropriate measure should be taken to minimize excessive erosion, silting and seepage during and subsequent to development.

The Division of State Parks/Historic Sites:

Recreation Concerns:

There are no known public parks interests in the subject parcel but public access should be maintained along the shoreline sand and tide pool area.

Historic Sites Concerns:

Our records do not indicate the presence of historical, cultural, architectural and/or archaeological resources on this property which are listed on the Hawaii Register and/or the National Register of Historic Places, or that have been determined Eligible for Inclusion on the National Register of Historic Places.

In the event that any unanticipated sites or remains such as artifacts, shell, bone or charcoal deposits; human burials; rock or coral alignments, pavings, or walls are encountered during construction, please inform the applicant to stop work and contact this office immediately.

The Division of Conservation and Resources Enforcement has provided a field inspection and report. This report is appen in its entirety to this Submittal as Appendix B. The report addresses construction activity and structures found to be present on the subject parcel.

The Divisions of Forestry and Wildlife, Land Management, and Water and Land Development indicate they have no objections to the proposed land use; and the Natural Area Reserves Syst indicates the proposal will not affect the existing Natural Area Reserves program.

ANALYSIS:

Following review and acceptance of the application, for processi the applicant, by letter dated May 11, 1982, was notified that:

1. The proposed use, single family residential use, is a conditional use of the Resource Subzone of the Conservation District according to Title 13, Chapter 2, Departmental Administrative Rules, as amended;

2. No public hearing pursuant to Section 183-41, Hawaii Revised Statutes (HRS), as amended will be required; and

3. The proposed use qualifies as an exempt action in accordance with Section 1:33 of the Environmental Impact Statement Regulations.

The County of Hawaii indicates the site lies within the Special Management Area, but is exempt from Special Management Area Rules and Regulations.

The objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

Subchapter 21 relating to standards requires all applications be reviewed in such a manner that the objective of the subzone is given primary consideration.

The proposed use, construction of a home and garage, water tank and catchment system, solar power and 12-volt battery system, cesspool and use of the subject property for a self sufficient farm as presented in the application, would appear to be a commendable approach to development of the site for residential use, utilizing the existing resources in a prudent manner. In fact, Staff is of the opinion that the use, as proposed, a single family residence, is a reasonable use, consistent with the objective and intent of the Resource Subzone and the Conservation District. Furthermore, the proposed use would appear to be consistent with the objectives of the Conservation Lands Plan.

However, Staff notes the application, filed with the Planning Office in Honolulu on March 15, 1982, indicated that the land was vacant and all improvements were proposed. Staff, in meeting with the applicant, on July 15, 1982, was informed that he had in the past months, begun to construct "forms" for pouring the foundation for the main structure, the house. The applicant did not indicate that any other work had been done. The applicant did indicate that the Division of Conservation and Resources Enforcement officers had visited the property.

Following this meeting with the applicant, Staff received the Division of Conservation and Resources Enforcement field investigation report (Appendix B) which indicates a number of conditions not evident in the application or from conversations with the applicant.

It then became apparent that the applicant actually began construction on the site over two years ago. This he admitted to the reporting Division of Conservation and Resources Enforcement officer.

The Division of Conservation and Resources Enforcement report indicates the existence of three wooden structures - a 21 foot by 22 foot structure reported to be a dwelling but identified by the applicant as a garage, an 18 foot by 20 foot hothouse structure and a restroom located within the 28 foot by 28 foot forms constructed by the applicant for the purpose of pouring a concrete foundation for a house.

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Natural Resources

In addition, the proposed water tank/catchment system has been installed and is presently operable, feeding water to the structure identified as a garage and to the toilet system of the site.

The 21 foot by 22 foot garage noted in the report has a built-in sink, stove, and ice box. The reporting DOCARE officer indicates that a portion of this structure is used as sleeping quarters (see the Division of Conservation and Resources Enforcement report, Exhibit 2) and that the applicant does live on the subject property. The report does not indicate how icebox and stove are fueled.

Makai of this "garage", the applicant has constructed a 18 foot by 20 foot hothouse or greenhouse, which the applicant claims is portable. This structure was not requested in the current application. The Division of Conservation and Resources Enforcement officer notes that the foundation posts are set in concrete, leading Staff to believe the structure is intended to be non-portable, and of a permanent nature.

At the proposed house site, the applicant has constructed restroom facilities and has begun to layout "forms" for pouring the concrete slab for the house.

The applicant has indicated to the Division of Conservation and Resources Enforcement officer that the "sewer system", assumed to be the proposed cesspool, had been installed by a licensed contractor.

To date, it is evident that the applicant has constructed two wooden structures, and partially completed a third structure, installed a water tank/catchment system, installed a cesspool and toilet, and presently utilizes the garage as living quarters - all without a Board approved Conservation District Use Application.

The above noted unauthorized structures, improvements and use of the subject property are considered to be violations of Title 13, Chapter 2, Departmental Administrative Rules, as amended and as such, the applicant is subject to a fine of $500.00 per violation.

Staff considers the total number of violations to be equal to six (6), as listed above.

Furthermore, it is the policy of the Board of Land and Natural Resources to permit one house only per parcel in the Conservation District. As such, continued use of the structure designated as a garage for living quarters cannot be permitted.

Staff maintains that at this point it would serve no useful purpose to require the applicant to remove all the improvements made thus far. However, Staff does maintain that the improvements not shown on the proposed plans submitted with the Conservation District Use Application should be removed and the uses indicated on the plan adhered to.

Board of Land and
Natural Resources

This means that the applicant should be required to remove the "hothouse" and remove the kitchen applicances installed in the garage. Further, the garage should be used only for the purpose of parking and storage.

This means that the applicant should be required to remove the "hothouse" and remove the kitchen applicances installed in the garage. Further, the garage should be used only for the purpose stated - garage and storage.

In addition, Staff has contacted the County building inspector who has indicated that a residence cannot be occupied until the County completes its final inspection. To date, the applicant has not obtained a building permit and has constructed a structure which he occupies without County approval. The County indicates they will look into the matter and possibly cite the applicant for violations.

As such, Staff recommends as follows:

RECOMMENDATION:

A. That the Board find the construction of two (2) wooden structures, and partial construction of a third structure, installation of a water tank/catchment system, installation of a cesspool and toilet, use of the structure designated as garage for living quarters to be violations of Title 13, Chapter 2, Departmental Administrative Rules, as amended, and that the Board assess the applicant a fine of Five Hundred Dollars ($500.00) per violation, the total of six (6) separate violations being equal to the sum of Three Thousand Dollars ($3,000.00) to be paid within sixty (60) days of the date of this meeting, this date being July 13, 1982.

B. That the applicant cease living on the subject property until he obtains permission from the County of Hawaii to occupy the structure designated on his plans as "house".

C. That the applicant remove the stove, icebox and any fuel supply/storage system from the structure designated on his plans as a garage. This structure is to be used only as a garage and storage space, and not for living quarters.

D. That this application for a single family residence with detached garage, water tank and catchment system, cesspool and solar power system, with use of the remaining land for non-commercial subsistence farming on property identified as TMK: 1-5-9: 36, in Puna, Island of Hawaii be approved subject to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and City and County governments, and applicable parts of Section 13-2-21 of Title 13, Chapter 2, Departmental Administrative Rules, as amended;

2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for pro-

perty 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. Other terms and conditions as prescribed by the Chairman;

4. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered during construction, the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;

5. That the applicant comply with all applicable Public Health Regulations;

6. A fire contingency plan, acceptable to the Division of Forestry and Wildlife shall be implemented during and after the construction of the dwelling;

7. That the single family dwelling not be used for rental or any other commercial purposes;

8. The construction, alteration, moving, demolition and repair of any building or other improvement on lands within the Conservation District, shall be subject to the building codes of the respective counties in which the lands are located; provided that prior to the commencement of any construction, alteration or repair of any building or other improvement, four (4) copies each of the final location map, plans and specifications shall be submitted to the Chairman, or his authorized representative, for approval, provided however, that any alteration or repair which does not change or expand on the existing land use shall not be subject to the above

9. Clearing areas for construction purposes shall require prior approval by the Chairman. Ground cover of slopes over 40 percent shall not be removed unless specifically authorized by the Chairman;

10. Cleared areas shall be revegetated within thirty (30) days, unless otherwise provided for in a plan on file with and approved by the Department;

11. Upon approval of a particular use by the Board, any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and, all work and

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HA-1466
August 13, 19

13. Side yards shall be a minimum of twenty (20) feet;

14. Non-attached accessory buildings, water tanks, and cesspool must be located at least ten (10) feet from the main structure;

15. That appropriate measures shall be taken to minimize excessive erosion, silting and seepage during and subsequent to development.

Respectfully submitted,

Sherrie Samuels

SHERRIE SAMUELS
Staff Planner

Attachment

APPROVAL FOR SUBMITTAL:

S. Ono

SUSUMU ONO, Chairman
Board of Land and Natural Resources

EXHIBIT D

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

File No.: HA-3233
180-Day Exp. Date: December 10, 2005

October 28, 2005

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

REGARDING:	Conservation District Use Application (CDUA) HA-3233 for a Single Family Residence (SFR) & Related Improvements
APPLICANT:	Steven Lim for the Gadler Family Trust
LANDOWNER:	Gadler Family Trust
LOCATION:	Keonepoko Iki, Puna, island of Hawaii
TMKs:	(3) 1-5-009:040
AREA OF PARCEL	Approximately (≈) 10 acres
USE:	≈ 1 acre
SUBZONE:	Resource

DESCRIPTION OF AREA AND CURRENT USE

The proposed project site is located on unimproved oceanfront property makai of a Government Beach Road, and is adjacent and North (Hilo side) of the Hawaiian Beaches subdivision located at Keonepoko Iki, District of Puna on the island of Hawaii. The 10,005 acre parcel identified as TMK (3)1-5-009:040 appears to lie entirely within the Resource subzone of the Conservation District. To the northeast is the Pacific Ocean, to the southeast is private property noted as the Klein residence within the Urban District and the Hawaiian Beaches subdivision beyond, to the southwest is the Government Beach Road and unimproved private property within the Agricultural District, and to the northwest are two approved Single Family Residence (SFR) and other private properties within the Conservation District **(Exhibit 1, 2, 3, 4 & 5)**.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
OCT 28 2005

ITEM K-2

An existing rock wall borders the property's southern (mauka) boundary. Rock wall remnants are located in the center of the property, mauka of an existing lauhala grove. Remnants of a tree house exist in a large banyan tree. There are two gated entry ways which breach the southern boundary wall with two existing roadways one that is 12 feet wide and ≈ 258 feet long and the other that is 15 feet wide and ≈420 feet long **(Exhibit 6,7, 8 & 9)**.

Access to the property is via provided from the Keaau-Pahoa highway that connects to Kahakai Boulevard in the Hawaiian Paradise Park subdivision to the Government Beach Road, also known as the Puna Trail, an improved gravel/dirt roadway having a 10-foot wide right-of-way. A 40-foot building setback line runs along the makai portion of the right of. Way. Electrical and Telephone service have underground entries located along the Government Beach Road and at the end of Welea Street within the Hawaiian Beach Subdivision **(Exhibit 10 & 11)**. There is no municipal water system available.

The shoreline of the subject area is rocky consisting of low/medium height sea cliffs **(EXHIBIT 12)**. The property is characterized by a gradual slope of predominantly historical a'a lava flow which covers the entire area makai of the Government Beach Road. The elevation of the property ranges from sea level to approximately 54 feet above mean sea level along the mauka boundary near the Government Beach Road.

According to the applicant, community contacts and consultation with kupuna familiar with the area disclosed that there are no known traditional or customary native Hawaiian practices within the subject property. Opihi, limu gathering and fishing take place at the shoreline areas.

According to the applicant, no plant species listed by the U.S. Fish & Wildlife Services or State protected plant species as threatened or endangered, proposed, or a candidate species or "species of concern" occur on the property or immediate vicinity. The shoreline of the property and adjoining oceanfront properties are bare of vegetation. Plants on the property consist of mature coconut, octopus, gunpowder, autograph, Norfolk pine, avocado and pandanus (hala).

According to the applicant, no endangered or otherwise rare bird or mammal species were observed within the project area. The area is not included within the critical habitat for protected species. Known avifauna consists of lowland urban birds such as the mynah, house finch, cardinal, and majiro. No resident endemic and indigenous land birds, water birds, seabirds and migratory birds have been recorded on the property. Mammal species most expected to occur on the property include mongoose, feral cat, mouse and rat. Marine mammals and sea turtles have not been observed along the low/medium height jagged, barren lava sea cliffs along the property.

PROPOSED USE

According to the applicant, the proposed Single Family Residence consists of a one-story concrete floor dwelling with two bedrooms, two and a half baths, a kitchen, a dining room, a living room, a foyer and entry that is approximately 2849 square feet. There are covered lanais (≈594.5 ft²), arcade and breezeway of (≈352.5 ft²), a utility and storage area (≈300.68 ft²) with all structures connected. An approximately 900 square foot swimming pool and a perimeter 4 foot-high chain link fence are proposed on the makai side of the SFR **(Exhibit 13)**.

According to the applicant, the area of the SFR is at the maximum of 5,000 square feet. The SFR will be sited along the northeastern boundary of the property. The front or mauka setback is 500 feet, the side setbacks are 224 feet and 111 feet and the back or makai setback is 159 feet. The maximum height shall not exceed 25 feet. Neutral colors and materials such as wood, stone and slate will be used on the exterior of the dwelling to harmonize with the existing physical environment **(Exhibit 14, 15, 16 & 17)**.

According to the applicant, the existing topography will require grading/contouring of 7% of the property. The proposed house site will require grading of approximately 1,138.67 cubic yards and fill of 1,215.84 cubic yards to accommodate the natural contours of the land. An individual waste water treatment system is proposed for domestic wastewater disposal meeting all applicable County and State regulations. The disposal system will be located adjacent to the dwelling. Potable water will be by private catchment system consisting of a concrete underground storage catchement water tank to be housed underground beneath the utility and storage area.

Driveway improvements include two 6.5' high rock column and gate at the existing entrances. The applicant proposes to place 3 inches of red cinder on the existing dirt roads and proposes "an additional pea gravel driveway and parking area of approximately 15-feet wide by 270 lineal feet, 24-feet wide by 851 lineal feet, and 25-feet by 40 lineal feet to connect both dirt roads to the dwelling."

Landscaping improvements will consist of planting of small shrubbery and ground cover around the perimeter of the house. Plant species being considered are pohinahina, akia, hinahina kukahakai, ma'o, naupaka kahakai, nehe, wiliwili, ilima, a'ali'i and ulei. The final landscaping plan will depend upon the availability of planting materials. 10-20 Norfolk Pines and 10-20 Coconut trees, 20 feet tall are proposed to be removed or relocated along with juvenile Norfolk pines and coconut trees 4-feet or less. A landscaping plan shall be submitted with the construction plans to the Department for approval.

Regarding the wall remnants on the subject property, based upon a field inspection and the applicants commitment to avoid any impact to the area of the parcel containing the wall remnants, the State Historic Preservation Division has determined that "no historic properties will be affected" by the proposed project.

Alternatives to the proposed action

The applicant has reduced the size of the proposed residence and related accessory use improvements as initially envisioned. Under the "No-Action" alternative, the Applicant would abandon the proposed project and the area would remain vacant land. This alternative deprives the Applicant of the reasonable use of their property.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: the **State**: Department of Health; Office of Hawaiian Affairs; Office of Environmental Quality Control; Department of Land and Natural Resources Divisions of: Aquatic Resources, Conservation and Resource Enforcement, Engineering, Forestry and Wildlife, Hawaii District Land Office, Historic Preservation; and the **County of Hawaii:** Department of Planning, Department of Environmental Management. In addition, this application and Final Environmental Assessment was also sent to Malama O Puna, a non-profit organization and the nearest public library, the Pahoa Public Library, to make this information readily available to those who may wish to review it.

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

STATE OF HAWAII

DEPARTMENT OF HEALTH

Clean Water Branch

An National Pollutant Discharge Elimination System (NPDES) permit is required before the commencement of the construction activities. The operation and maintenance of the proposed swimming pool will not result in any discharges into State waters. Any discharge related to project construction or operation activities, will comply with the applicable State Water Quality Standards as specified in HAR, Chapter 11-54.

There are no site specific Best Management Practices (BMPs) measures proposed to properly isolate and confine the construction activities and to contain and prevent any potential pollutant discharge from adversely impacting State waters. At a minimum, the BMP shall include site characterization; construction sequence construction method; characteristics of the discharge and potential pollutants associated with the proposed construction activity; and control measures and/or treatment.

The is no Applicable Monitoring and Assessment Plan proposed to demonstrate how the project construction activity would be in compliance with the applicable State Water Quality Standards.

Pursuant to Hawaii Revised Statutes (HRS), §342D-50(a), requires that "No person, including any public body, shall discharge any water pollutants into state waters, or cause

or allow any water pollutant to enter State waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director."

APPLICANT'S RESPONSE

The Applicant will comply with the NPDES permitting requirements prior to commencement of the construction activities. The Applicant will also comply with applicable rules and regulations to ensure that the operation and maintenance of the proposed swimming pool will not result in any discharge into State waters.

Wastewater Branch

The subject project lies in the Critical Wastewater Disposal Area with One Acre Lot Exception. Wastewater treatment and disposal has been briefly mentioned in the draft Environmental Assessment (EA). As there is no County service system within the vicinity, and the property is larger than one acre, we concur with the application. Although our rules allow cesspools to be used in this area, we strongly recommend that wastewater be handled by a non-cesspool treatment system and effluent be disposed of into shallow soil absorptions systems rather then seepage pits. All wastewater plans must conform to applicable provisions of the Department of Health's Rules. We do reserve the right to review the detailed wastewater plans for conformance to applicable rules.

APPLICANT'S RESPONSE

Wastewater for the project will be handled via a private septic tank and perk field system meeting with all applicable governmental regulations.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL

Please consult with all immediate neighbors. Describe in as much details the proposed wastewater system. Describe whether there are any anchialine pools in the vicinity of the project.

APPLICANT'S RESPONSE

The Applicant has made contact with adjacent property owners on the Kapoho side who have written a letter of support for the proposed project. Other adjacent properties are vacant with no full-time residents. The Wastewater for the project will be handled via a septic tank and perk field system meeting with all applicable governmental regulations. There are no anchialine pools in the vicinity of the project.

OFFICE OF HAWAIIAN AFFAIRS (OHA)

OHA commends the property owner for choosing to develop the proposed dwelling away from known archaeological sites and an old-growth hala tree. And does not intend to impede any traditional cultural practices, including procurement, along the shoreline.

Regarding the complex of walls within the property State Site numbers should be assigned to the sites and significance should be assessed, just as they would in a formal Archaeological Inventory Survey. OHA recommends that an Archaeological Monitoring Plan be drafted in support of this project. A Cultural Impact Statement should be prepared. Identify the cultural consultant who prepared the synopsis. Identify the community members consulted. Should iwi or Hawaiian cultural or traditional deposits be found during ground disturbance work shall cease and the appropriate agencies will be contacted.

APPLICANT'S RESPONSE

A site visit conducted on 09/11/03 by Jeanne Knapp, Hawaii island Assistant Archaeologist revealed several wall remnants which were located outside of the proposed development area. Given these findings from the field inspection, State Historic Preservation Division (SHPD) stated that it believed that "no historic properties will be affected by this undertaking."

The Cultural Impact Statement was prepared by Virginia Goldstein, former County of Hawaii Planning Director who consulted with local residents, Grant Togashi, and Hamilton and Pat Ahlo who are familiar with the area. The EA has been revised to incorporate this information. The applicant will stop work in the immediate vicinity and contact SHPD if any archaeological or historic sites are found.

DEPARTMENT OF LAND AND NATURAL RESOURCES

AQUATIC RESOURCES

The proposal as described should not significantly impact aquatic resource values provided construction activities are restricted to periods of minimal rainfall and low runoff, and the areas denuded of vegetation or susceptible to erosion are appropriately stabilized. Precautions shall be taken to prevent debris, landscaping chemicals, eroded soil, petroleum products and other potential contaminants from flowing blowing or leaching into coastal waters. Additional or undescribed construction or landscape modifications within the Conservation District should be submitted to the Department for review.

APPLICANT'S RESPONSE

The applicant will comply with the NPDES permitting requirements prior to commencement of the construction activities. The Applicant will also comply with applicable rules and regulations to ensure that construction and landscaping activities will not result in any discharge into coastal waters.

ENGINEERING

The project site is located in minimal tsunami inundation area. Please refer to the Federal Emergency Management Agency (FEMA) , instead of the U.S. Corps of Engineers Flood Insurance Rate Maps (FIRM)

APPLICANT'S RESPONSE

The Final EA will reflect reference to the Federal Emergency Management Agency, and not the U.S. Corps. of Engineers Flood Insurance Rate Maps (FIRM).

FORESTRY AND WILDLIFE

No Comments

COUNTY OF HAWAII

DEPARTMENT OF PLANNING

By letter dated March 11, 2005, the proposed use was determined to be exempt form the Special Management Area definition of development. The requirement to submit a current certified shoreline survey was waived because all proposed improvements were located a minimum of 110-feet from the ocean.

ANALYSIS

After reviewing the application, by correspondence dated June 17, 2005, the Department has found that:

1. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to §13-5-24, Hawaii Administrative Rules (HAR), R-8, SINGLE FAMILY RESIDENCE, (D-1), "A single family residence that conforms to design standards as outlined in this chapter." Please be advised, however, that this finding does not constitute approval of the proposal;

2. Pursuant to §13-5-40 of the Hawaii Administrative Rules, a Public Hearing will not be required;

3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) is anticipated for the proposed project.

It had been determined that satisfaction of the Special Management Area has been met with documentation dated March 11, 2005, from the County of Hawaii which states that the proposed construction of the single-family dwelling and related improvements are exempt from the definition of development. This exemption is based on the location of all

proposed improvements as depicted on a site plan dated June 22, 2004, which illustrates that the proposed swimming pool deck is located approximately 159 feet from the ocean and the chain-link fence is located approximately 110 feet from the ocean.

In addition, a FONSI to the environment was published in the September 23, 2005 Environmental Notice.

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. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

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

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. A Single Family Residence is an identified land use pursuant to HAR, §13-5-24, R-8, SINGLE FAMILY RESIDENCE (D-1) A single family residence that conforms to design standards s outlined in Chapter 13-5, HAR. Providing for one SFR and associated improvements within one acre of a ten-acre parcel should not adversely affect the open space and public views along the shoreline. The applicant has stated the remaining portion of the property shall remain in its natural state.

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

Staff believes the proposed project complies with provisions and guidelines contained in Chapter 205, HRS regarding Coastal Zone Management. It had been determined that satisfaction of the Special Management Area has been met with documentation dated March 11, 2005, from the County of Hawaii which states that the proposed construction of the single-family dwelling and related improvements are exempt from the definition of development. This exemption is based on the location of all proposed improvements as depicted on a site plan

dated June 22, 2004, which illustrates that the proposed swimming pool deck is located approximately 159 feet from the ocean and the chain-link fence is located approximately 110 feet from the ocean.

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, community or region. There may be short-term adverse effects on the surrounding area associated with construction activities such as potential noise and air quality. No changes in the shoreline or topography are envisioned. Pedestrian access along the shoreline will not be curtailed. The Hawaiian beach subdivision within the Urban District is immediately adjacent to the subject parcel.

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 proposed SFR and associated improvements are proposed on approximately one acre of a ten-acre parcel and the remaining portion of the property will continue to remain in its natural condition. A SFR exists in the Urban Land Use District to the east (Kapoho side) and an approved SFR exists to the west (Hilo side) within the Conservation District. The Agricultural Land Use District exists to the South across the street from the subject parcel.

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

The proposed home site is set back over a hundred feet from the shoreline. The proposed design and siting of the residential dwelling and related accessory use improvements and the property's gradually slopping terrain helps to facilitate the preservation of the natural beauty of the coastline's views and vistas. The applicant has stated that the remaining portions of the property will remain in its natural condition.

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

There will be no subdivision of land for this proposed project.

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

Staff believes the proposed land use will not be materially detrimental to the public health, safety and welfare.

DISCUSSION

Staff has no objections to a Single Family Residence that adheres to Conservation District Rules on the subject site. The subject property abuts the Urban and Agricultural State Land Use Districts. The adjacent residents within the Conservation District have received Conservation District Use Permits. The subject area is adjacent to the Hawaiian Beaches subdivision and some utilities are available to service homes. The area has established residential use and the proposed use shall be compatible with the locality and surrounding area.

Staff visited the subject parcel on the morning of August 29, 2005. Staff noted the area appeared as represented in the CDUA. Staff noted the remnants of the tree house. Staff noted off of the existing roadway, the ground was very rocky and uneven, heavily vegetated with numerous mosquitoes. Staff noted very large groves of hala and coconut trees. Staff noted the shoreline area consisted of a wide expanse of barren rock. There was unimpeded lateral access along the shoreline and the siting of the subject SFR will not affect this access in any way.

Staff believes the tree house was in disuse and recommends immediate removal. Within the application, discussions regarding the driveway areas were unclear. However because plans are preliminary and the Department will be approving final construction and grading plans, Staff believes all proposed improvements will be clarified and shall met our approval prior to construction.

The applicant proposes to disturb approximately 1 acre of land and leave the remaining natural areas of the parcel "as is." In addition, remnant stone walls located in the middle of the property will not be disturbed. Staff notes the groves of hala and coconut trees adds to the beauty and maintains the character of the Puna coastline. The landscaping plan should reflect and maintain the natural beauty of Puna and also soften and mitigate the inland view towards the residence.

RECOMMENDATION:

Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources APPROVE this application for a one-story Single Family Residence as described in CDUA HA-3233 located at Keonepoko, Puna, island of Hawaii, TMK: (3) 1-5-009:040 subject to the following conditions:

1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;

2) The applicant, 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 or 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 applicant shall comply with all applicable Department of Health administrative rules;

4) The applicant shall remove the unauthorized tree house within 30 days of Board approval of CDUA HA-3233;

5) The single-family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;

6) All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit;

7) The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;

8) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

9) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his 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 applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

10) The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

11) The applicant will minimize visual impacts using appropriate lighting, house color and landscaping. Existing trees shall be maintained to screen the structure from the surrounding lands. No mature trees shall be removed without the approval of the Department;

12) No outdoor lighting shall be directed towards the sea;

13) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this 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/or the Department may, in addition, institute appropriate legal proceedings;

14) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;

15) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

16) Potable water supply and sanitation facilities shall have the approval of the appropriate agencies;

17) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;

18) The applicant 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;

19) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the aquatic environment, off-site roadways, utilities, and public facilities;

20) Cleared areas shall be re-vegetated within thirty days of the completion of construction as described in a landscaping plan on file with the Department;

21) Obstruction of public roads, trials, and pathways shall be minimized. If obstruction is unavoidable, the applicant shall provide roads, trails, or pathways acceptable to the department;

22) The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules, Title 13-5;

23) Other terms and conditions as may be prescribed by the Chairperson; and

24) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

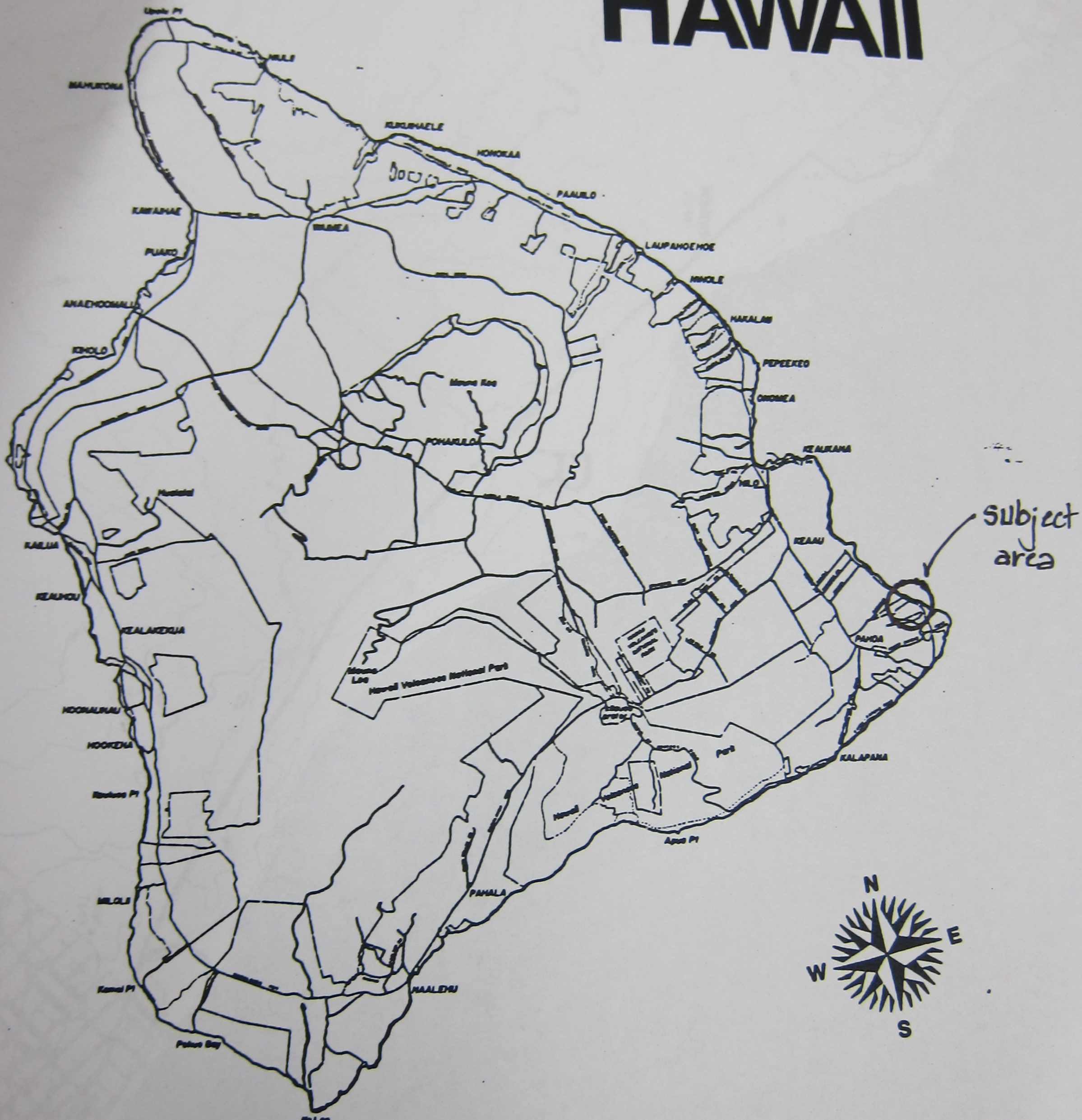
Respectfully submitted,

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

Approved for submittal:

Peter T. Young, Chairperson
Board of Land and Natural Resources

HAWAII



subject area

EXHIBIT 1

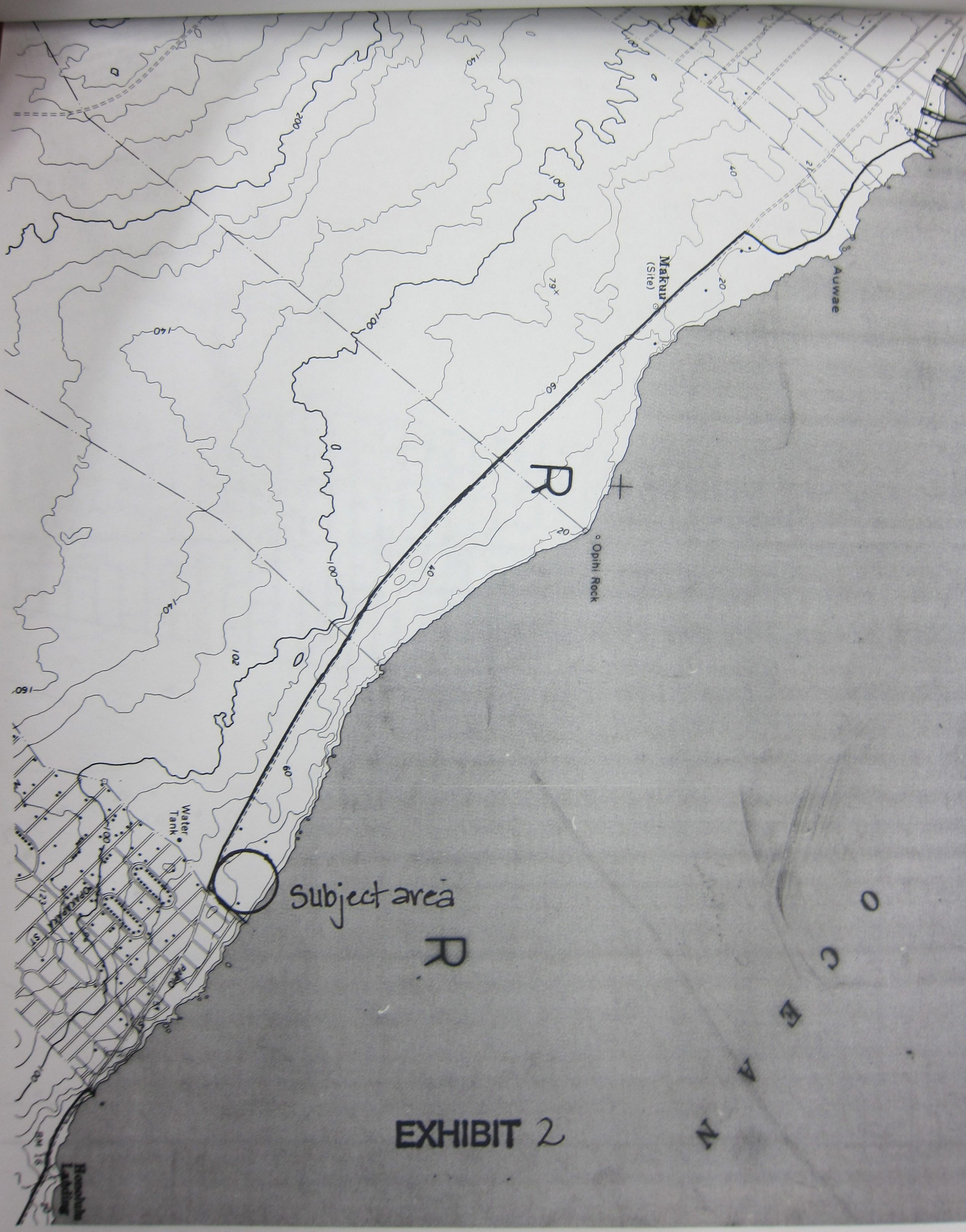

Makuu
(Site)
Auwae
Opihi Rock
Water Tank
Subject area
R
R
CEAN
Honolulu Landing

EXHIBIT 2

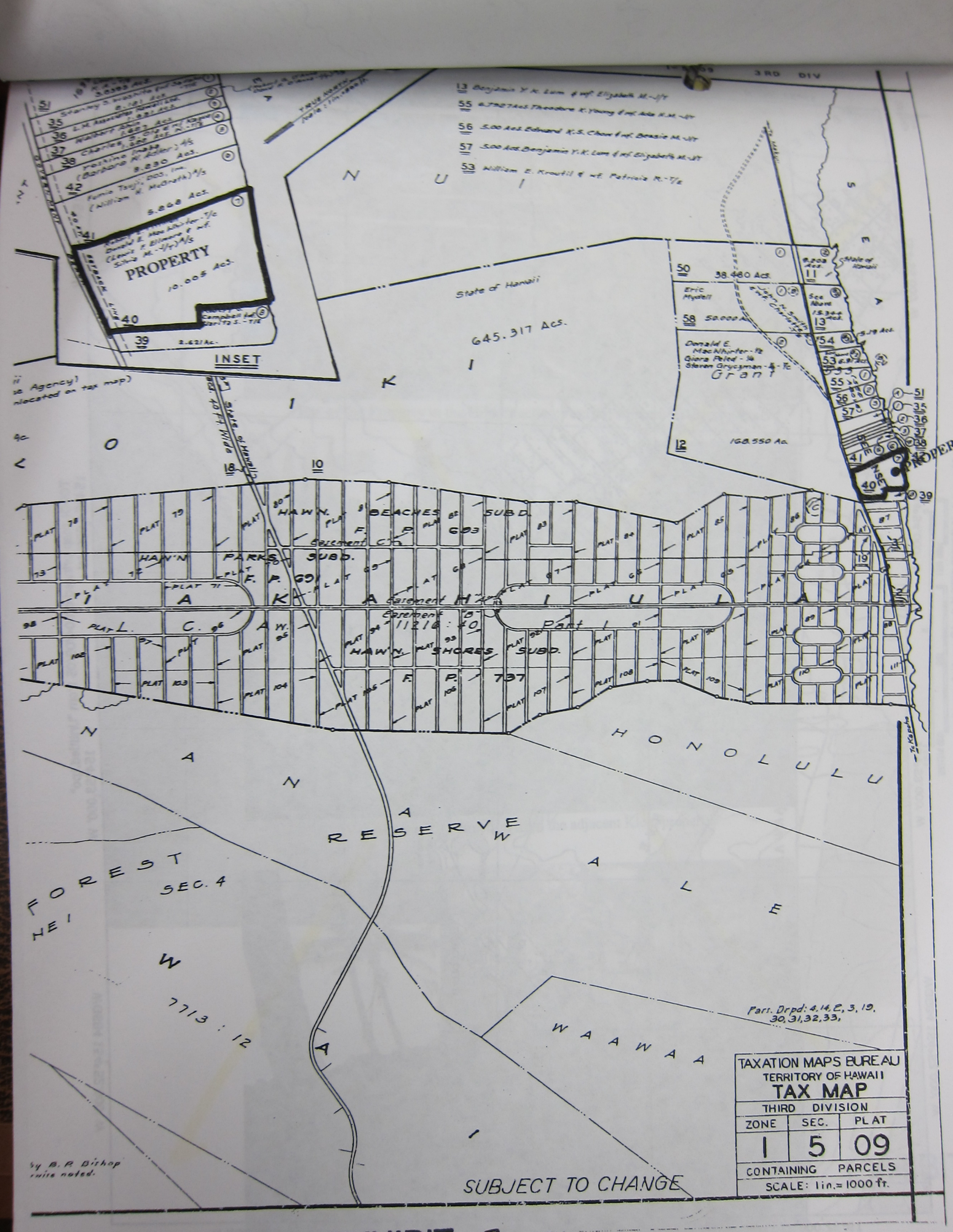
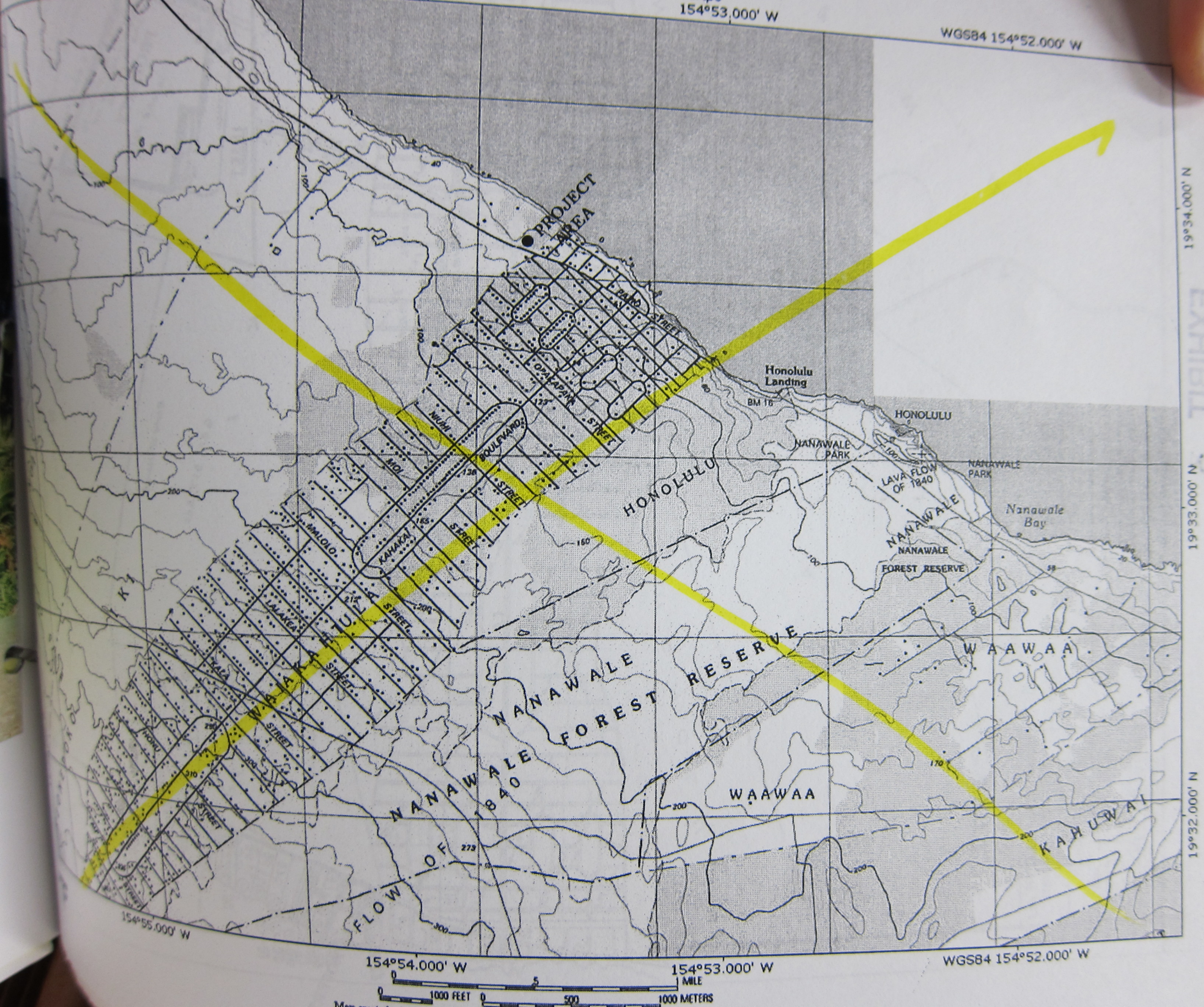

PROPERTY
10.005 Acs.
5.868 Acs.
8.830 Acs.
2.621 Ac.
INSET
645.317 Acs.
State of Hawaii
38.480 Acs.
50.000 Acs.
168.550 Acs.
Grant
Eric Myalell
Donald E. MacNhirter - ½
Glora Field - ¼
Steven Grycyman - ¼ - ½
Easement "B" 11216 : 40
Part 1
Easement "C"
Easement "H"
737
HAWN. BEACHES SUBD.
HAWN. PARKS SUBD.
HAWN. SHORES SUBD.
F. P. 603
F. P. 605
F. P. 606
F. P. 607
Parts. Drpd: 4, 14, E, 3, 19, 30, 31, 32, 33,
SUBJECT TO CHANGE
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
THIRD DIVISION
ZONE 1 | SEC. 5 | PLAT 09
CONTAINING PARCELS
SCALE: 1 in. = 1000 ft.

EXHIBIT 3



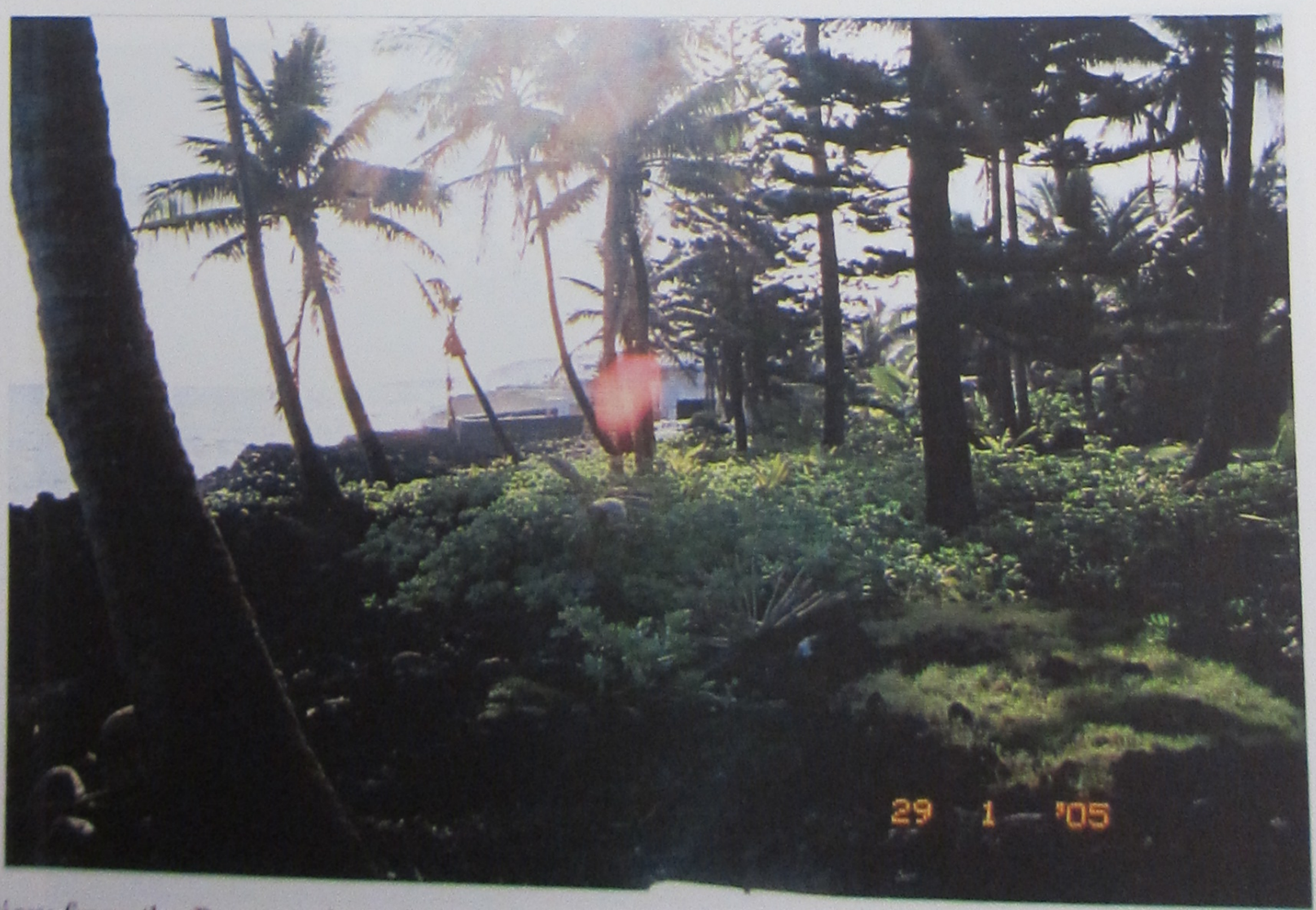
154°53.000' W
WGS84 154°52.000' W
PROJECT AREA
Honolulu Landing
BM 16
HONOLULU
NANAWALE PARK
LAVA FLOW OF 1840
Nanawale Bay
NANAWALE FOREST RESERVE
WAAWAA
KAHUWAI
NANAWALE FOREST RESERVE
NANAWALE FLOW OF 1840
WAIAKAHIULA
PARO STREET
OPAKAPAKA STREET
NIUHI
BOULEVARD
MOI
STREET
KAHAKAI
MALOLO
LALAKEA
KALA
HONU
19°34.000' N
19°33.000' N
19°32.000' N
154°55.000' W
154°54.000' W
154°53.000' W
WGS84 154°52.000' W
0 .5 1 MILE
0 1000 FEET
0 500 1000 METERS



View of the Property in the Hilo direction from the adjacent Klein property.



View in the Hilo direction from the adjacent Klein property.



EXHIBIT



View of first adjacent single-family dwelling (Hilo side).



View of first adjacent single-family dwelling (Hilo side) from the ocean.

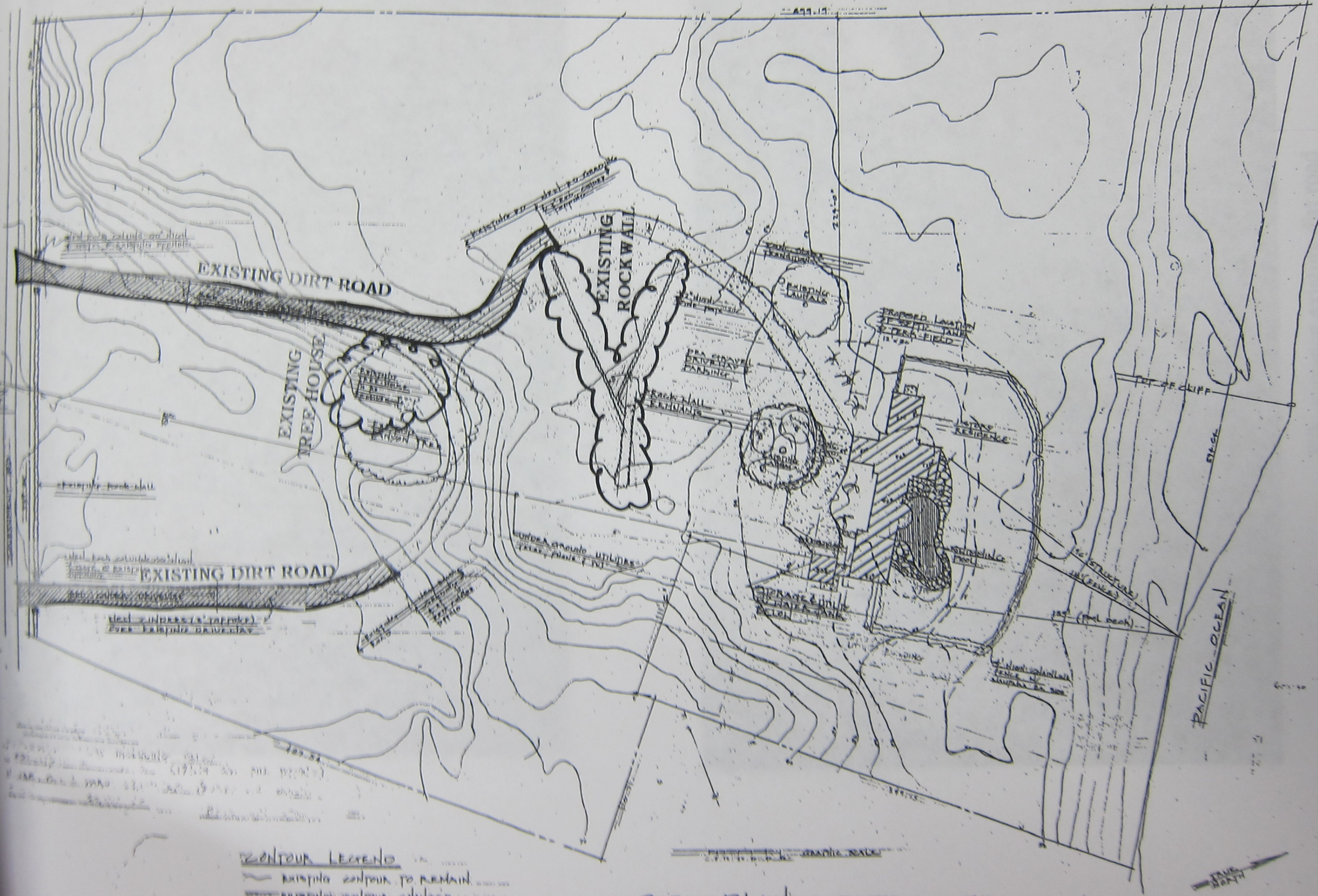


View of the second adjacent single-family dwelling (Hilo side) from the Old Government Road.

EXHIBIT 5

EXHIBIT 6

EXISTING STRUCTURE



PROPOSED NEW SINGLE FAMILY RESIDENCE FOR
MR. & MRS. NICHOLAS GADLER
GOVERNMENT BEACH ROAD KEONOPOKO DISTRICT, PUNA, HAWAII

1



Hilo entrance existing dirt road



Hilo entrance existing dirt road

EXHIBIT 7



Kapoho side entrance and existing dirt road



Hilo side entrance and existing dirt road

EXHIBIT 8



ree house in the Banyan tree to be removed.



Lauhala grove to be retained and located next to the proposed driveway to the single-family residence



EXHIBIT 9

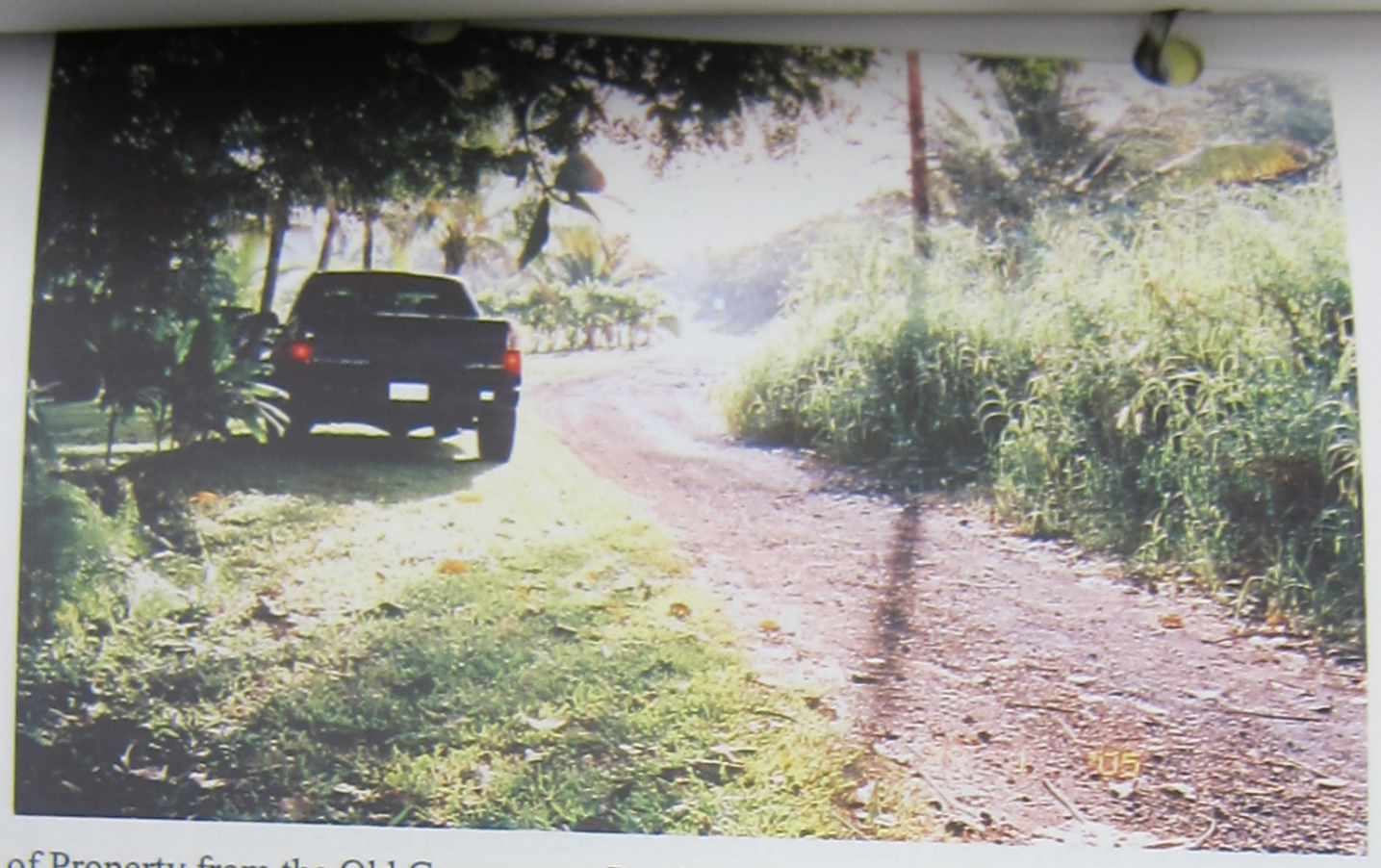
Norfolk Pine and Coconut trees to be removed and/or relocated

MAKAI SIDE OF THE PROPERTY

Subject parcel

EXHIBIT 10

MAUKA ENTRANCE TO THE PROPERTY



View of Property from the Old Government Road to Hawaiian Beaches Subdivision (Kapoho direction).



View of Property from the Old Government Road in the Kapoho direction.



Property entrance from the Old Government Road.

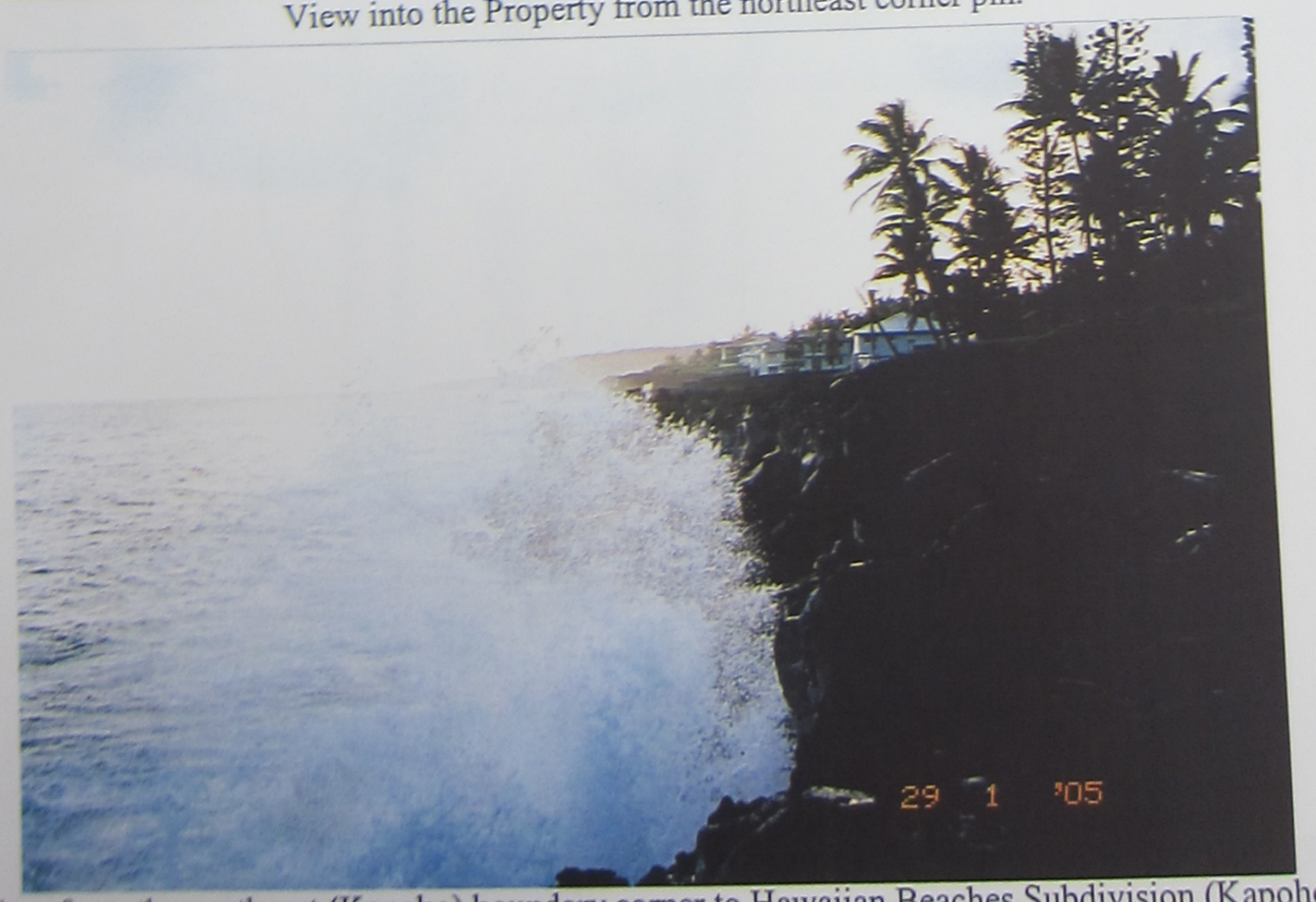
EXHIBIT 11



Ocean view of Property from the northeast (Kapoho) boundary corner pin in the northwest direction (Hilo direction).



View into the Property from the northeast corner pin.



Ocean view from the northeast (Kapoho) boundary corner to Hawaiian Beaches Subdivision (Kapoho direction).

EXHIBIT 12

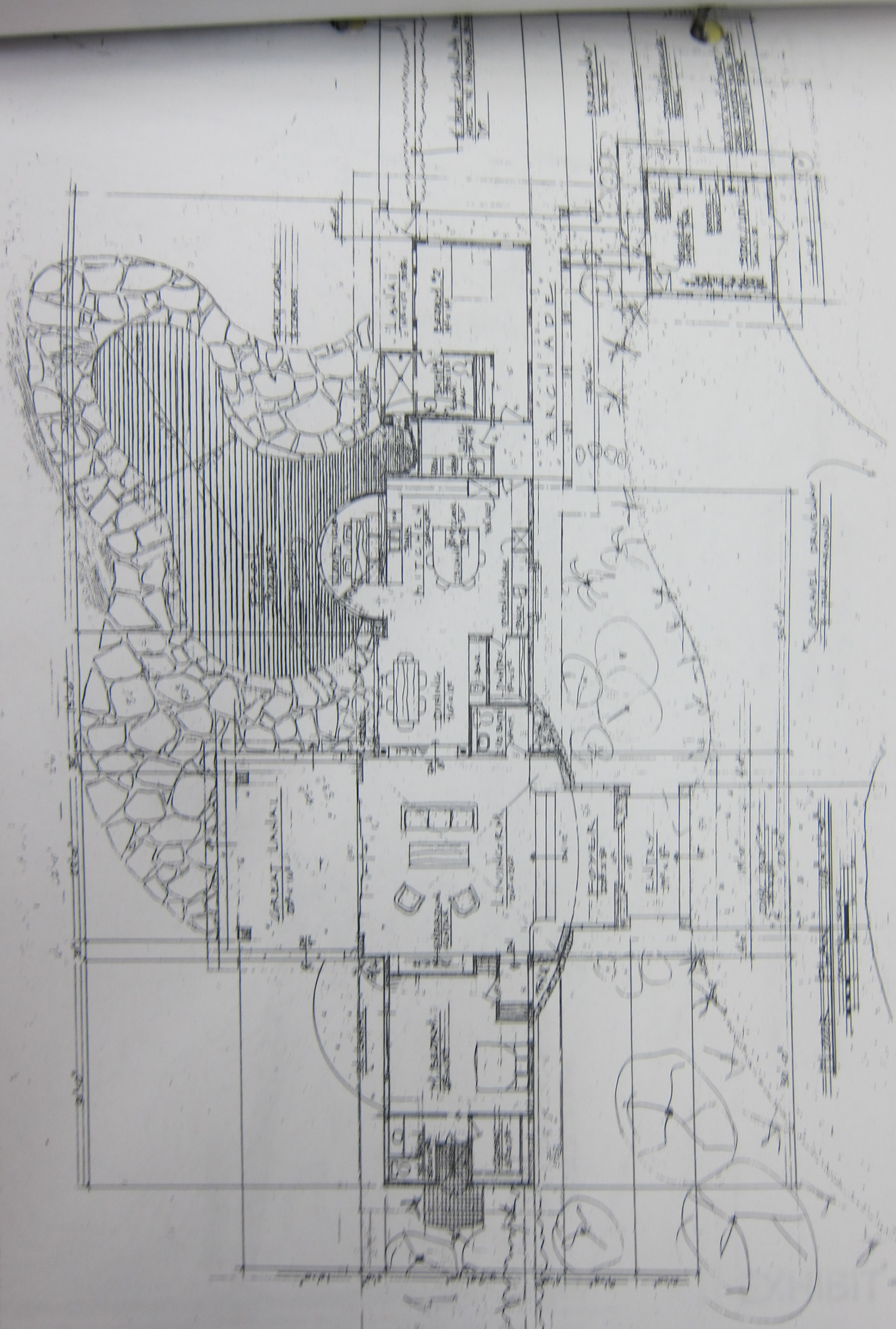
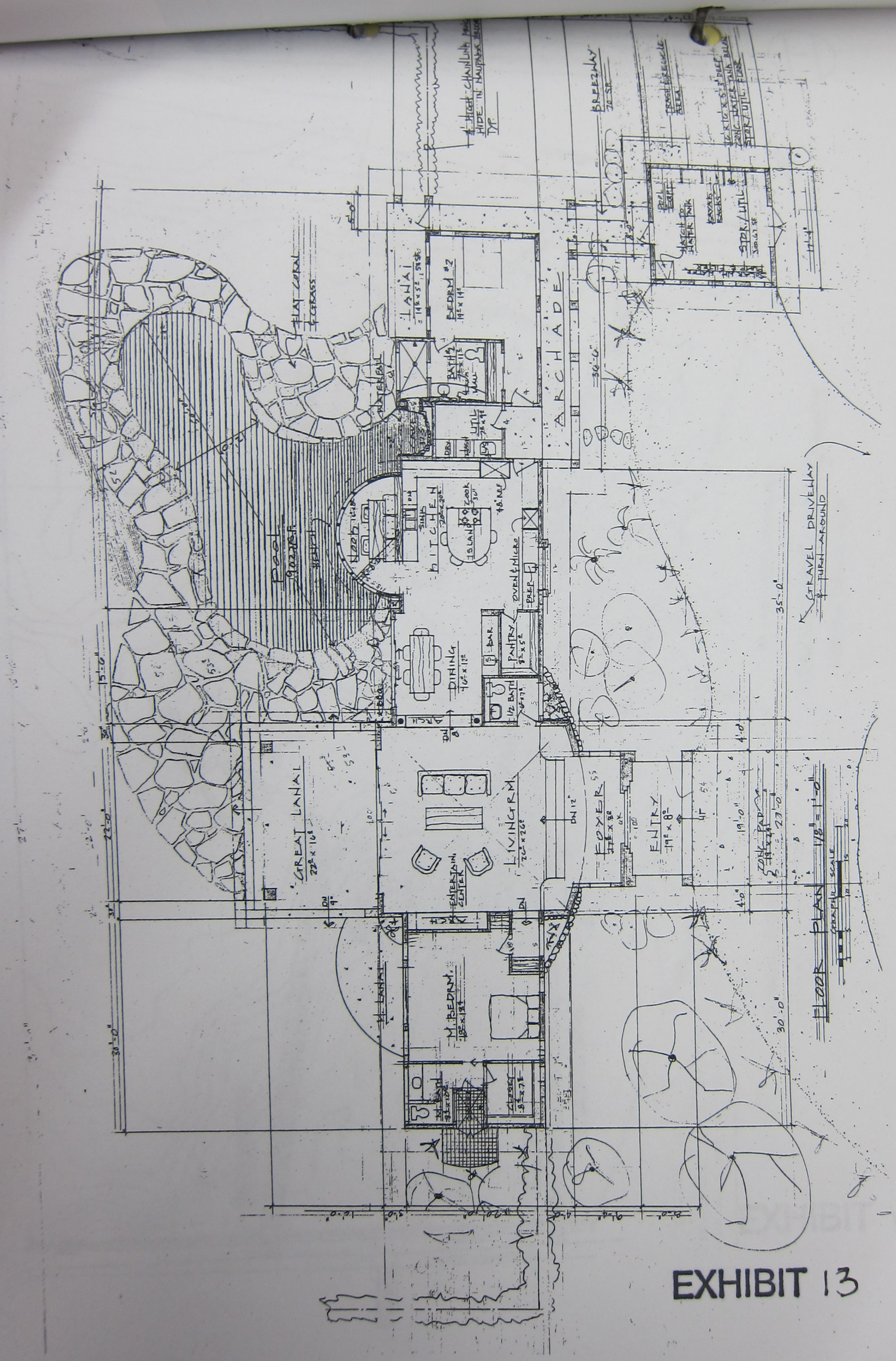


EXHIBIT 13



LANAI
BEDRM #2
ARCHADE
BREEZEWAY
FLAT CORAL & GRASS
WATERFALL
BATH #2
UTIL
DRY
WASH
KITCHEN
ISLAND
COOK
OVEN & MICRO
PREP
PANTRY
BAR
DINING
1/2 BATH
GREAT LANAI
LIVING RM
ENTERTAIN CENTER
FOYER
ENTRY
M. BEDRM.
M. LANAI
CLOSET
GRAVEL DRIVEWAY & TURN AROUND
FLOOR PLAN
GRAPHIC SCALE

EXHIBIT 13

EXISTING ROCK WALL

NEW ROCK COLUMN 28'-0" HIGH @ EXISTING RETAINING

NEW ZINPERS (3" TAPERED) OVER EXISTING DRIVEWAY

NEW ROCK COLUMN 28'-0" HIGH @ EXISTING RETAINING

EXISTING TREE TO BE REMOVED

EXISTING BANYAN TREE

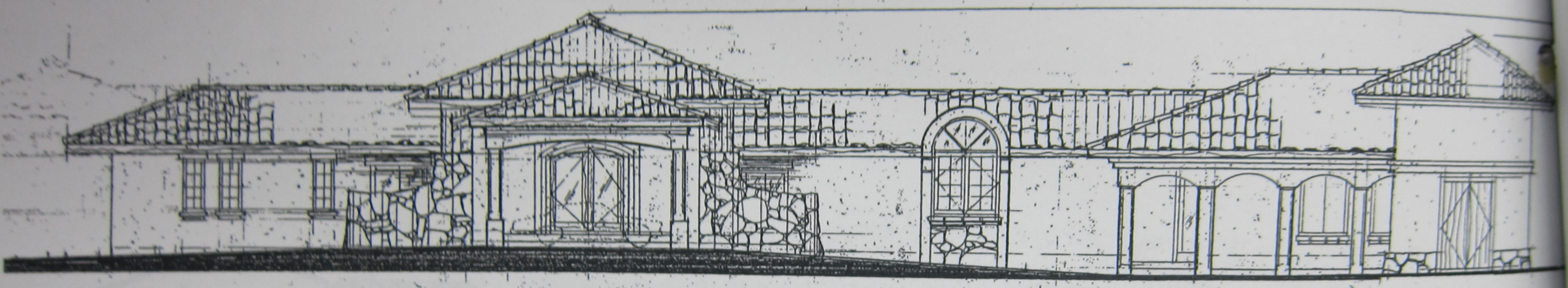
NEW 6" SEWER LATERAL

NEW 6" SEWER LATERAL

EXISTING SEWER MANHOLE

EXISTING SEWER MANHOLE

EXISTING SEWER MANHOLE



MAUKA ELEVATION - GADLER RESIDENCE 1/8" = 1'-0"

GRAPHIC SCALE

EXHIBIT 15

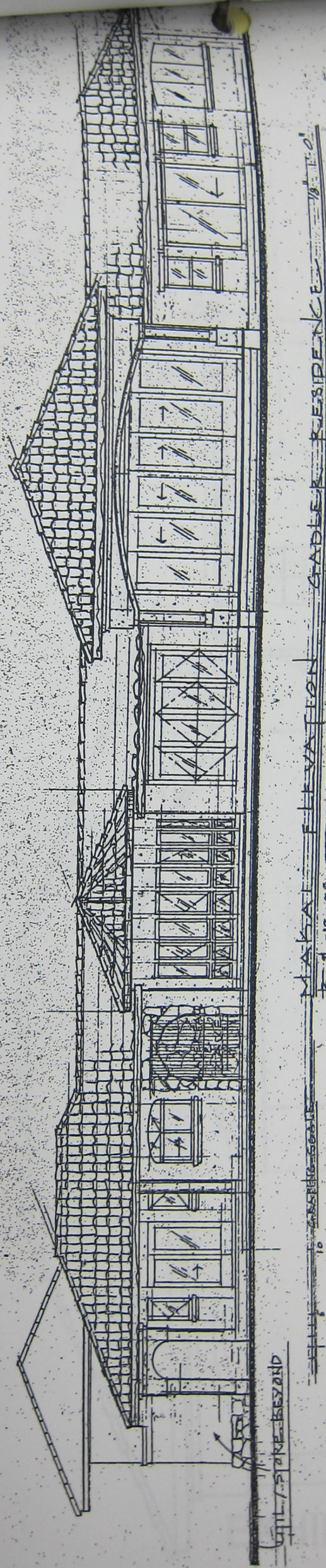

MAKAI ELEVATION GABLER RESIDENCE
GRAPHIC SCALE
GILL/STONE BEYOND

EXHIBIT 16

ROOFING: BUFF/BROWN
MISSION TILES

FASCIA:
MAHOGANY

SIDING:
BUFF
CEM. PLASTER

LAVA ROCK
ACCENTS

22'

SOUTH ELEVATION 1/8" = 1'-0"

4.12.05

1 5 10 GRAPHIC SCALE

EXHIBIT 17

NORTH ELEVATION 1/8" = 1'-0"

4.12.05

1 5 10 GRAPHIC SCALE

EXHIBIT E

LINDA LINGLE
GOVERNOR OF HAWAII





PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

CDUP HA-3233
Acceptance Date: June 13, 2005
180-Day Exp. Date: December 10, 2005

Mr. Steven S.C. Lim
Carlsmith Ball LLP
121 Waianuenue Avenue
Hilo, Hawaii 96720

OCT 28 2005

Dear Mr. Lim:

SUBJECT: Conservation District Use Permit (CDUP) HA-3233

This is to inform you that on October 28, 2005, the Board of Land and Natural Resources approved your client's Conservation District Use Application (CDUA) for a one-story Single Family Residence as described in CDUA HA-3233 located at Keonepoko, Puna, island of Hawaii, TMK: (3) 1-5-009:040 subject to the following conditions:

1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;

2) The applicant, 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 or 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 applicant shall comply with all applicable Department of Health administrative rules;

4) The applicant shall remove the unauthorized tree house within 180 days of Board approval of CDUA HA-3233;

5) The single-family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;

6) All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit;

7) The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided

during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;

8) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

9) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his 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 applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

10) The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

11) The applicant will minimize visual impacts using appropriate lighting, house color and landscaping. Existing trees shall be maintained to screen the structure from the surrounding lands. No mature trees shall be removed without the approval of the Department;

12) No outdoor lighting shall be directed towards the sea;

13) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this 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/or the Department may, in addition, institute appropriate legal proceedings;

14) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;

15) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

16) Potable water supply and sanitation facilities shall have the approval of the appropriate agencies;

17) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;

18) The applicant 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;

19) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the aquatic environment, off-site roadways, utilities, and public facilities;

20) Cleared areas shall be re-vegetated within thirty days of the completion of construction as described in a landscaping plan on file with the Department;

21) Obstruction of public roads, trials, and pathways shall be minimized. If obstruction is unavoidable, the applicant shall provide roads, trails, or pathways acceptable to the department;

22) The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules, Title 13-5;

23) Other terms and conditions as may be prescribed by the Chairperson; and

24) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, please feel free to contact Tiger Mills at 587-0382.

Sincerely,

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

Applicant's Signature

Date 11-3-05

c: Chairperson
Hawaii District Land Office
County of Hawaii, Department of Planning

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 1533 to Kekoa) situate, lying and being at Keonopoko Iki, District of Puna, Island and County of Hawaii, State of Hawaii, being LOT 7, same being a subdivision of Lots 1 to 8, inclusive, and thus bounded and described:

Beginning at the southwest corner of this parcel of land at the southeast corner of Lot 6 and on the north side of the existing Government Beach Road (Kapoho-Maku), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPOHO" being 23,695.90 feet north and 17,322.18 feet west and running by azimuths measured clockwise from true South:

1.	201°	30'	30"	899.19	feet along Lot 6;
2.	302°	13'	40"	594.64	feet along sea shore;
3.	40°	15'	20"	349.15	feet along Lot 8;
4.	310°	15'	20"	110.71	feet along Lot 8;
5.	40°	15'	20"	427.54	feet along Lot 8;
6.	108°	48'		389.65	feet along existing Government Beach Road (Kapoho-Maku);
7.	112°	31'		50.30	feet along the same to the point of beginning and containing an area of 10.005 acres, more or less.

EXHIBIT B

STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	**Date Received**
Board Action Date / Item No.	**Division/Office**

2015 NOV 24 P 3:18 RECEIVED

INSTRUCTIONS:

1. File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:

   Department of Land and Natural Resources
   Administrative Proceedings Office
   1151 Punchbowl Street, Room 130
   Honolulu, Hawaii 96813
   Phone: (808) 587-1496, Fax: (808) 587-0390

2. DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (http://dlnr.hawaii.gov/forms/contested-case-form/). Please review these rules before filing a petition.

3. If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.

4. Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a $100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

5. All materials, including this form, shall be submitted in **three (3)** photocopies.

A. PETITIONER (If there are multiple petitioners, use one form for each.)		
1. Name Paul Pastorek	**2. Contact Person** Paul Pastorek	
3. Address 9816 Debra Drive	**4. City** River Ridge	**5. State and ZIP** LA 70123
6. Email paul@pastorekpartners.com	**7. Phone** (225) 571-0771	**8. Fax**

B. ATTORNEY (if represented)		
9. Attorney Name Onaona P. Thoene and Katherine A .Garson	**10. Firm Name** Carlsmith Ball LLP	
11. Address 1001 Bishop Street, Suite 2100	**12. City** Honolulu	**13. State and ZIP** HI
14. Email pthoene@carlsmith.com &	**15. Phone** (808) 523-2500	**16. Fax** (808) 523-0842

kgarson@carlsmith.com		

C. SUBJECT MATTER

17. Board Action Being Contested
Action to deny Conservation District Use Permit Application ("CDUA") No. HA-3982 (the "Application").

18. Board Action Date	**19. Item No.**
November 14, 2025	K-2

20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case
Hawaii Revised Statutes ("HRS") §§ 183C-6, 183C-9
Hawaii Administrative Rules ("HAR") §§ 13-1-28, 13-1-31(b), 13-5-42
Constitution of the State of Hawaii Article I, Section 5 (The rights of due process and equal proteciton of laws)

21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection
Petitioner is the owner of TMK No. (3) 5-1-010-027 (the "Property") and the applicant under CDUA HA-3982 to develop a single-family residence ("SFR") and related infrastructure. The Board's denial of the Application deprives Petitioner of his due process rights. Under HAR § 13-1-31(b)(2), all persons who have a property intrest in the land, or who lawfully reside on the land, "shall be admitted as parties[.]"

22. Any Disagreement Petitioner May Have with an Application before the Board

The Board's decision to deny the Application was arbitrary and capricious, an abuse of the Board's discretion, in excess of the Board's authority, and clearly erroneous in light of the evidence supporting the Application and information presented to the Board.

In denying the Application, the Board expressed two reasons: First, the Board adopted OCCL's unfounded characterization of the Property, and second, the Board stated that size of the proposed SFR was too large despite being below the 5,000 s.f. Maximum Developable Area ("MDA") in the HAR Title 13, Chapter 5 (the "Conservation District Rules") and similar in size to neighboring homes in the area. The Board's decision to deny the Application based on the perception that the proposed SFR was "too large" for the area was based on inaccurate statements by OCCL staff that neighboring homes in the area were in the 2,000 and 3,000 s.f. range.

I. The Board's Decision was Made Based on Incorrect Information.

At the November 14, 2025 meeting, the Board's stated reason for denying the Application was that the proposed home was too large for the area. Applicant's counsel noted that, just months prior (in March of 2025), the Board approved a second extension of time on a Conservation District Use Permit ("CDUP") for a home whose MDA was thought to be around 4,900 s.f. (Upon further research, the second extension of time for CDUP HA-3868 relates to an approved MDA of 4,695 s.f.) OCCL Administrator Michael Cain testified that OCCL had identified five (5) CDUPs that were issued for properties that are on both sides of Parcels 026 and 027, and are also located between the two large subdivisions (i.e., HPP and Hawaiian Beaches), and represented the square footage of the maximum developed area as: (a) 3,705 s.f.; (b) 3,013 s.f.; (c) 2,644 s.f.; (d) 3,847 s.f.; and (d) 3,868 s.f. Administrator Cain also stated that OCCL's position was that the dwelling units requested by the Applications were "significantly bigger" than the neighboring homes in the area. OCCL, however, did not provide that information in writing to the Board in the Staff Submittal. This information was the most significant, if not determinative, factor in the Board's decision to deny the Application. Chair Chang indicated that her decision not to approve the Application was based on "the size of the dwellings," that they were "not in alignment," and would "change the character of

the area."

Administrator Cain's statement was demonstrably incorrect. Administrator Cain read the permit numbers for the neighboring properties, not the approved square-footage developed area (or size) of the existing previously approved SFRs. The actual number of CDUPs for SFRs that the Applicant was able to locate between HPP and Hawaiian Beaches was double what Mr. Cain represented.

The SFR that Administrator Cain represented as having an approved developable area of 3,705 s.f. was CDUP HA-3705 approved for 4,322 s.f.; the permit that Administrator Cain identified as being 3,013 s.f. is actually CDUP HA-3013 & HA-3482 approved for 4,154 s.f.; and the permit represented as being 3,868 s.f. is actually CDUP HA-3868 approved for 4,695 s.f. Thus, the actual CDUPs that have been granted for homes along Government Beach Road are, in fact, similar in size to what the Applicant is proposing.

The Staff Recommendation and some Board members made statements that the general area in which the Property is located is "remote" and "rural". Denying the Application for this reason was arbitrary and capricious and made in error. As the Applicant pointed out in his written testimony and presentation to the Board, this characterization of the Property is not accurate. In reality, as recognized by the County of Hawai'i Planning Department in its recommendation to approve the Special Management Area permit for the SFR on the Property, "[t]he subject parcels are within an established residential community that [sic] both agricultural and residential uses, as well as the fully developed Hawaiian Paradies [sic] Park located north of the project site." (Emphasis added.)

II. The Board Did Not Have Sufficient Time to Consider the Application and Applicant Was Not Given Sufficient Time to Present the Application and Counter the Staff Recommendation.

As a foundational matter, the Board did not have sufficient time to consider the Application. Prior to the November 14, 2025 meeting, Applicant requested that the Board allow Applicant to make a presentation on the Application, particularly because the staff recommendation was to deny the permit. The Applicant was informed that his presentation would be limited to just five minutes. While the Applicant also submitted written testimony in support of the Application and to rebut the matters raised in the Staff Submittal, this is not a substitute for allowing Applicant to present its full case to the Board. A copy of the Applicant's November 12, 2025 written testimony is enclosed as Enclosure 1.

In September 2025, Applicant's' consultant was told by OCCL staff that the Application would likely be scheduled for decision making at the Board's October 24, 2025 meeting. This would have given Applicant the opportunity to initially present the Application to the Board at the October 24, 2025 meeting, and if necessary, address any concerns raised by the Board at the November 14, 2025 meeting. The only reason given to Applicant's consultant for not scheduling the Application at the October 24th meeting was that OCCL staff could not complete the submittal in time. Instead, OCCL put the Applicant in the untenable position of scheduling the Application at a Board meeting just 4 days before the automatic approval deadline and on a very packed agenda with other controversial items, thereby forcing the Board to rush through the limited materials provided by OCCL and vote to deny the permit, even if there were any unanswered questions on the project, to avoid an automatic approval. This also resulted in leaving Applicant with no choice but to request a contested case hearing.

When HRS § 183C-6 was amended in 2016 to allow for the extension of the 180-day review period of CDUAs by an additional 90 days in the case where environmental review or a contested

case proceeding was required, former Board member Christopher Yuen testified in favor of the measure and aptly noted that "[n]ormally, BLNR's staff has been very good at bringing such applications to the board for a decision at a meeting a month or two before the 180-day deadline." Mr. Yuen further noted that "[d]ecisions involving our conservation lands should be made on the merits, not because of an arbitrary deadline." Id.

While the Applicant is appreciative that the Board gave Applicant more than five minutes to present the Application, the time provided was not sufficient to counter OCCL's negative recommendation and the incorrect and incomplete information provided to the Board. This was a clear violation of Applicant's due process rights. Indisputably, Applicant was not given a meaningful opportunity to be heard or any opportunity to refute the incorrect information provided by OCCL. See Sandy Beach Defense Fund v. City Council of Honolulu, 70 Haw. 361, 377, 773 P.2d 250, 260-61 (1989) ("The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest."); Mauna Kea Anaina Hou v. Bd. of Land and Natural Res., 136 Hawai'i 376, 389, 363 P.3d 224, 237 (2015) (identifying two instances in which a property interest is considered sufficiently substantial to trigger due process protections, including "where an agency denies an applicant's proposed property use").

III. The Application Was Not Reviewed by the Board Prior to Denying It.

The Board's decision to deny the Application was arbitrary and capricious and made in error because the Board was not provided a copy of the Application as part of the Staff Submittal for Agenda Item K-2. This deprived the Board of any opportunity to review the actual Application it was rendering a decision on. Instead, the Board relied entirely on the analysis provided by OCCL staff, including the incorrect information that was apparently dispositive in the Board's decision to deny the Application. See Part I, supra; see also Mauna Kea Anaina Hou, 136 Hawai'i at 391, 363 P.3d at 239 (holding that the Board's process of ruling on the merits of a CDUA before the factual record was developed failed to satisfy the appearance of justice).

IV. The Application Complies with the SFR Standards in the Conservation District Rules.

There is no valid, defensible reason for denying the Application. The proposed SFR complies with the Conservation District Rules, is below the MDA of 5,000 s.f., and is similar in size and scale to other SFRs the Board has approved in the same area. See HAR § 13-5-41 and Exhibit 4 to the Conservation District Rules (providing that the MDA for lots larger than one (1) acre is 5,000 s.f.). Treating Applicant differently from similarly situated neighbors with approved CDUPs for their SFRs is arbitrary, capricious, and a violation of Applicants' due process rights. See DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC., 134 Hawai'i 187, 219, 20, 339 P.3d 685, 717-18 (2014) (discussing that the equal protection clauses of the United States and the Hawai'i Constitutions "mandate[] that all persons similarly situated shall be treated alike, both in privileges conferred and in the liabilities imposed" and recognizing an equal protection claim may be brought by a "class of one," "where the plaintiff alleges that [he/she] has ben intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment") (citations omitted).

The design standards contained in Exhibit 4 to the Conservation District Rules are intended to guide the Board and prevent the very kind of subjective and arbitrary decision-making that occurred at the November 14, 2025 meeting. The January 1991 Auditor report to the Hawai'i Legislature on the regulation of SFR construction in the Conservation District, serious concerns were raised that in the absence of specific standards, it would be hard for the Board to determine whether certain

residences were "compatible with the locality and surrounding areas" or violated the subjective condition that "natural beauty and open space be preserved". See Review of the Regulation of Residential Construction in the Conservation District, A report to the Governor and the Legislature of the State of Hawai'i, Report No. 91-1, January 1991 by the Auditor of the State of Hawai'i. Despite the adoption of detailed construction standards, those concerns provided true in the Board's denial of the Application.

HAR § 13-5-41(a) provides that SFR uses approved by the Board must comply with the SFR standards in Exhibit 4 to the Conservation District Rules:

> Single family residential uses approved by the board shall comply with the design standards contained in Exhibit 4, entitled "Single Family Residential Standards: August 12, 2011", located at the end of this chapter and made a part of this section, except as may be allowed by the board upon finding that prevailing conditions warrant the deviation from specific standards, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen percent.

(Emphases added.)

Exhibit 4 provides only one exception that allows for a reduction of the permissible MDAs: "Site characteristics and the degree of pre-existing site disturbance may be a further limiting factor in the calculation of maximum developable area when so determined by the board." (Emphases added.) Thus, by its own rules, the Board can only reduce the permissible MDA if it makes explicit determination that such a reduction is warranted based on "site characteristics" and "the degree of pre-existing site disturbance." The Board made no such determination that could justify its decision to deny the Application. Instead, the Board denied the Application based on: (a) certain members' subjective belief about what the right size of the SFR should be (without providing any guidance as to what that would be), and (b) the incorrect information provided by the OCCL Administrator on the sizes of the neighboring homes.

The Board's decision to deny the Application is a clear abuse of the Board's discretion. See Enclosure 2, a copy of the Motion for Reconsideration filed with the Board on November 21, 2025, which arguments and exhibits are incorporated herein by reference.

23. Any Relief Petitioner Seeks or Deems Itself Entitled to

1. Granting of this Petition for Contested Case Hearing to provide Applicant with the opportunity to address the Board's stated reasons for denying the Application;
2. Reversal of Board's November 14, 2025 decision to deny CDUA HA-3982 (or in the alternative, recission of the Board's November 14, 2025 decision it decision to deny the Application so that the Application would be automatically granted by operation of HRS § 183C-6(b), subject to the conditions agreed upon at the November 14, 2025 meeting between Applicants and OCCL; and
3. Approval of CDUA No. HA-3982.

24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

Petitioner's participation will serve the public interest because the contested case proceeding will identify issues with the Board's decision on Agenda Item K-2 and ensure that the Board makes decsions on Conservation District Use Permits on the merits and with correct information.

25. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

See Enclosure 2 - Motion for Reconsideration filed with the Board on November 21, 2025.

☒ Check this box if Petitioner is submitting supporting documents with this form.

☐ Check this box if Petitioner will submit additional supporting documents after filing this form.

Onaona P. Thoene	Onaona P. Thoene	November 24, 2025
Petitioner or Representative (Print Name)	Signature	Date

ENCLOSURE 1

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2100
1001 BISHOP STREET
HONOLULU, HAWAII 96813
TELEPHONE 808.523.2500 FAX 808.523.0842
WWW.CARLSMITH.COM

DIRECT DIAL NO. 808.523.2596 | PTHOENE@CARLSMITH.COM | OUR REFERENCE NO. 072076-1

November 12, 2025

Via email to blnr.testimony@hawaii.gov
Dawn Chang
Chair, Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, 1st Floor
Honolulu, Hawai‘i 96813

Re: BLNR Meeting November 14, 2025 - Testimony in Support of **Approving** Agenda Items K-1 (CDUA HA-3981) and K-2 (CDUA HA-3982)

Dear Chair Chang and Members of the Board of Land and Natural Resources ("**Board**"):

The Applicants, Mr. Ryan Pastorek, the sole member of Opunaha, LLC, and owner of Tax Map Key ("**TMK**") No. (3) 1-5-010: 026 ("**Parcel 026**") and Ryan's father, Mr. Paul Pastorek, owner of TMK No. (3) 1-5-010: 027 ("**Parcel 027**"), submit this testimony in support of **approving** the Conservation District Use Permit Applications ("**CDUAs**") that are the subject of Agenda Items K-1 and K-2.

The Applicants vehemently disagree with the Office of Conservation and Coastal Lands ("**OCCL**") staff's recommendation to deny CDUA Nos. HA-3981 and HA-3982 and the characterization of the actions requested by the respective Applicants, and respectfully request that the Board grant both CDUAs subject to the standard conditions in Hawai‘i Administrative Rules ("**HAR**") § 13-5-42.

A. Background

Ryan Pastorek has been interested in the area of Puna since 2012. From 2012-2019, he consistently visited the Big Island a few times per year and stayed in Kalapana or Hawaiian Paradise Park, primarily to photograph to the Kilauea lava flows. He fell in love with the Hawai‘i way of life and resolved to eventually move full time to Puna and immerse himself in the Hawai‘i culture. Ryan purchased the Properties in 2019 (Parcel 26 in March, and Parcel 27 in September) with the intent that Parcel 27 contain a single family residence for his parents.

Parcel 27 was subsequently transferred to his father, Paul Pastorek, who fell in love with Hawai‘i as well.

Ryan and Paul support the protection of nature and its flora and fauna and respect the natural environment. Ryan is an avid nature photographer and has traveled the world to capture its landscapes and wildlife. He is a national and state park enthusiast and an animal lover and contributes to the Sierra Club and World Wildlife Fund. Paul is a member of the Greater New Orleans Iris Society and has been instrumental in preserving and reviving nearly extinct native Louisiana iris. He owns a 55 acre rural property in Louisiana on which he has been clearing invasive species and planting native Louisiana plants (including long leaf pine and rare nelsonii iris) to rebuild Louisiana native swampland.

Ryan was integral to the development of the local neighborhood watch which includes Parcel 026 and Parcel 027, facilitated by former Hawai‘i County police officer Duane Waipa. Ryan has been and remains active in organizing and participating in Beach Road cleanup efforts, and he assists with numerous neighborhood projects. Despite not having a home on the island yet, Ryan has continued to invest in his life in Hawai‘i and travels to Beach Road at least five times per year and stays with his neighbors. He has built and continues to build a wonderful community of adopted ‘ohana all over Hawai‘i.

There are two separate CDUAs before the Board for consideration, each for a single-family residence ("**SFR**") on neighboring lots, Parcel 026 and Parcel 027 (together the "**Properties**") owned by a father and son who also wish to adjust the lot line between their lots through a consolidation and resubdivision action.

The Properties are located in the Puna District on the Island of Hawai‘i, and **are located between two large subdivisions**, Hawaiian Paradise Park ("**HPP**") which consist of approximately 8,800 lots and a population nearing 15,000,[1] and which is one of the largest subdivisions in Hawai‘i, and Hawaiian Beaches, which consists of approximately 1,300 lots. The Properties are approximately one mile from the HPP subdivision, and two miles from the Hawaiian Beaches subdivision, and are located makai of Government Beach Road which runs between the two subdivisions. While this area may be considered "remote", "rural" and "rugged" to some from more populated islands, Puna is one of the fastest growing areas in State. This area is considered to be a well-established residential area. Thousands of people live in the area and the dwelling types and styles are varied.

There are improved lots with residences on either side of the Properties - also in the State Land Use Conservation District - pursuant to their own Conservation District Use Permits ("**CDUPs**"). For example, on March 14, 2025, the Board granted a second extension of time to build a single family residence on TMK No. (3) 1-5-010:009 (2 lots north of Parcel 026) (Item K-1 of the March 14, 2025 BLNR Agenda), and on September 12, 2025, the Board heard and granted a third request for an extension of time to build a single family residence on TMK No.

[1] COUNTY OF HAWAI‘I RESEARCH AND DEVELOPMENT, *Census Community Profiles, available at* https://www.rd.hawaiicounty.gov/data-information/community-profiles (last visited Nov. 10, 2025).

(3) 1-5-010:031 (4 lots south of Parcel 027) (Item K-1 of the September 12, 2025 BLNR Agenda).

A Final Environmental Assessment and Finding of No Significant Impact Determination ("**FEA/FONSI**") was published in the March 8, 2024 edition of *The Environmental Notice*.[2] The FEA/FONSI analyzed the environmental impacts of the development of both proposed SFRs and the corresponding consolidation/resubdivision. FEA/FONSI § 2.1. The FEA/FONSI also explored the alternative of developing a single SFR on either Parcel 26 or Parcel 027.

The Properties are within the Resource subzone, and pursuant to HAR § 13-5-24 (R-7), a SFR that conforms to design standards as outlined in the HAR Title 13, Chapter 5 (the "**Conservation District Rules**") is permitted with a Board permit. The fact that CDUPs are being requested on neighboring lots does not turn these projects into an "estate" (as the Staff Recommendation opines). First, there is no prohibition in any Conservation District law, rule or regulation (or any other law, rule or regulation) on building single family residences on adjoining lots or living next door to your parents. In Hawai‘i, it is common to live near or next to ‘ohana. Second, the intent is that both residences are built at the same time to significantly reduce costs, take advantage of the same contractors to hopefully cut down on delays, and to reduce impacts (such as noise) to neighboring properties that would be caused by two separate construction periods.

The Staff Recommendation for CDUA: HA-3981 (Item K-1) and CDUA: HA-3982 (Item K-2) is disappointing in its characterization of the projects and seeming lack of understanding of the Puna area. It is the Applicants' opinion that the Staff Recommendation neglects to emphasize certain factual and important information, so the Applicants offer this testimony.

For the reasons discussed herein, as supported by the CDUAs and FEA/FONSI, the Board should find that the criteria established in HAR § 13-5-30(c) have been met, and CDUAs: HA-3981 and HA-3982 should be issued.

B. <u>The CDUAs Satisfy the Criteria Established in HAR § 13-5-30(c)</u>.

1. The proposed use is consistent with the purpose of the Conservation District (HAR § 13-5-30(c)(1)).

The purpose 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," of the area. HRS § 183C-1.

[2] The FEA/FONSI is available on the Environmental Law Program's website at https://files.hawaii.gov/dbedt/erp/Doc_Library/2024-03-08-HA-FEA-Pastorek-Single-Family-Residences-in-Makuu,-Puna.pdf.

The Staff Recommendation agrees that the proposed uses, residential development, small-scale agriculture, removal of invasive species, and landscaping, are identified permitted uses within the Resource Subzone, yet objects to "the overall intensity and scope of the proposed actions". See page 15 of the Staff Recommendation for CDUA HA-3981, and page 17 of the Staff Recommendation for CDUA HA-3982. The Staff Recommendation indicates that the proposed uses will "contribute to the incremental loss of open space, visual integrity, and natural coastal character, along this portion of the Puna and Popoki coastlines, and are therefore inconsistent with the purpose of the Conservation District to conserve, protect, and preserve the State's natural and cultural resources[.]"

The Staff Recommendation seems to object to development of any residences on the Properties since they are now structure free, referring to the Properties as pristine pastures. However, the Properties are between two large subdivisions, resulting in the immediate area (much of it within the Conservation District) being used as a dumping ground for cars, mattresses, trash bags, furniture, dishwashers, etc. *See* Exhibit A. On the contrary, having people living on the Properties, planting native plants and managing landscaping, and being present to keep away illegal dumping helps the existing natural resources and protects the visual integrity of the Conservation District. In addition, the Applicants modified the proposed landscape plans in response to OCCL staff comments. For example, the number of trees have been significantly reduced, and tree specifics, including sizes and locations, have changed. *See* FEA/FONSI at 99, and *compare with* Figure 3 of the CDUA at 14-15.

As noted in the FEA/FONSI, while minor and temporary impacts may occur during construction, no long-term or significant adverse impacts are expected. The proposed SFRs are designed to conform to the SFR standards in Exhibit 4 to the Conservation District Rules, with the SFR (and related improvements) on Parcel 26 being approximately 4,738 s.f. (4,010 s.f. home under roof) and the SFR (and related improvements) on Parcel 27 being approximately 4,984 s.f. (2,750 s.f. under roof) There are existing SFRs on both sides of the Properties (TMK Nos. (3) 1-5-010: 025 and 028). Note also that the purpose of the consolidation and resubdivision is to plant more native plants (which will hopefully bring back native birds), have less impact on scenic views, and less noise impacts to the neighboring residences, amongst other matters.

Both Ryan and Paul have spent time on the Properties and have focused on the upkeep, maintenance and preservation of the Properties, always trying to do right by the land. Ryan has organized and participated in efforts to clean and fix the roadway fronting the Properties, building deep relationships with the neighbors, and helping to develop the community neighborhood watch. Ryan and Paul are pushing forward in their efforts to be good stewards of the land and hope to revitalize native species there.

The families that occupy the residences on both sides of the Properties **support** the proposals for the SFRs and are excited to have the Pastoreks as neighbors. *See* pages 13-14 of Staff Recommendation for CDUA HA-3981 and pages 14-15 of Staff Recommendation for CDUA HA-3982.

There is nothing in the record to support a finding that the permitted building of the SFRs would disrupt the "visual integrity" or "natural coastal character" of the area. While there will be an incremental loss of open space due to the development of the SFRs, as discussed in more detail below, the SFRs will conform to the required standards set forth in the Conservation District Rules and are in keeping with the character of the existing SFRs on either side of the Properties, and the large subdivisions within the surrounding area. The plans specifically situate the structures on the Properties to maintain visual viewpoints to the ocean from the roadway, which was done in concert with the neighbors. Furthermore, approximately 483 acres of the Department of Hawaiian Home Lands ("**DHHL**") parcel mauka of Government Beach Road, designated as Makuʻu Makai in DHHL's 2025 Makuʻu Regional Plan, is slated for kuleana homestead lots "where beneficiaries can lease un-improved, off-grid homestead lots[.]" Thus, more residential development is planned for this area and the SFRs proposed here will not be out of place.

Additionally, as reinforced by the letters of support provided by neighboring community members mentioned above, development of the SFRs on the Properties will positively support public health, safety, and welfare in the area through an increased presence on and ongoing stewardship of the Properties.

Water Source for the Properties. In support of its negative recommendation on the CDUAs and concern regarding long term viability and impacts on groundwater and coastal resources, the Staff Recommendation raises on multiple occasions the absence of a confirmed sustainable water source for the SFRs. While a well is being proposed, if the well does not produce adequate water or a well drilling permit is not issued, the Applicants are proposing, as an alternative source, a rainwater catchment system (one for each of Parcel 026 and Parcel 027). *See* CDUA HA-3981 at 17; CDUA HA-3982 at 16. Rainwater catchment systems are the primary water source for residences in Puna and many other areas throughout the Island of Hawaiʻi. The County of Hawaiʻi ("**County**") generally allows water catchment systems where a County system is not available[3] and there is sufficient rainfall.[4] The Staff Recommendation states that the area has historically received approximately 120 to 200 inches of rain per year. *See* Staff Recommendation at 2. This is almost 10 times the annual rainfall in Honolulu, and more than double what the County typically requires for a catchment system. For these reasons, the concerns regarding a water source and water waste (related to the proposed pool and hot tub) are exaggerated and misplaced. The proposed SFRs have two possible water sources.

2. The proposed land use is consistent with the objectives of the Resource Subzone (HAR § 13-5-30(c)(2)).

The purpose of the Resource Subzone is "to ensure, ***with proper management***, the sustainable ***use*** of the natural resources" of the area. HAR § 13-5-13(a) (emphases added). The

[3] The County also allows rain water catchment systems for accessory dwelling units even where served by a public or private water system. *See* Hawaiʻi County Code § 25-6-30.

[4] The County has determined that a minimum of 60 inches of rainfall annually is sufficient to grant a variance from County water system requirements. Hawaiʻi County Planning Department Rule 22-4.

purpose of the Resource Subzone is not to prohibit any use that *may* have an adverse impact on natural resources.

The Staff Recommendation opines that the proposed uses "are not appropriate for this rural and rugged shoreline setting and would require ongoing resource input, maintenance and management" and are therefore inconsistent with the objectives of the Resource Subzone, however, no specific resources are identified. As noted above, however, SFRs are appropriate and allowed in the Resource Subzone with a Board permit. HAR § 13-5-24. The Applicants are committed to ongoing stewardship of the Properties.

The proposed SFRs under the CDUAs here allow for the sustainable use of the Conservation District resources in the area through development of SFRs that will conform with the standards and parameters of the Conservation District Rules. Development of the SFRs will also implement landscaping with more native species to replace the existing invasives. In the construction of the SFRs, the Applicants plan to use local and sustainably sourced materials as much as possible, including local hardwoods and stone. Each SFR would be equipped with solar power and battery systems to increase energy independence and reduce demand on the power grid.

Furthermore, there are very large developments within one to two miles of either side of these Properties, along with SFRs on at least 4 of the immediately adjacent properties, all with the same "rural and rugged shoreline" that is characteristic of the Puna area. As noted previously, allowing people to live on and steward these Properties actually helps to maintain the area by curbing illegal dumping and crime.

As discussed above, the Applicants have already been active in stewarding the Properties and the area through Government Beach Road clean ups and clearing of illegal dumping, increasing security via neighborhood watch, and fostering relationships with the community. Development of the SFRs is also expected to increase the native plantings on the Properties as the existing invasive vegetation is replaced over time.

The CDUAs therefore satisfy the second criterion of HAR § 13-5-30(c).

3. The proposed land use complies with the provisions and guidelines contained in HRS Chapter 205A (Coastal Zone Management), where applicable (HAR § 13-5-30(c)(3)).

As discussed in detail on pages 52-56 of CDUA HA-3981 and pages 51-55 of CDUA HA-3982, the proposed SFRs are supportive of the Coastal Zone Management policies, objectives and guidelines, as well as the State Planning Act (HRS Chapter 226). In particular, development of the SFRs will allow for a more regular presence on the Properties and will preserve clean, scenic views. In addition, development of the proposed SFRs would provide temporary employment for local construction workers and would support the local economy through the contracting of local labor and purchasing of local materials (where available).

Overall, the project would stimulate and support the general economic stability and development of Hawai‘i Island and more specifically the Maku‘u community.

The Staff Recommendation seems concerned that siting a home on a shoreline parcel does not reduce coastal hazards and that the SFRs will "introduce urban residential uses that may negatively impact a relatively open coastal view area." Staff Recommendation at 17 (CDUA HA-3981); Staff Recommendation at 18 (CDUA HA-3982). The Applicants respectfully disagree with the Staff Recommendation. As discussed above, there are already urban residential uses immediately to the north and south of the Properties along the shoreline, with more intense urban residential uses within 1 to 2 miles in either direction of the Properties (i.e., the HPP and Hawaiian Beaches subdivisions). The County Planning Department in its recommendation to approve the Special Management Area ("**SMA**") permit for the SFRs on Parcels 026 and 027 indicated that "[t]he subject parcels are within an ***established*** residential community that [sic] both agricultural and residential uses, as well as the fully developed Hawaiian Paradies [sic] Park located north of the project site."[5] Further urban residential uses are planned for approximately 483 acres of the DHHL parcel that is directly mauka of Government Beach Road across the street from the Properties, designated as Maku‘u Makai in DHHL's 2025 Maku‘u Regional Plan, which is slated for kuleana homestead lots. Thus, more residential development is planned for this area and the SFRs proposed here will not be out of place.

According to the Staff Recommendation, the purpose of the CZM program is to direct development away from the shoreline and "hazardous areas". The FEA/FONSI contained a coastal erosion study, and analyzed sea level rise, and found that although wave action could contribute to more coastal erosion over time, any significant impact will occur outside of the expected lifespan of the homes (40 - 70 years) and well outside of the development area, which is set back no less than 130 feet from the shoreline. *See* FEA/FONSI at 67; CDUA HA-3981 at 37 (Figure 16 3.2 Foot Sea Level Rise Exposure Map); CDUA HA-3982 at 36 (Figure 15).

To mitigate the impacts from the proposed SFRs, the proposed structures will be setback a minimum of 130 feet from the certified shoreline - more than double what the rules promulgated by this Board require based on the average annual erosion rate for the Properties. *See* page 54 of the CDUA for Parcel 026, and page 53 of the CDUA for Parcel 027.

The Staff Recommendation also criticizes "large dwellings" with "luxury accessory structures," as being inconsistent with the objective and polices of the HRS Chapter 205A. There is no cost ceiling on materials used for structures in the CZM area. The proposed SFRs and accessory structures are within the guidelines and rules propounded by this Board. There is no prohibition against furo baths or any other perceived "urban" or "luxury" amenities in the Conservation district. The Applicants appreciate staff's concern regarding the availability of water in the area for certain accessory uses and understand that if sufficient water is not available, some or all of the accessory uses may not ultimately be developed or used on a regular

[5] County Planning Department Recommendation - Ryan & Paul Pastorek Special Management Area Use Permit Application (PL-SMA-2024-000055) at 4 (May 2024), *available at* https://records.hawaiicounty.gov/weblink/1/doc/135597/Page1.aspx (emphasis added).

basis. The comparison to the moratorium on pools on Maui is, however, misplaced. The water availability (including natural rainwater) and climate conditions for the Properties, which OCCL staff indicates averages 120 to 200 inches of rain per year and are located on the windward side of the island, are very different from the dry, leeward side of Maui that averages 13.54 inches of rain per year.

On June 6, 2024, the County Windward Planning Commission approved a Special Management Area ("**SMA**") permit for the proposed SFRs (the "**SMA Permit**"). *See* Exhibit E to CDUA for Parcel 026 and Exhibit E to CDUA for Parcel 027. In determining whether to issue a SMA permit, the County must also assess whether a project complies with the HRS Chapter 205A guidelines, which the County did here. The SMA Permit was approved subject to 15 conditions of approval, most of which will directly address and/or ensure that coastal resources are protected. For example, the SMA Permit prohibits the construction of any wood, metal, or rope ladder, platform, steps, concrete pads, or other constructed appurtenances from the top of the pali (sea cliff) to access the ocean along the entire length of the shoreline of each parcel. This condition addresses both shoreline erosion concerns and public health, safety, and welfare concerns raised by OCCL staff. Accordingly, the County has analyzed and determined that the proposed SFRs are consistent with the HRS Chapter 205A policies and guidelines.

The Applicants understand that OCCL staff also have concerns with some of the vegetation proposed as part of the landscaping for the Properties. The Applicants are willing to work with OCCL to identify vegetation that would be appropriate for the Properties through the site plan approval process.

4. The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community or region (HAR § 13-5-30(c)(4)).

The Conservation District Rules define "natural resource" as "resources such as plants, aquatic life and wildlife, cultural, historic, recreational, geologic, and archeological sites, scenic areas, ecologically significant areas, watersheds, and minerals." The Staff Recommendation does not show that the proposed SFRs would have a substantial adverse impact to existing natural resources in the area, community, or region, but instead takes the position that because staff cannot "conclusively agree that the proposed land uses will not cause substantial adverse" impacts, the CDUAs do not satisfy this criterion. Staff Recommendation at 18 (CDUA Parcel 026); Staff Recommendation at 19 (CDUA Parcel 027).

OCCL staff indicated that they find "that the project raises concerns regarding its long term compatibility with the surrounding natural and visual environment." *Id.* Yet, it does not provide any detail about what specific concerns it has with long term compatibility. Again, these proposed SFRs are between 2 other existing residences - the owners of which submitted letters of support for the proposed projects. One of those residences was built more than twenty years ago, and there seems to be no issues with the surrounding natural and visual environment. Having people living on these properties, planting native plants, and being present, helps the existing natural resources, surrounding area and community.

The Staff Recommendation also inexplicably states in recommendation "d" that "*The proposed uses are likely to result in substantial adverse impacts to existing natural resources and the surrounding coastal environmental, given the site's proximity to the shoreline, porous geology, and well-drained soils, and exposure to multiple natural hazards*" even though OCCL staff admitted that they could not "conclusively agree that the proposed land uses will not" or conversely will, "cause substantial adverse" impacts. *See* Staff Recommendation at 17, 28 (CDUA HA-3981); Staff Recommendation at 19 (CDUA HA-3982). As discussed in detail in Section 4.2 of the FEA/FONSI and Section III(4) of the CDUAs, the proposed SFRs are not anticipated to result in significant adverse impacts to natural resources in the Conservation District.

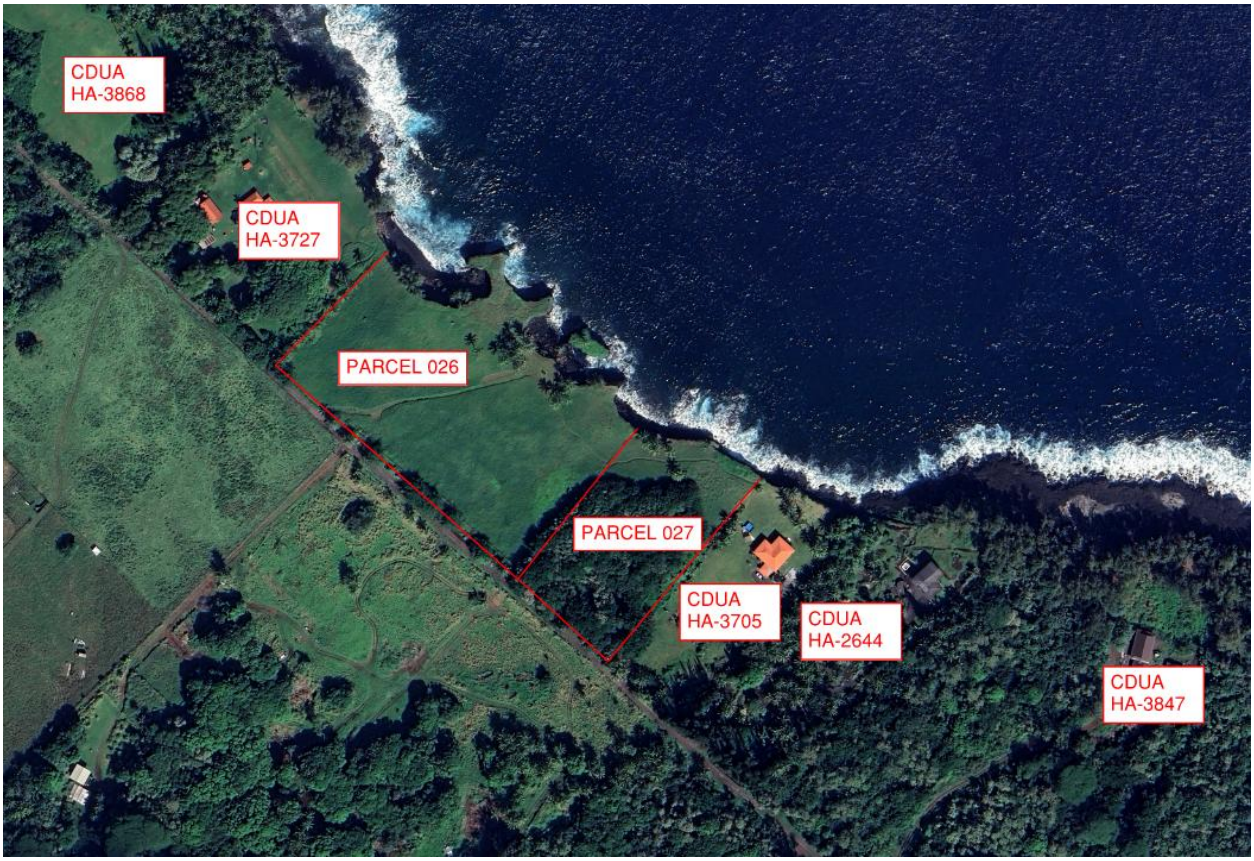
Furthermore, the FEA/FONSI found any impacts could be mitigated through proposed measures and conditions incorporated into the Conservation District Use Permits (e.g., the 130 foot setback, landscaping plans, preserving existing vegetation on Parcel 027 by consolidating and resubdividing the lots to move the lot line between Parcel 026 and 027, and orienting the SFRs to maximize natural light and ventilation to conserve energy, etc.). See Exhibit B for a description of proposed mitigation measures. It does not appear that the Staff Recommendations considered the proposed mitigation measures for the project, but the Board should take them into account when considering whether the CDUAs satisfy the HAR § 13-5-30(c) criteria. *See* In *Matter of Conservation District Use Permit Application HA-3568*, 143 Hawai‘i 379, 404-05, 431 P.3d 752, 777-78 (2018) ("***Matter of CDUA***") (holding that the Board properly considered measures designed to address environmental impacts generated by the proposed project in approving a CDUA).

5. **The proposed land use is compatible and consistent with the character of the existing area and appropriate to the physical conditions of the Properties (HAR § 13-5-30(c)(5)).**

The fifth criterion set forth in HAR § 13-5-30(c)(5) requires that the proposed 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 Staff Recommendation states that the proposes uses "have the potential to change the character of the existing surrounding community of modest rural dwellings and open coastal space to a multi-residential large estate, and therefore are not consistent with the locality, surrounding areas, and purpose of the Conservation District." Staff Recommendation at 18 (CDUA Parcel 026); Staff Recommendation at 29 (CDUA Parcel 027). Staff also describes the general area as "undeveloped and isolated". *Id.* As discussed, the Applicants disagree with staff's characterization of the general area. While these specific parcels and some areas mauka may be described in that manner, the Properties are located between two very large subdivisions and there are existing residences on either side of the Properties, as shown below and Exhibits 1 and 3 to the Staff Recommendations. Those areas should be included in considering whether the proposed SFRs are compatible and consistent with the existing area. *See Matter of CDUA*, 143

Hawai‘i at 405-06, 431 P.3d at 778-79 (finding that there "must be a sound and rational basis for defining the relevant locale").



The photograph above is a satellite image of the Properties and neighboring lots on either side taken from Google Maps with the associated CDUPs noted on the neighboring parcels. Below are a satellite image from Google Maps and County GIS map showing some of the residences in Hawaiian Paradise Park, approximately one mile away from the Properties:





As demonstrated by the area maps, the area is surrounded by a variety of rural and urban dwellings, some modest, some not. As such, the proposed SFRs are certainly consistent with the surrounding area both in design and function - as single family residences. Again, these dwellings are designed in accordance with the Conservation District Rules for single family residences.

6. The existing physical and environmental aspects of the land will be preserved or improved upon (HAR § 13-5-30(c)(6)).

The Applicants acknowledge that there will be some visual impacts by the addition of the SFRs on the now-vacant properties, however, the proposed design and siting of the SFRs, and landscaping are intended to preserve as much of the existing environmental aspects of the Properties. Again, the plans specifically situate the structures on the Properties to maintain visual viewpoints to the ocean from the roadway, which was done in consultation with the neighbors. If the proposed consolidation and resubdivision is not approved, the only realistic opportunity for Mr. Paul Pastorek to develop a SFR on Parcel 027 would result in greater environmental impacts than what is being proposed now because he would be required to remove

much more (approximately 50%) of the existing vegetation on that parcel, which in turn would not be planted with native vegetation. In contrast, the consolidation and resubdivsion will preserve nearly all of that existing vegetation in the short term, which will eventually be revitalized to the extent possible to include native species in accordance with Paul Pastorek's plans and allow for greater view and air corridors between the SFR on Parcel 027 and the existing residence on Parcel 028.

Development of the SFRs will ultimately improve stewardship of the Properties by having a regular presence on the Properties. As detailed above, Ryan and Paul have cleared areas of Conservation District property and the roadway of prior illegally dumped materials and they continue to maintain the Properties. *See Matter of CDUA*, 143 Hawai‘i at 406, 431 P.3d at 779 (affirming the Board's decision to consider other measures, such as the removal of prior structures, to satisfy this criterion).

The Staff Recommendation mentions a few other reasons why this criterion has not been met, in staff's opinion, including concerns with proposed landscaping that may reduce the existing open space characteristics, particularly for landscaping planted along Government Beach Road. As mentioned previously, the Applicants have already worked with their neighbors to address this, and they are willing to work with OCCL to adjust landscaping plans through the site plan approval process.

Staff also identify natural hazards, such as the conditions of the existing shoreline, trade winds, seismic activity, and potential for vog in the area as reasons why the existing physical characteristics of the Properties will not seemingly be preserved or improved upon, stating that: "*The subject property and project area are exposed to multiple overlapping natural hazards - including land subsidence, tsunami, storms, seal level rise, seismic and volcanic activity - that pose substantial risks to the proposed improvements and to life, property, and the environmen*t." Staff Recommendation at 25-28 (CDUA HA-3981); Staff Recommendation at 26-29 (CDUA HA 3982). It is noted that these common characteristics of Hawai‘i island are what they are - but they do not support a finding that the proposed CDUAs do not meet this criterion. Natural hazards are the natural condition and way of life on Hawai‘i island and Applicants have no control over these natural conditions. If proposed projects were denied because of the potential for tsunami, seismic, and volcanic activity, there would be few housing options in Hawai‘i and certainly further housing shortages in this State.

As described in Sections 3.1 and 3.2 of the FEA/FONSI and Section III (3) of the CDUAs, the proposed SFRs are not anticipated to exacerbate environmental impacts resulting from natural hazards.

7. Subdivision of land is not being utilized to increase the intensity of land uses in the Conservation District (HAR § 13-5-30(c)(7)).

The Applicants take issue with staff's statement that the proposed consolidation and resubdivision is "irrelevant" because the Applicants "*will treat the property or properties as an approximately 10.45-acres multi-dwelling estate irrespective of property boundaries. In this*

regard, staff finds that the proposed consolidation and re-subdivision and the proposed uses to construct two large residential dwellings and accessory uses or structures in close proximity will increase density and the intensity of land uses in the Conservation District." Staff Recommendation at 21 (CDUA HA-3981); Staff Recommendation at 21 (CDUA HA-3982). This statement directly contradicts staff's factual statement 3 paragraphs prior that the Applicants could proceed with building SFRs of the same size on the existing parcels *without* consolidating and resubdividing. As detailed above, the primary reason for requesting the consolidation and resubdivision is to avoid greater environmental impacts that are anticipated if the consolidation and resubdivision is not approved.

Parcels 026 and 027 are two separate existing legal lots of record. The Staff Recommendation acknowledges that the parcels are, without the consolidation and resubdivision, each of sufficient size to allow for a CDUA to construct an SFR of the same size proposed by the CDUAs (5,000 s.f. or less). Staff Recommendation at 19-20 (CDUA Parcel 026); Staff Recommendation at 20 (CDUA Parcel 027). Therefore, the proposed CDUAs to consolidate and resubdivide and develop the SFRs will not increase the intensity of land uses in the Conservation District.

As discussed in more detail in Section 2.1.1 of the FEA/FONSI and Section I, pages 7-8 of CDUA HA-3982 (Parcel 027), the proposed consolidation and resubdivision is expected to result in less adverse impacts than proceeding with an SFR without the consolidation and resubdivision because it will allow for siting the home on Parcel 027 in an area that would require less site work (i.e., clearing of existing vegetation and grading). Additionally, the proposed project allows for more natural/open space and less density between the proposed SFR on Parcel 027 and the existing residence on Parcel 028.

8. The proposed land use will not be materially detrimental to the public health, safety and welfare (HAR § 13-5-30(c)(8)).

The proposed SFRs will not be materially detrimental to the public health, safety, and welfare. The Staff Recommendation posits that the proposed SFRs will create unacceptable risks for residents, the surrounding community, and emergency responders due to the remote location which lacks public infrastructure, limited emergency services, and reliably maintained access, but does not identify what those risks might be. The Applicants acknowledge and understand the inherent risks with living on the Properties. The Applicants are aware that Fedex and UPS deliver to homes along Government Beach Road and they have regularly observed the presence of fire trucks (the HPP fire station is located approximately 5 miles away), rescue crews, and police patrols in the area. The County Department of Public Works grades Government Beach road at least twice a year. Some of the Applicants' neighbors are also in the kupuna age range so it would be helpful to have the Applicants around to offer assistance.

As detailed previously, the Properties are between and in relatively close proximity to two large subdivisions. It is anticipated that having regular residents on the Properties will, as it already has, keep the area, including the Government Beach Road, clean and maintained which would help the community in the event of a natural disaster.

C. Other Points Raised in the Staff Recommendation

It is noted that the "art studio" space referenced in the Staff Recommendation is intended to be a multiuse space for non-commercial photography work, woodworking, pottery, and planting. Most of the time it will likely function as storage (e.g., for the lawnmower).

Although the Properties are not currently serviced with electrical power, HELCO has lines servicing Government Beach Road and all of the neighbors are hooked up to HELCO's grid. There is at least one electric pole fronting the Properties. (The County Planning Department's Background Report on the Applicants' SMA permit notes that there is an electrical easement along Government Beach Road covering 12 parcels, including the Properties.) Telephone and cable services are also available to the Properties. The Applicants anticipate that they will likewise be able to obtain HELCO and other services for the Properties, along with solar panels.

D. Conclusion

The Applicants appreciate the opportunity to submit this testimony in support of approving the CDUAs that are Agenda Items K-1 and K-2 and request that the Board approve CDUA HA-3981 and CDUA HA-3982 subject to the standard conditions set forth in HAR § 13-5-42. Applicant is also agreeable to the conditions suggested by the Staff Recommendation on pages 8, 21, and 23 that would prevent future shoreline hardening, prohibiting the use of the SFRs as transient vacation rentals, or impeding lateral shoreline access.

Sincerely,



Onaona P. Thoene

EXHIBIT A
Photographs of illegal dumping fronting the Properties along Government Beach Road









EXHIBIT B

	Mitigation Measures
Erosion and Coastal Hazards	- 130 ft + setback exceeds the recommendation of the coastal erosion study. - Building sites outside of areas affected by most coastal hazards/sea level rise area. - No work, activities, storage, or staging of materials will occur within the minimum shoreline setback, including fencing, animal husbandry, or minor construction. - Proposed condition to restrict future shoreline hardening/ require movement or dismantling of the house if threatened by hazards. - Construction would comply with all provisions of Hawai‘i County Building Code including wind and seismic resilience criteria. - The residences will not be impacted by storm surge based on the elevation and distance from the shoreline. - The proposed development will not contribute to further erosion of the shoreline and is not expected to be impacted significantly by erosion events during the lifespan of the residences.
Flora and Fauna	- Minimal ground disturbance is proposed. - Mitigations for the prevention of ROD and Coconut beetles will be implemented. - Best Management Practices created by the University of Hawai‘i-Manoa, College of Tropical Agriculture and Human Resource’s Best Management Practices to Manage Non-Point Pollution in Agriculture will be used for landscaping practices - Replanting will be appropriate to the site location and will utilize flora designated as “Pono Plants.” - Mitigation measures to prevent impacts to endangered birds will be implemented. - Project construction will adhere to Hawai‘i County Code Chapter 14-50 to minimize the potential for disorientation of seabirds. - Any clearing could be timed to avoid impacts to native Hawaiian Hawks and Hoary Bats according to DOFAW recommendations.
Land Clearing	- Consolidation and resubdivision allows the preservation of forest area on Parcel 27, reduces grading area by 2-acres - Buildings sited with consideration of previously cleared land - County Grading and Grubbing regulations will be followed, and a list of Best Management Practices will be established to properly manage storm water runoff.
Noise, Air Quality, and Scenic Resources	- All County noise restriction guidelines will be followed. - The project will take reasonable measures to control airborne, visible fugitive dust from roadways as outlined in the Department of Health’s Clean Air Branch Standard Comments for Land Use Reviews.

	- Landscaping has been planned to minimize potential impacts to scenic resources, ocean views from Government Beach Road, and the natural flow of the tradewinds. - A landscaping schedule will be followed to ensure conformity with HAR Chapter 13-5 guidelines
Hazardous Substances, Toxic Waste, and Hazardous Conditions	- Construction activities with the potential to produce polluted runoff will be limited to periods of low rainfall. - During construction, emergency spill treatment, storage, and disposal of all hazardous materials, will be explicitly required to meet all State and County requirements, and the contractor will adhere to "Good Housekeeping" for all appropriate substances. - Unused materials and excess fill (if any) will be properly disposed of at an authorized waste disposal site.
Public Shoreline Access	- Given the likely presence of the historic trail on property, lateral access will be allowed. - SMA Condition 4 requires that the Applicants shall not construct any wood, metal, or rope ladder, platform, steps, concrete pads, or other constructed appurtenances from the top of the pali to access the ocean along the entire length of shoreline of each parcel.
Roads and Access	- Government Beach Road will be accessible to local traffic and will never be blocked by machinery.
Water Resources	- Rainwater catchment proposed as backup to well if the water source is inadequate or well permit is not granted. - Historic rainfall in the area is over double the required amount for catchment allowance per County guidelines. Even in dryer years, the area has sufficient rainfall to support catchment systems. - If sufficient water is not available, some or all of the accessory uses may not ultimately be developed or used on a regular basis.

ENCLOSURE 2

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DEPT OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

CARLSMITH BALL LLP

KATHERINE A. GARSON 5748
PUANANIONAONA P. THOENE 10005
121 Waianuenue Avenue
P.O. Box 686
Hilo, HI 96721-0686
Tel No. 808.935.6644
Fax No. 808.935.7975
kgarson@carlsmith.com
pthoene@carlsmith.com

Attorneys for Applicants
OPUNAHA, LLC (RYAN PASTOREK) AND PAUL PASTOREK

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of Conservation District Use Permit Application Nos. HA-3981 and 3982; Applicants Opunaha, LLC (Ryan Pastorek) and Paul Pastorek, Tax Map Key Nos. (3) 1-5-010: 026 and 027, Puna, County and Island of Hawai'i	CDUA NOS. HA-3981 AND HA-3982 MOTION FOR RECONSIDERATION OR RECISSION OF THE BOARD OF LAND AND NATURAL RESOURCES' NOVEMBER 14, 2025 DECISIONS ON AGENDA ITEMS K-1 AND K-2; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF COUNSEL; EXHIBITS "A" - "E"; CERTIFICATE OF SERVICE

MOTION FOR RECONSIDERATION OR RECISSION OF THE BOARD OF LAND AND NATURAL RESOURCES' NOVEMBER 14, 2025 DECISIONS ON AGENDA ITEMS K-1 AND K-2

Applicants OPUNAHA, LLC (RYAN PASTOREK) and PAUL PASTOREK (collectively, "**Applicants**"), through its undersigned counsel, respectfully moves the Board of Land and Natural Resources of the State of Hawai'i ("**Board**") to reconsider or rescind its decisions taken at its November 14, 2025 meeting to deny Conservation District Use Permit Application Nos. HA-3981 (Agenda Item K-1) and HA-3982 (Agenda Item K-2). This Motion

for Reconsideration ("**Motion**") is made pursuant to Hawai'i Administrative Rules §§ 13-1-34 and 13-1-39, and is supported by the attached Memorandum in Support and exhibits thereto. Applicants request that the Board agendize this Motion for hearing at the Board's next regularly scheduled meeting on December 12, 2025.

DATED: Honolulu, Hawai'i, November 21, 2025.

KATHERINE A. GARSON
PUANANIONAONA P. THOENE

Attorneys for Applicants
Opunaha, LLC (Ryan Pastorek) and Paul Pastorek

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of Conservation District Use Permit Application Nos. HA-3981 and 3982; Applicants Opunaha, LLC (Ryan Pastorek) and Paul Pastorek, Tax Map Key Nos. (3) 1-5-010: 026 and 027, Puna, County and Island of Hawai'i	CDUA NOS. HA-3981 AND HA-3982 MEMORANDUM IN SUPPORT OF MOTION

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

I. INTRODUCTION

At its regular meeting on November 14, 2025, the Board of Land and Natural Resources of the State of Hawai'i ("**Board**") heard and considered Conservation District Use Permit Application ("**CDUA**") Nos. HA-3981 (Agenda Item K-1) and HA-3982 (Agenda Item K-2) (collectively, the "**Applications**"). The Applications seek the Board's approval to consolidate and resubdivide Tax Map Key ("**TMK**") Nos. (3) 1-5-010: 026 ("**Parcel 026**") and (3) 1-5-010: 027 ("**Parcel 027**") (collectively, the "**Properties**"), and develop one single-family residence ("**SFR**") on each of Parcel 026 and Parcel 027, as permitted under Hawai'i Administrative Rules ("**HAR**") Title 13, Chapter 5 (the "**Conservation District Rules**"). Under HAR § 13-5-42 and Exhibit 4 (Single-Family Residential Standards), properties that are one (1) acre or greater in size have a maximum developable area[1] ("**MDA**") of 5,000 square feet ("**s.f.**"). Under the Applications, the proposed MDA for Parcel 026 is approximately 4,739 s.f. on 4.048 acres (post-consolidation/resubdivision) and the proposed MDA for Parcel 027 is approximately 4,984 s.f. on 6.402 acres (post-consolidation/resubdivision). Thus, both indisputably satisfy the MDA

[1] MDA "[m]eans the total floor area in square feet allowed under the approved land use. The floor area computation shall include: all floor areas under roof, including first, second, and third story areas, decks, pools, saunas; garage or carport, and other above ground structures." Exhibit 4 to the Conservation District Rules.

requirements under the Conservation District Rules.

The Properties are located in the Puna District on the Island of Hawai'i, and **are located between two large subdivisions**, Hawaiian Paradise Park ("**HPP**") which consist of approximately 8,800 lots and a population nearing 15,000,[2] making it one of the largest subdivisions in Hawai'i, and Hawaiian Beaches, which consists of approximately 1,300 lots. The Properties are approximately one mile from the HPP subdivision, and two miles from the Hawaiian Beaches subdivision, and are located makai of Government Beach Road, which runs between the two subdivisions.

The Department of Land and Natural Resources ("**DLNR**") Office of Conservation and Coastal Lands ("**OCCL**") staff recommendation to the Board was to deny both Applications, generally stating, but without providing sufficient analysis, that the Applications did not satisfy the eight criteria set forth in Hawai'i Administrative Rules ("**HAR**") § 13-5-30(c). The primary basis for recommending denial, however, was OCCL's opinion that the proposed SFRs were purportedly not appropriate for the area.

In denying the Applications, the Board expressed two reasons: First, the Board adopted OCCL's unfounded characterization of the Properties, and second, the Board stated that sizes of the proposed SFRs were too large despite being below the 5,000 s.f. MDA in the Conservation District Rules and similar in size to neighboring homes in the area. The Board's decisions to deny the Applications based on the perception that the proposed SFRs were "too large" for the area were based on inaccurate statements by OCCL staff that neighboring homes in the area were in the 2,000 and 3,000 s.f. range.

Following the Board's decisions to deny the Applications, Applicants made a timely

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[2] COUNTY OF HAWAI'I RESEARCH AND DEVELOPMENT, *Census Community Profiles*, *available at* https://www.rd.hawaiicounty.gov/data-information/community-profiles (last visited Nov. 10, 2025).

verbal request for a contested case hearing on Agenda Items K-1 and K-2 pursuant to HAR § 13-5-29(a).

The Board's decisions to deny the Applications were arbitrary and capricious, an abuse of the Board's discretion, in excess of the Board's authority, and clearly erroneous in light of the evidence supporting the Applications and information presented to the Board. For the reasons set forth herein, Applicants request that the Board reconsider its decisions to deny the Applications and grant the Conservation District Use Permits for Parcels 026 and 027 ("**CDUPs**") subject to the conditions agreed upon at the November 14, 2025 meeting between Applicant and OCCL (which include all of the standard conditions in HAR § 13-5-42 and additional conditions requested by OCCL). In the alternative, the Applicants request that the Board rescind its decisions to deny the Applications made at the November 14, 2025, after which the Applicants will withdraw their requests for contested case hearings. The result would be that the Applications would be automatically granted by operation of Hawai'i Revised Statutes ("**HRS**") § 183C-6(b). In the event the Board rescinds its decisions, the Applicants will agree to the conditions agreed upon at the November 14, 2025 meeting between Applicants and OCCL.

II. LEGAL STANDARD

Under HAR § 13-1-39(a), the Board may reconsider a prior decision it made on the merits if the movant shows that: "(1) New information not previously available would affect the result; or (2) A substantial injustice would occur."

III. ARGUMENT

A. The Motion Should be Granted Because the Applications and Information on the Sizes of the Neighboring Homes were Misstated by OCCL.

At the November 14, 2025 meeting, the Board's stated reason for denying the Applications were that they were too large for the area. Applicants' counsel noted that, just

months prior (in March of 2025), the Board approved a third extension of time on a CDUP for a home whose MDA was in excess of 4,900 s.f. OCCL Administrator Michael Cain testified that OCCL had identified five (5) CDUPs that were issued for properties that are on both sides of Parcels 026 and 027, and are also located between the two large subdivisions (i.e., HPP and Hawaiian Beaches), and represented the square footage of the maximum developed area as: (a) 3,705 s.f.; (b) 3,013 s.f.; (c) 2,644 s.f.; (d) 3,847 s.f.; and (d) 3,868 s.f. Administrator Cain also stated that OCCL's position was that the dwelling units requested by the Applications were "significantly bigger"[3] than the neighboring homes in the area. OCCL, however, did not provide that information in writing to the Board in the Staff Submittal. This information was the most significant, if not determinative, factor in the Board's decision to deny the Applications. Chair Chang indicated that her decision not to approve the Applications was based on "the size of the dwellings," that they were "not in alignment," and would "change the character of the area."

Administrator Cain's statement was demonstrably incorrect. Administrator Cain read the ***permit numbers*** for the neighboring properties, not the approved ***square-footage*** developed area (or size) of the existing previously approved SFRs. The actual number of CDUPs for SFRs that the Applicant was able to locate between HPP and Hawaiian Beaches was double what Mr. Cain represented and are set forth in the chart below and supported by Figures 1 - 3 and Exhibits A and B.

The SFR that Administrator Cain represented as having an approved developable area of 3,705 s.f. was CDUP HA-3705 approved for **4,322** s.f.; the permit that Administrator Cain identified as being 3,013 s.f. is actually CDUP HA-3013 & HA-3482 approved for **4,154** s.f.; and the permit represented as being 3,868 s.f. is actually CDUP HA-3868 approved for **4,695** s.f.

[3] Video recording of the Board's November 14, 2025 meeting is available at https://www.youtube.com/watch?v=s0Iu5QfSlc0&list=PLDh6ZXzdUvQkHtqVoauOkfa26NfNLh2pK. *See* the recording at around the 1:54:00 mark.

Thus, the actual CDUPs that have been granted for homes along Government Beach Road are, in fact, similar in size to what the Applicants are proposing. The chart below details the sizes of the neighboring homes, as shown on Figures 1 - 3.

	TMK No./ Current Owner Name per COH RPT Website	Size	CDUP No.	Date Approved	MDA Per Conservation District Rules in Effect on Date Approved (in sq. ft.)	Approved Development Area
1.	(3) 1-5-010-009 Garrett / Kamahele Farms LLC	13.43 acres	HA-3868	Oct. 9, 2020 (2nd time extension approved March 14, 2025)[4]	5,000	**4,695** SFR and 680 s.f. Farm/utility shed[5]
2.	(3) 1-5-010-025 Wood	5.43 acres	HA-3482	Nov. 25, 2008	5,000	**4,154**[6] (originally HA-3013 approved on May 11, 2001 for 3,700 s.f.)
3.	(3) 1-5-010-028 Melella	3.5 acres	HA-3705	Aug. 22, 2014	5,000	**4,332**[7] as of February 16, 2022, SFR and accessory uses (originally approved 3,371 s.f.)
4.	(3) 1-5-010-029 Robinson	3.6 acres	HA-2644	Sept. 10, 1993	No MDA limit	2,600
5.	(3) 1-5-010-031 Moore	8.75 acres	HA-3847	Nov. 8, 2019 (3rd time extension approved Sept. 12, 2025)[8]	5,000	(originally approved **4,301**) currently 3,592 Developable Area and a 769 sq. ft. farm shed after alterations and additions[9]
6.	(3) 1-5-009-035 Yermian	2.181 acres	HA-3676	Dec. 13, 2013[10]	5,000	**4,470**[11]
7.	(3) 1-5-009-036 Ray	1.6310 acres	HA-3/15/82-1466	On or about Aug. 13, 1982	No MDA limit	2,200 s.f.[12] (COH RPT drawing shows 2,662 s.f. including "porch unceiled shed roof")
8.	(3) 1-5-009-040 Gadler Family Trust	10.005 acres	HA-3233	Oct. 28, 2005	5,000	**4,096** SFR approx. 2,849 s.f, covered lanais (594.5 s.f.), arcade, breezeway (approx. 352.5 s.f.), utility, storage area (approx. 300.68 s.f.)[13]

[4] https://dlnr.hawaii.gov/wp-content/uploads/2025/05/Minutes-250314.pdf (Item K-1).
[5] https://dlnr.hawaii.gov/wp-content/uploads/2025/03/K-1.pdf (page 1).
[6] *See* Exhibit A (CDUP HA-3482 and Staff Submittal at 6).
[7] *See* Exhibit B (After the Fact Site Plan Approval).
[8] https://dlnr.hawaii.gov/wp-content/uploads/2025/09/K-1.pdf
[9] *Id.* at 15.
[10] https://dlnr.hawaii.gov/wp-content/uploads/2020/11/131213-minutes.pdf (Item K-5).
[11] https://files.hawaii.gov/dlnr/meeting/submittals/131213/K-5.pdf (page 3).
[12] *See* Exhibit C (CDUA HA-3/15/82-1466, dated August 13, 1982).
[13] *See* Exhibit D (Staff Recommendation) and Exhibit E CDUP HA-3233.

9.	(3) 1-5-009-053 Grossbard & Bourzat	6.91 acres	HA-3851	Dec. 13, 2019[14]	5,000	**3,418** (2,560 SFR, 858 carport and utility shed[15])
10.	(3) 1-5-009-055 Dearing	6.79 acres	HA-3797	Oct. 13, 2017[16]	5,000	**4,922**[17]
	Applicants' Proposal					
11.	(3) 1-5-010-026	4.048 acres	HA-3981	N/A	5,000	**MDA 4,739** 4,010 s.f. SFR
12.	(3) 1-5-010-027	6.402 acres	HA-3982	N/A	5,000	**MDA 4,984 s.f.** 2,750 SFR + landscaping, pool, art studio

Figure 1



[14] https://dlnr.hawaii.gov/wp-content/uploads/2019/12/Agenda-191213-D.pdf (Item K-1).
[15] https://dlnr.hawaii.gov/wp-content/uploads/2019/12/K-1.pdf (p. 4)
[16] https://dlnr.hawaii.gov/wp-content/uploads/2018/02/Minutes-171013.pdf (pgs. 12-13)
[17] https://dlnr.hawaii.gov/wp-content/uploads/2017/10/K-1.pdf (p. 4).

Figure 2
(Identifying Approved Developed Area and CDUP Nos.)

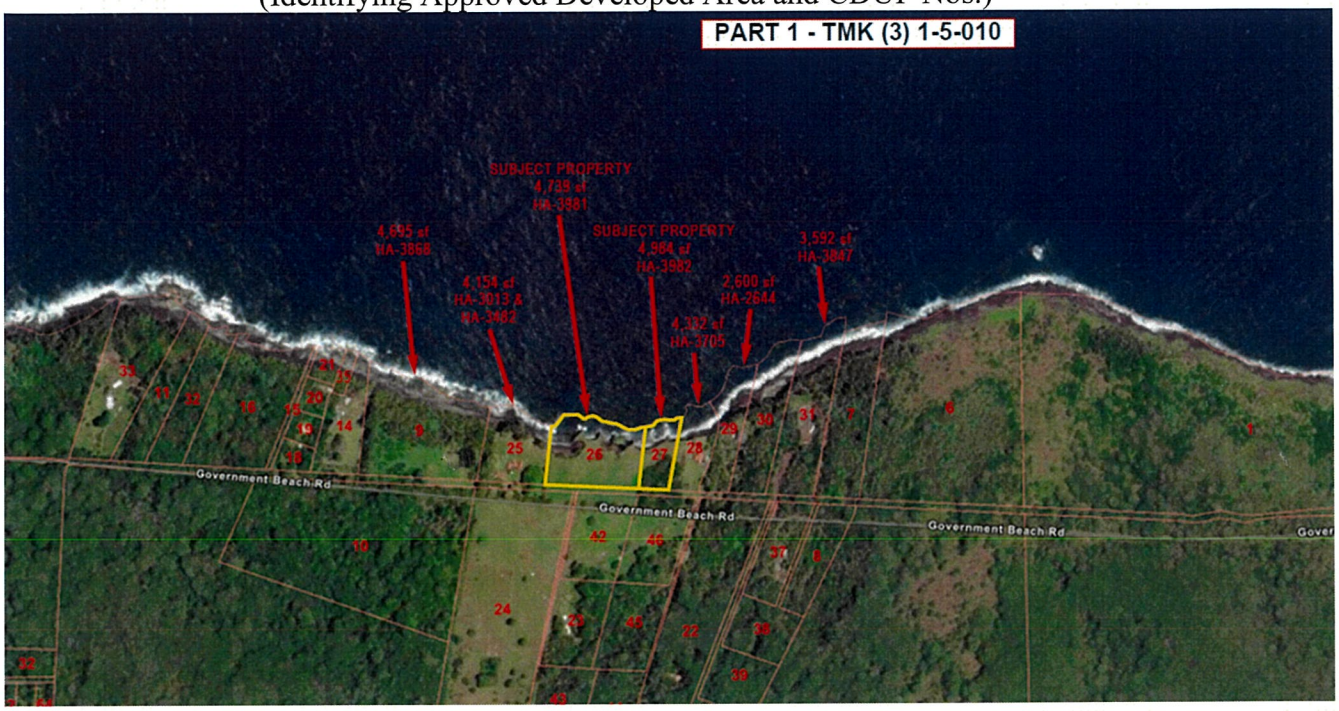
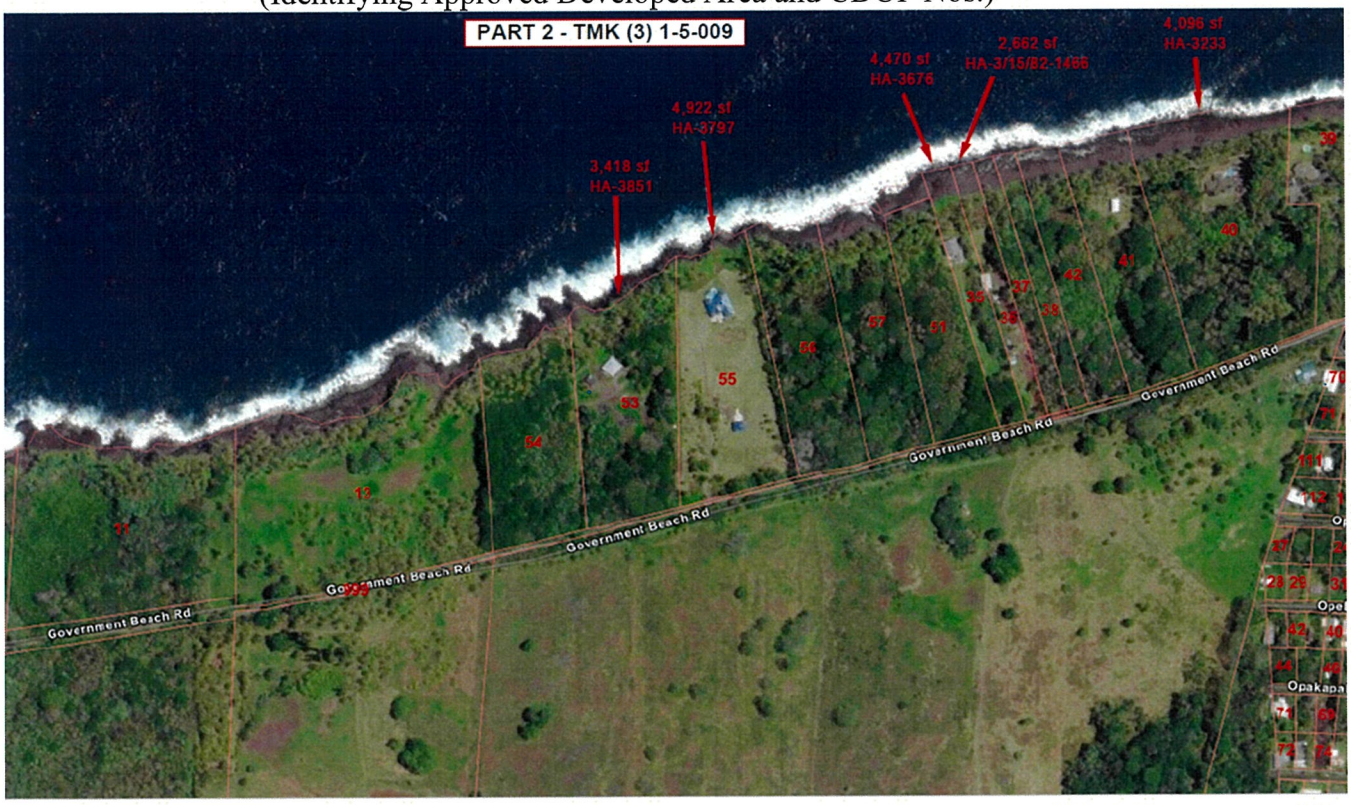


Figure 3
(Identifying Approved Developed Area and CDUP Nos.)



The Staff Recommendation and some Board members made statements that the general area in which the Properties are located is "remote" and "rural". Denying the Applications for this reason was arbitrary and capricious and made in error. As the Applicants pointed out in their written testimony and presentation to the Board, and as shown on Figures 1 -3 above, this characterization of the Properties is not accurate. In reality, as recognized by the County of Hawai'i Planning Department in its recommendation to approve the Special Management Area permit for the SFRs on Parcels 026 and 027, "[t]he subject parcels are within an ***established*** residential community that [sic] both agricultural and residential uses, as well as the fully developed Hawaiian Paradies [sic] Park located north of the project site." (Emphasis added.)

B. The Motion Should be Granted Because a Substantial Injustice Has Occurred.

1. The Board Did Not Have Sufficient Time to Consider the Applications and Applicants Were Not Given Sufficient Time to Present the Applications and Counter the Staff Recommendations.

As a foundational matter, the Board did not have sufficient time to consider the Applications. Prior to the November 14, 2025 meeting, Applicants requested that the Board allow Applicants to make a presentation on the Applications, particularly because the staff recommendations were to deny the permits. The Applicants were informed that their presentations would be limited to just five minutes.

In September 2025, Applicants' consultant was told by OCCL staff that the Applications would likely be scheduled for decision making at the Board's October 24, 2025 meeting. This would have given Applicants the opportunity to initially present the Applications to the Board at the October 24, 2025 meeting, and if necessary, address any concerns raised by the Board had at the November 14, 2025 meeting. The only reason given to Applicants for not scheduling the Applications at the October 24th meeting was that OCCL staff could not complete the submittal in time. Instead, OCCL put the Applicants in the untenable position of scheduling the

Applications at a Board meeting just 4 days before the automatic approval deadline and on a very packed agenda with other controversial items, thereby forcing the Board to rush through the limited materials provided by OCCL and vote to deny the permits, even if there were any unanswered questions on the projects, to avoid an automatic approval. This also resulted in leaving Applicants with no choice but to request a contested case hearing.

When HRS § 183C-6 was amended in 2016 to allow for the extension of the 180-day review period of CDUAs by an additional 90 days in the case where environmental review or a contested case proceeding was required, former Board member Christopher Yuen testified in favor of the measure and aptly noted that "[n]ormally, BLNR's staff has been very good at bringing such applications to the board for a decision at a meeting a month or two before the 180-day deadline."[18] Mr. Yuen further noted that "[d]ecisions involving our conservation lands should be made on the merits, not because of an arbitrary deadline." *Id.*

While the Applicants are appreciative that the Board gave them more than five minutes to present the Applications, the time provided was not sufficient to counter OCCL's negative recommendation and the incorrect and incomplete information provided to the Board. This was a clear violation of Applicants' due process rights. Indisputably, Applicants were not given a meaningful opportunity to be heard or any opportunity to refute the incorrect information provided by OCCL. *See Sandy Beach Defense Fund v. City Council of Honolulu*, 70 Haw. 361, 377, 773 P.2d 250, 260-61 (1989) ("The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest."); *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.*, 136 Hawai'i 376, 389, 363 P.3d 224, 237 (2015) (identifying two

[18] Testimony of Christopher Yuen in support of HB2036, *available at* https://www.capitol.hawaii.gov/sessions/Session2016/Testimony/HB2036_TESTIMONY_WAL_02-01-16_.PDF.

instances in which a property interest is considered sufficiently substantial to trigger due process protections, including "where an agency denies an applicant's proposed property use").

2. The Applications Were Not Reviewed by the Board Prior to Denying Them.

The Board's decisions to deny the Applications were arbitrary and capricious and made in error because the Board was not even provided copies of the Applications as part of the Staff Submittals for Agenda Items K-1 and K-2. This deprived the Board of any opportunity to review the actual Applications it was rendering decisions on. Instead, the Board relied entirely on the analysis provided by OCCL staff, including the incorrect information that was apparently dispositive in the Board's decision to deny the Applications. *See* Part III.A, *supra*; *see also Mauna Kea Anaina Hou*, 136 Hawai'i at 391, 363 P.3d at 239 (holding that the Board's process of ruling on the merits of a CDUA before the factual record was developed failed to satisfy the appearance of justice).

3. The Applications Comply with the SFR Standards in the Conservation District Rules.

There is no valid, defensible reason for denying the Applications. The proposed SFRs comply with the Conservation District Rules, are below the MDA of 5,000 s.f., and are similar in size and scale to other SFRs the Board has approved in the same area. *See* HAR § 13-5-41 and Exhibit 4 to the Conservation District Rules (providing that the MDA for lots larger than one (1) acre is 5,000 s.f.). Treating Applicants differently from similarly situated neighbors with approved CDUPs for their SFRs is arbitrary, capricious, and a violation of Applicants' due process rights. *See DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC.*, 134 Hawai'i 187, 219, 20, 339 P.3d 685, 717-18 (2014) (discussing that the equal protection clauses of the United States and the Hawai'i Constitutions "mandate[] that all persons similarly situated shall be treated alike, both in privileges conferred and in the liabilities imposed" and recognizing an equal

protection claim may be brought by a "class of one," "where the plaintiff alleges that [he/she] has ben intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment") (citations omitted).

The design standards contained in Exhibit 4 to the Conservation District Rules are intended to guide the Board and prevent the very kind of subjective and arbitrary decision-making that occurred at the November 14, 2025 meeting. The January 1991 Auditor report to the Hawai'i Legislature on the regulation of SFR construction in the Conservation District, serious concerns were raised that in the absence of specific standards, it would be hard for the Board to determine whether certain residences were "compatible with the locality and surrounding areas" or violated the subjective condition that "natural beauty and open space be preserved". *See Review of the Regulation of Residential Construction in the Conservation District*, A report to the Governor and the Legislature of the State of Hawai'i, Report No. 91-1, January 1991 by the Auditor of the State of Hawai'i.[19] Despite the adoption of detailed construction standards, those concerns provided true in the Board's denial of the Applications.

HAR § 13-5-41(a) provides that SFR uses approved by the Board must comply with the SFR standards in Exhibit 4 to the Conservation District Rules:

> Single family residential uses approved by the board ***shall comply with the design standards contained in Exhibit 4***, entitled "Single Family Residential Standards: August 12, 2011", located at the end of this chapter and made a part of this section, ***except*** as may be allowed by the board ***upon finding that prevailing conditions warrant the deviation from specific standards***, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen percent.

(Emphases added.)

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[19] THE AUDITOR, STATE OF HAWAI'I, *RESIDENTIAL CONSTRUCTION IN THE CONSERVATION DISTRICT, REPORT NO. 91-1* (Jan. 1991), *available at* https://files.hawaii.gov/auditor/Reports/1990-1995/91-1.pdf.

Exhibit 4 provides only one exception that allows for a reduction of the permissible MDAs: "***Site characteristics*** and the ***degree of pre-existing site disturbance*** may be a further limiting factor in the calculation of maximum developable area ***when so determined by the board.***" (Emphases added.) Thus, by its own rules, the Board can only reduce the permissible MDA if it makes explicit determination that such a reduction is warranted based on "site characteristics" and "the degree of pre-existing site disturbance." The Board made no such determination that could justify its decision to deny the Applications. Instead, the Board denied the Applications based on: (a) certain members' subjective belief about what the right size of the SFRs should be (without providing any guidance as to what that would be), and (b) the incorrect information provided by the OCCL Administrator on the sizes of the neighboring homes.

The Board's decisions to deny the Applications are clear abuses of the Board's discretion.

III. CONCLUSION

For the reasons set forth above, the Motion should be granted and the Board should approve CDUA HA-3981 and CDUA HA-3982 subject to the standard conditions in HAR § 13-5-42 and the additional conditions proposed by OCCL at the November 14, 2025 meeting. In the alternative, the Board should rescind its prior actions denying the Applications so that the Applicants can withdraw their requests for contested cases hearings and the CDUPs can be issued by operation of law.

DATED: Honolulu, Hawai'i, November 21, 2025.

KATHERINE A. GARSON
PUANANIONAONA P. THOENE

Attorneys for Applicants
Opunaha, LLC (Ryan Pastorek) and Paul Pastorek

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of Conservation District Use Permit Application Nos. HA-3981 and 3982; Applicants Opunaha, LLC (Ryan Pastorek) and Paul Pastorek, Tax Map Key Nos. (3) 1-5-010: 026 and 027, Puna, County and Island of Hawai'i	CDUA NOS. HA-3981 AND HA-3982 DECLARATION OF COUNSEL; EXHIBITS "A" - "E"

DECLARATION OF COUNSEL

I, PUANANIONAONA P. THOENE, hereby declare as follows:

1. I am an attorney with the law firm of Carlsmith Ball LLP, counsel of record for Applicants Opunaha, LLC (whose sole member is Ryan Pastorek) and Paul Pastorek (collectively, "**Applicants**"). This declaration is made on my personal knowledge and I am competent in all respects to make this declaration.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts from a file labeled CDUA #HA-3482 TMK: 3-1-5-10:25 obtained from the State of Hawai'i, Department of Land and Natural Resources, Office of Conservation and Coastal Lands ("**OCCL**") files on November 20, 2025.

3. Attached hereto as Exhibit B is a true and correct copy of a letter dated February 16, 2022 from OCCL to Kim Chiodo at Land Planning Hawaii LLC regarding an After-the-Fact Site Plan Approval (SPA) for the placement of a portable spa on an existing 17' x 17' concrete slab and the partial removal of a pre-existing concrete slab at 2225 Government Beach Road, Puna, Hawaii, Tax Map Key No.: (3) 1-5-010:028.

4. Attached hereto as Exhibit C is a true and correct copy of the OCCL staff submittal dated August 13, 1982 in File No.: HA-3/15/82-1466, obtained from OCCL files on November 21, 2025.

5. Attached hereto as Exhibit D is a true and correct copy of the OCCL staff submittal dated October 28, 2025 in File No.: HA-3233, obtained from OCCL files on November 21, 2025.

6. Attached hereto as Exhibit E is a true and correct copy of Conservation District Use Permit HA-3233 dated October 28, 2025, obtained from OCCL files on November 21, 2025.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawai'i, November 21, 2025.

PUANANIONAONA P. THOENE

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of Conservation District Use Permit Application Nos. HA-3981 and 3982; Applicants Opunaha, LLC (Ryan Pastorek) and Paul Pastorek, Tax Map Key Nos. (3) 1-5-010: 026 and 027, Puna, County and Island of Hawai'i	CDUA NOS. HA-3981 AND HA-3982 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following parties by hand-delivery at the address and on the date indicated below:

Dawn Chang
Chair
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, 1st Floor
Honolulu, Hawai'i 96813

Michael Cain
Administrator
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
1151 Punchbowl Street, 1st Floor
Honolulu, Hawai'i 96813

DATED: Honolulu, Hawai'i, November 21, 2025.

KATHERINE A. GARSON
PUANANIONAONA P. THOENE

Attorneys for Applicants
Opunaha, LLC (Ryan Pastorek) and Paul Pastorek

EXHIBIT A

CDUA# HA-3482

TMK: 3-1-5-10:25

Isl./Dist. Hawaii, Makuu, Puhoo

Applicant: Donald & Susan Wood

Landowner: Same as above

Use: Additions to a Single Family Residence

Board Action: Approved 11/25/2008 w/16 conditions

CONSERVATION DISTRICT USE APPLICATION HA-3182

SUBZONE: RESOURCE

180-DAY EXP. DATE: 17 FEB 09

Acceptance: 20 AUG 2008

APPLICANT:

DONALD & SUSAN WOOD

Agent: Greg Moovers

tel 880-1455

USE REQUESTED: Additions to SFR

DISTRICT/ISLAND: Makuu, Puna, Hawai'i

TAX MAP KEY: (3) 1-5-10:25

AREA/PARCEL: 5.43 acres **AREA/USE:** +2400 ft²

PUBLIC HEARING: ____YES ✓ NO **PUBLIC HEARING DATE:** _____

BOARD ACTION:

Chair Approved 11.25.08

VIOLATION ____YES ____NO

FINE IN AMOUNT OF: $ _____

INDEXED _____

LINDA LINGLE
GOVERNOR OF HAWAII





BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:MC

CDUP: HA-3482

MAY 13 2009

Mr. Don Wood
HCR3 Box 10020
Kea`au, HI 96749

SUBJECT: CONSERVATION DISTRICT USE PERMIT (CDUP) NO. HA-3482
Additions to the Wood Single Family Residence
Maku`u, Pahoa, Puna District, Hawai`i
TMK (3) 1-5-10:25

This is to inform you that on November 25, 2008, the Chair of the Board of Land and Natural Resources approved this Conservation District Use Application (CDUA) HA-3482 for additions to the single-family residence at Maku`u, Pahoa, Hawai`i, TMK (3) 1-5-10:25, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of HAR §13-5-42;

2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai`i harmless from and against any loss, liability, claim or demand for property damage, personal injury or 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 applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to HAR §11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;

4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans to the Chairperson or her authorized representative for approval. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction of the residence and infrastructure must be completed within three years of the approval.

6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;

7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

8. The applicant will use Best Management Practices for the proposed project;

9. The applicant will give preference towards using native plants all landscaping work;

10. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

11. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this 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/or the Department may, in addition, institute appropriate legal proceedings;

12. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;

13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

14. The single family dwelling will not be used for rental or any other commercial purposes unless approved by the Board;

15. The applicant will contact OCCL for any permitting requirements should they change the scope of the project;

16. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, please feel free to contact Michael Cain at 587-0048.

Sincerely,

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged

Applicant's Signature

May 31, 2009
Date

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

FILE NO.: CDUA HA-3482
REF: OCCL: MC

Acceptance Date: August 20, 2008
180 Exp. Date: February 17, 2009

TO: Chairperson's Office, Department of Land and Natural Resources

REGARDING: Additions to a Single Family Residence

APPLICANT: Donald and Susan Wood
HCR Box 10020, Ke`eau, HI 96749

AGENT: Gregory Mooers, Mooers Enterprises
Post Office Box 1101, Kamuela, HI 96743

LOCATION: Maku`u, Puna, Hawai`i

TMK: (3) 1-5-10:25

AREA OF PARCEL: 5.43 acres

AREA OF USE: 2420 sqft.

SUBZONE: Resource

DESCRIPTION OF AREA AND CURRENT USE:

The 5.43 acre coastal property is located off of the Old Government Road that runs between the Hawaiian Paradise Park and Hawaiian Beaches subdivisions. The land was once used for grazing, and now consists of grassland with occasional trees.

On May 11, 2001 the Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) HA-3013 for a single family residence on the property. The plans allowed for a segmented, two-bedroom, one-story residence and a barn, with a total Developed Area of 3700 square feet. The proposal called for the residence and associated structures to be built in three phases.

The landowners completed Phase One of the original project, which included a great room, a bedroom, and a walled garden. The total developed area of the completed structure is 1734 square feet. The remainder of the house was not built. **Exhibit 1** shows the original site plan. Completed structures are outlined in green. Exhibit 2 shows a photograph of the residence.

The applicants built an outdoor courtyard and garden that was not shown on the original site plans. This is shown in **Exhibit 3**. The courtyard is not graded and is not paved; OCCL has concluded that this does not need to be counted when calculating the maximum developable area.

The landowners did not complete the remainder of the proposed project. CDUP HA-3013 contained the standard condition that construction begin within a year of approval and finish within 3 years. As the landowners did not request an extension of the permit, they were required to seek a new CDUP for the remainder of the work.

PROPOSED USE:

The landowners have chosen to modify their original plans, and have submitted an application to add a two-story 760 square foot bedroom, a 720 square foot art studio, and a 960 square foot detached garage to the existing residence.

The revised Site Plan is shown in **Exhibit 4**. Existing buildings are outlined in green, proposed elements are outlined in red. **Exhibits 5-9** contain floor plans for the proposed new elements to the residence.

None of the proposed additions will be closer than 150-200 feet from the shoreline.

The proposal does not involve any grubbing or grading.

The additions would result in a net increase of 2420 square feet, bringing the total developed area to 4154 square feet. This is within the Maximum Developable Area for this parcel as allowed under the Single Family Residential Standards outlined in Hawai`i Administrative Rules (HAR) §13-5.

There are no violations or enforcement cases pending against the property.

There are no known archaeological features at the site.

SUMMARY OF COMMENTS:

The Office of Conservation and Coastal Lands referred the application to the following agencies for review and comment: Department of Health; Office of Hawaiian Affairs; the County of Hawai`i Planning Department; and Department of Land and Natural Resources (DLNR) Land Division, Division of Forestry, Division of Conservation and Resource Enforcement, and Historic Preservation Division.

A notice of the application was placed in the September 8, 2008 edition of the Office of Environmental Quality Control's *Environmental Notice*. In addition, a copy was available for review at the Hilo Public Library.

Comments were received from the following agencies:

DLNR Land Division
No comment

DLNR DOCARE
No comment

DLNR Division of Forestry and Wildlife
No comment

DLNR Historic Preservation Division
The parcel was surveyed in October 2000, at which time it was determined that no historic properties would be affected by the development.

Planning Department
The project is in the Special Management Area. The original proposal was determined to be exempt from the definition of development. However, the Department believes that a new SMA application needs to be submitted to the office to determine if the additions are also exempt.

Applicant's Response
The applicant appealed this determination, and Planning concurred that the previous SMA assessment is adequate for the proposed additions. OCCL confirmed this decision by phone with the Department.

ANALYSIS:

Following review and acceptance for processing, the Applicant's Agent was notified, by letter dated March 17, 2008, that:

1. The addition was an identified land use within the Conservation District, pursuant to Hawai`i Administrative Rules (HAR) §13-5-22 *Identified land uses in the protective subzone,* P-9 STRUCTURES, EXISTING, (C-1) *Demolition, removal, or alteration of existing structures, facilities and equipment.*

2. Pursuant to HAR §13-5-40 *Hearings*, a public hearing was not required.

3. This project was exempt from conducting an Environmental Assessment pursuant to HAR §11-200-8 (4) *Minor alterations in the conditions of land, water, or vegetation.*

§13-5-30 CRITERIA:

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

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.

Staff is of the opinion that the proposed action will not negatively impact the natural resources of the area.

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

Pursuant to HAR §13-5-14, the objective of the Resource Subzone *is to designate open space where specific conservation uses may not be defined, but where urban use may be premature.*

The project in and of itself will not affect open space. It will increase the density on the subject parcel; however, the total developed area will remain less than the maximum set in the Administrative Rules.

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

The proposal is exempt from the definition of development, and will not need a Special Management Area permit

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

Staff notes that the project is similar in style to other residences in the neighborhood. The area is relatively isolated, and the development will be hid from general view. Staff does not foresee an adverse impact on the community.

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 renovations are similar in size and design to others in the community.

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.*

Staff is of the opinion that the natural beauty and open space characteristics of the portions of the lots within the Conservation District will be maintained.

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

The proposed project does not involve subdivision of Conservation District land.

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 addition will not be materially detrimental to the public health, safety and welfare.

DISCUSSION:

In 2001 the Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) HA-3013 for a 3700 square foot single family residence on the subject property. The proposal called for the residence and associated structures to be built in three phases. The landowners only completed the master bedroom and 'great room,' which totaled 1743 square-feet of developed area. Elements of the original plan that were not built included an additional bedroom, a gazebo, an art studio, a two-car garage, and a detached barn

In early 2008 the landowners requested permission to continue with construction. After reviewing the records, OCCL concluded that the original construction deadline had passed, and that the a new permit would be required.

The landowners chose to amend their original plan. OCCL had concerns with their amendments, as some of the structures were detached and could conceivably be converted to second residences or rental units. The landowners revised their plans to address these concerns by attaching the proposed second bedroom and proposed art studio to the main residence. The garage remains separate, but will not be connected to the plumbing system.

OCCL is satisfied that the proposed additions are consistent both with the design guidelines for residences in the Conservation District and with the original site plan that the Board approved.

Therefore:

RECOMMENDATION:

Based on the preceding analysis, Staff recommends that the Chair of the Board of Land and Natural Resources APPROVE this application for additions to the Wood residence at TMK (3) 1-5-10:25, Maku`u, Puna, Hawai`i, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of HAR §13-5-42;

2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai`i harmless from and against any loss, liability, claim or demand for property damage, personal injury or 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 applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to HAR §11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;

4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans to the Chairperson or her authorized representative for approval. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction of the residence and infrastructure must be completed within three years of the approval.

6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;

7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

8. The applicant will use Best Management Practices for the proposed project;

9. The applicant will give preference towards using native plants all landscaping work;

10. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

11. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this 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/or the Department may, in addition, institute appropriate legal proceedings;

12. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;

13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

14. The single family dwelling will not be used for rental or any other commercial purposes unless approved by the Board;

15. The applicant will contact OCCL for any permitting requirements should they change the scope of the project;

16. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully submitted,

Michael Cain
Staff Planner

Under the authority of §13-5-30(a) and 13-5-33, Hawai`i Administrative Rules, this request for a Departmental Permit for CDUA OA-3314 is hereby:

☑ Approved

☐ Disapproved

Dated at Honolulu, Hawai`i 11/25/08

for **LAURA H. THIELEN**, Chairperson
Board of Land and Natural Resources

EXHIBIT B

DAVID Y. IGE
GOVERNOR OF HAWAI'I

SUZANNE D. CASE.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHO'OLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAI'I 96809

Ref: OCCL:RB

SPA: HA 22-50

Feb 16, 2022

Kim Chiodo
Land Planning Hawaii LLC
194 Wiwoole St.
Hilo, HI 96720

SUBJECT: After-the-Fact Site Plan Approval (SPA) for the placement of a portable spa on an existing 17'x17' concrete slab and the partial removal of a pre-existing concrete slab at 2225 Government Beach Road, Puna, Hawaii
Tax Map Key: (3) 1-5-010:028

Dear Ms. Chiodo:

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your After-the-Fact SPA for the placement of a portable spa on an existing 17'x17' concrete slab and the partial removal of the pre-existing concrete slab. It should be noted that SPA HA 20-04 indicates, "the old cement slab was demolished and replaced with a new 17-foot x 17-foot cement slab." The applicant notes that this statement is incorrect as only a portion of the old (pre-existing) slab was removed as noted in their SPA HA 20-04 application, "a portion of an old cement slab was demolished and replaced with a new 17'x17' cement slab." The existing 17'x17' slab was permitted under SPA HA 20-04.

The therapy spa is prefabricated and portable; it measures 15'x15'. Approximately 360 square feet of the pre-existing slab was previously removed; it currently measures 357 square feet. The single-family residence and accessory uses are 4,332 square feet. Pursuant to HAR §13-5 Exhibit 4 the permitted Maximum Developable Area (MDA) on lots larger than one acre is a maximum of 5,000 square feet; therefore, the existing SFR and associated structures are within the permitted MDA.

This application is meant to resolve an enforcement action, HA 22-16, in which unauthorized land uses were discovered to have taken place at the subject property. Staff notes that according to the enforcement action, unauthorized land uses included the following: pool, new concrete pad, and a gazebo. The OCCL notes that the gazebo has been removed; that the pool is a portable spa; and the new concrete pad is the unremoved portion of the old (pre-existing) slab.

To resolve this matter, the landowner is required to apply for an after-the-fact SPA for the unauthorized land uses. The landowner states that because the SPA HA 20-04 acknowledged that the purpose of the 17'x17' concrete slab was to house the spa, the landowner believed this acknowledgement to imply that the spa was permitted under SPA HA 20-04. Thus, the applicant is submitting this after-the-fact SPA to obtain approval for the portable spa atop the 17' x 17' concrete slab and the old (pre-existing) concrete slab's partial removal.

Additionally, Condition #9 of SPA HA 20-04 states, *the permittee shall remove the hog wire fence within the designated easement area for Site No. 18418 as outlined in the preservation plan. The permittee is required to submit a copy of the preservation plan to the Department along with photographic evidence that the fence was removed in the required area.* The applicant has submitted photographic evidence that the fence was removed in the required area; the applicant has submitted a copy of the preservation plan. The OCCL notes that this condition has been fulfilled.

ANALYSIS

The project area is located within the Resource Subzone of the State Land Use Conservation District. Based on the project description provided, it would appear that the proposed project is consistent with the following:

- Hawai'i Administrative Rules (HAR) §13-5-22, P-9 STRUCTURES, ACCESSORY (B-1) *Construction or placement of structures accessory to existing facilities or uses;* and
- HAR §13-5-22, P-8 STRUCTURES AND LAND USES, EXISTING (B-1) *Demolition, removal, or minor alteration of existing structures, facilities, land, and equipment.*

Further, the proposed project may be considered an exempt action under the following:

- §11-200-8, HAR (a)(3) *Construction and location of single new, small facilities or structures and the alteration and modification of same and installation of new, small, equipment and facilities and the alteration and modification of same including but not limited to: (E) accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences.*
- §11-200-8(a)(4) *Minor alteration in the conditions of land, water or vegetation.* Specifically, the Exemption List for the Department under Exemption Class 4, No. 7 allows for *minor ground adjustments (e.g., grading, grubbing, cutting, or filling) that do not require grading permits.*

Staff notes that the Land Division was consulted with regard to the HRS §343, Exemption Determination and they concurred that the exemptions are appropriate for the proposed work.

Therefore, authorization is hereby granted to Lorraine A. Melella and Laura T. Melella for the after-the-fact SPA for the placement of a portable spa on an existing 17'x17' concrete slab and the partial removal of a pre-existing concrete slab at 2225 Government Beach Road, Puna, Hawaii Tax Map Key: (3) 1-5-010:028 and is 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. The permittee understands and agrees that this permit does not convey any vested rights or exclusive privilege;

5. In issuing the approval, the department has relied on the information and data, which the applicant has provided in connection with the application. If, subsequent to the issuance of the approval such information and data prove to be false, incomplete, or inaccurate, this approval may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;

6. 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;

7. 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 Hawai'i, and by Hawai'i statutory and case law;

8. Other terms and conditions as prescribed by the Department; and

9. Failure to comply with any of these conditions shall render a permit void under Chapter 13-5, as determined by the chairperson or board.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other. Should you have any questions, please feel free to contact Rachel Beasley at 798-0386.

Sincerely,

S Michael Cain

Michael Cain, Acting Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

Lauren Q. McClean

_____ Date 3-2-2022
Applicant's signature

c: Chairperson
Hawai'i Board Member
HDLO/DOCARE-Hawai'i
CoH, Planning Dept.

EXHIBIT C

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

FILE NO.: HA-3/15/82-1466
180-Day Exp. Date: 9/12/82

August 13, 1982

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

Gentlemen:

Conservation District Use Application for
Single Family Residential Use
at Puna, Hawaii

APPLICANT: Robert Gerald D'Anna
P. O. Box 1287
Pahoa, Hawaii 96778

LANDOWNERSHIP: Private, applicant

LOCATION: TMK: 1-5-9: 36

AREA OF PARCEL/USE: 1.631 acres/1.631 acres

SUBZONE: Resource

DESCRIPTION OF AREA:

The subject parcel is located approximately one-fourth mile north of Hawaiian Beaches Subdivision with frontage on the Government Beach Road. Access is via the Government Beach Road via Kahakai Boulevard or Makuu Drive.

The property has a slight slope towards the ocean, approximately 15 percent. Shoreline area consists of boulders and sand with small tidal pools at the waters edge. The remainder of the parcel consists of pahoehoe lava covered with varying amounts of soil supporting a variety of plant life: coconut, plumeria, banana, citrus trees, taro, sweet potatoe, exotic palms and wiliwili trees.

CURRENT USE:

Vacant; parcel is currently not served by utilities.
NOTE: See Division of Conservation and Resources' report (Appendix B) regarding current use.

PROPOSED USE:

The applicant proposes to construct a single-family, 2-story dwelling with loft area and a detached garage on parcel 36, with a combined floor space of 2,200 square feet. In addition, he also proposes to construct a pool-type water tank, 18 feet in diameter, 4 feet deep with an 8,000 gallon capacity; the garage roof will serve as catchment area to supply the tank.

Board of Land and
Natural Resources

The applicant intends to establish a self-sufficient farm on the remainder of the parcel. The proposed improvements are non-commercial and are for the owner's use only.

Sewerage disposal shall be accommodated by a regulation type cesspool (6 feet by 14 feet) to be located directly behind the dwelling no closer than 10 feet to any building or property line.

The applicant states that should he desire to have telephone service in the future, Hawaiian Telephone Company has indicated service can be provided with the permission of the owners of parcel 12, lying mauka of the Government Road. The telephone line would be run on overhead lines to the applicant's property and underground within the subject parcel.

A photo-electric, 12-volt battery system will be used to supply power for residence use and to operate the water tank pump.

The applicant would like to begin construction in August, 1982 and complete the project by October, 1982.

Preliminary plans for house and garage have been submitted for review.

The present access road on the property is posted as private-no trespassing.

This parcel is held in Fee Simple by the owners with no covenants or restrictions, except where provided for in Exhibit "A". (See Appendix A).

SUMMARY OF COMMENTS:

The application was sent to the following agencies for review and comment:

County of Hawaii Planning Department, Department of Water Supply, Department of Public Works, the State Department of Health, Office of Environmental Quality Control, Environmental Quality Commission, Office of Hawaiian Affairs and the following Department of Land and Natural Resources divisions: Aquatic Resources, Forestry and Wildlife, State Parks/Historic Sites, Land Management, Water and Land Development, Natural Area Reserves System and the Division of Conservation and Resources Enforcement.

Their comments follow:

County of Hawaii Planning Department:

Thank you for the opportunity to review the subject applicat
For your information, the subject parcel lies within the Spe
Management Area. However since development will be limited
a single family dwelling and cultivation for personal

Board of Land and
Natural Resources

HA-1466
August 13, 1982

Because the subject property lies within an agriculture one acre zoning district, the County has no objections to the intended development, but requests that the following conditions be attached to the application:

1. The front yard shall have a minimum depth of thirty (30) feet, and the rear yard a minimum dept of forty (40) feet in observance of the shoreline setback.

2. Side yards shall be a minimum of twenty (20) feet.

3. Non-attached accessory buildings, water tanks, and cesspool must be located at least ten (10) feet from the main structure.

The County Department of Water Supply:

We have no objections to the Conservation District Use Application inasmuch as there is no County water system in the area. Further, we do not anticipate developing any source in the area.

The Department of Public Works:

Should this application be approved, the applicant shall obtain a building permit.

The State Department of Health:

Our staff has reviewed this request and does not foresee any major adverse environmental effects arising from this project.

Please be informed that we have no objections to granting the permit.

The Office of Hawaiian Affairs, Land Division:

No adverse impacts on Hawaiian/Native Hawaiian Rights and/or Ceded Lands are anticipated from this proposed action.

The Office of Hawaiian Affairs is concerned about the preservation of Historical and Archaeological sites located on any property, and may take a stand to advocate for its protection.

The Department of Land and Natural Resources, Division of Aquatic Resources:

The applicant proposes to construct a single-family dwelling (total floor space of 2,200 square feet) on a 1.631 acre beachfront parcel in Puna, Hawaii. Also proposed is the establishment of a farm on the remainder of the parcel. All proposed improvements are non-commercial and intended for the owner's use.

The applicant states that a regulation type (6 feet by 14 feet) cesspool, to be located directly behind the dwelling, will be used for sewage disposal.

Comments:

Inasmuch as the dwelling will be located at least 300 feet from the ocean, no significant adverse impact upon the area's aquatic resources is anticipated. However, appropriate measure should be taken to minimize excessive erosion, silting and seepage during and subsequent to development.

The Division of State Parks/Historic Sites:

Recreation Concerns:

There are no known public parks interests in the subject parcel but public access should be maintained along the shoreline sand and tide pool area.

Historic Sites Concerns:

Our records do not indicate the presence of historical, cultural, architectural and/or archaeological resources on this property which are listed on the Hawaii Register and/or the National Register of Historic Places, or that have been determined Eligible for Inclusion on the National Register of Historic Places.

In the event that any unanticipated sites or remains such as artifacts, shell, bone or charcoal deposits; human burials; rock or coral alignments, pavings, or walls are encountered during construction, please inform the applicant to stop work and contact this office immediately.

The Division of Conservation and Resources Enforcement has provided a field inspection and report. This report is appen in its entirety to this Submittal as Appendix B. The report addresses construction activity and structures found to be present on the subject parcel.

The Divisions of Forestry and Wildlife, Land Management, and Water and Land Development indicate they have no objections to the proposed land use; and the Natural Area Reserves Syst indicates the proposal will not affect the existing Natural Area Reserves program.

ANALYSIS:

Following review and acceptance of the application, for processi the applicant, by letter dated May 11, 1982, was notified that:

1. The proposed use, single family residential use, is a conditional use of the Resource Subzone of the Conservation District according to Title 13, Chapter 2, Departmental Administrative Rules, as amended;

2. No public hearing pursuant to Section 183-41, Hawaii Revised Statutes (HRS), as amended will be required; and

3. The proposed use qualifies as an exempt action in accordance with Section 1:33 of the Environmental Impact Statement Regulations.

The County of Hawaii indicates the site lies within the Special Management Area, but is exempt from Special Management Area Rules and Regulations.

The objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

Subchapter 21 relating to standards requires all applications be reviewed in such a manner that the objective of the subzone is given primary consideration.

The proposed use, construction of a home and garage, water tank and catchment system, solar power and 12-volt battery system, cesspool and use of the subject property for a self sufficient farm as presented in the application, would appear to be a commendable approach to development of the site for residential use, utilizing the existing resources in a prudent manner. In fact, Staff is of the opinion that the use, as proposed, a single family residence, is a reasonable use, consistent with the objective and intent of the Resource Subzone and the Conservation District. Furthermore, the proposed use would appear to be consistent with the objectives of the Conservation Lands Plan.

However, Staff notes the application, filed with the Planning Office in Honolulu on March 15, 1982, indicated that the land was vacant and all improvements were proposed. Staff, in meeting with the applicant, on July 15, 1982, was informed that he had in the past months, begun to construct "forms" for pouring the foundation for the main structure, the house. The applicant did not indicate that any other work had been done. The applicant did indicate that the Division of Conservation and Resources Enforcement officers had visited the property.

Following this meeting with the applicant, Staff received the Division of Conservation and Resources Enforcement field investigation report (Appendix B) which indicates a number of conditions not evident in the application or from conversations with the applicant.

It then became apparent that the applicant actually began construction on the site over two years ago. This he admitted to the reporting Division of Conservation and Resources Enforcement officer.

The Division of Conservation and Resources Enforcement report indicates the existence of three wooden structures - a 21 foot by 22 foot structure reported to be a dwelling but identified by the applicant as a garage, an 18 foot by 20 foot hothouse structure and a restroom located within the 28 foot by 28 foot forms constructed by the applicant for the purpose of pouring a concrete foundation for a house.

Board of Land and
Natural Resources

In addition, the proposed water tank/catchment system has been installed and is presently operable, feeding water to the structure identified as a garage and to the toilet system of the site.

The 21 foot by 22 foot garage noted in the report has a built-in sink, stove, and ice box. The reporting DOCARE officer indicates that a portion of this structure is used as sleeping quarters (see the Division of Conservation and Resources Enforcement report, Exhibit 2) and that the applicant does live on the subject property. The report does not indicate how icebox and stove are fueled.

Makai of this "garage", the applicant has constructed a 18 foot by 20 foot hothouse or greenhouse, which the applicant claims is portable. This structure was not requested in the current application. The Division of Conservation and Resources Enforcement officer notes that the foundation posts are set in concrete, leading Staff to believe the structure is intended to be non-portable, and of a permanent nature.

At the proposed house site, the applicant has constructed restroom facilities and has begun to layout "forms" for pouring the concrete slab for the house.

The applicant has indicated to the Division of Conservation and Resources Enforcement officer that the "sewer system", assumed to be the proposed cesspool, had been installed by a licensed contractor.

To date, it is evident that the applicant has constructed two wooden structures, and partially completed a third structure, installed a water tank/catchment system, installed a cesspool and toilet, and presently utilizes the garage as living quarters - all without a Board approved Conservation District Use Application.

The above noted unauthorized structures, improvements and use of the subject property are considered to be violations of Title 13, Chapter 2, Departmental Administrative Rules, as amended and as such, the applicant is subject to a fine of $500.00 per violation.

Staff considers the total number of violations to be equal to six (6), as listed above.

Furthermore, it is the policy of the Board of Land and Natural Resources to permit one house only per parcel in the Conservation District. As such, continued use of the structure designated as a garage for living quarters cannot be permitted.

Staff maintains that at this point it would serve no useful purpose to require the applicant to remove all the improvements made thus far. However, Staff does maintain that the improvements not shown on the proposed plans submitted with the Conservation District Use Application should be removed and the uses indicated on the plan adhered to.

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Natural Resources

This means that the applicant should be required to remove the "hothouse" and remove the kitchen applicances installed in the garage. Further, the garage should be used only for the purpose of parking and storage.

This means that the applicant should be required to remove the "hothouse" and remove the kitchen applicances installed in the garage. Further, the garage should be used only for the purpose stated - garage and storage.

In addition, Staff has contacted the County building inspector who has indicated that a residence cannot be occupied until the County completes its final inspection. To date, the applicant has not obtained a building permit and has constructed a structure which he occupies without County approval. The County indicates they will look into the matter and possibly cite the applicant for violations.

As such, Staff recommends as follows:

RECOMMENDATION:

A. That the Board find the construction of two (2) wooden structures, and partial construction of a third structure, installation of a water tank/catchment system, installation of a cesspool and toilet, use of the structure designated as garage for living quarters to be violations of Title 13, Chapter 2, Departmental Administrative Rules, as amended, and that the Board assess the applicant a fine of Five Hundred Dollars ($500.00) per violation, the total of six (6) separate violations being equal to the sum of Three Thousand Dollars ($3,000.00) to be paid within sixty (60) days of the date of this meeting, this date being July 13, 1982.

B. That the applicant cease living on the subject property until he obtains permission from the County of Hawaii to occupy the structure designated on his plans as "house".

C. That the applicant remove the stove, icebox and any fuel supply/storage system from the structure designated on his plans as a garage. This structure is to be used only as a garage and storage space, and not for living quarters.

D. That this application for a single family residence with detached garage, water tank and catchment system, cesspool and solar power system, with use of the remaining land for non-commercial subsistence farming on property identified as TMK: 1-5-9: 36, in Puna, Island of Hawaii be approved subject to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and City and County governments, and applicable parts of Section 13-2-21 of Title 13, Chapter 2, Departmental Administrative Rules, as amended;

2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for pro-

perty 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. Other terms and conditions as prescribed by the Chairman;

4. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered during construction, the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;

5. That the applicant comply with all applicable Public Health Regulations;

6. A fire contingency plan, acceptable to the Division of Forestry and Wildlife shall be implemented during and after the construction of the dwelling;

7. That the single family dwelling not be used for rental or any other commercial purposes;

8. The construction, alteration, moving, demolition and repair of any building or other improvement on lands within the Conservation District, shall be subject to the building codes of the respective counties in which the lands are located; provided that prior to the commencement of any construction, alteration or repair of any building or other improvement, four (4) copies each of the final location map, plans and specifications shall be submitted to the Chairman, or his authorized representative, for approval, provided however, that any alteration or repair which does not change or expand on the existing land use shall not be subject to the above

9. Clearing areas for construction purposes shall require prior approval by the Chairman. Ground cover of slopes over 40 percent shall not be removed unless specifically authorized by the Chairman;

10. Cleared areas shall be revegetated within thirty (30) days, unless otherwise provided for in a plan on file with and approved by the Department;

11. Upon approval of a particular use by the Board, any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and, all work and

Board of Land and
Natural Resources

HA-1466
August 13, 19

13. Side yards shall be a minimum of twenty (20) feet;

14. Non-attached accessory buildings, water tanks, and cesspool must be located at least ten (10) feet from the main structure;

15. That appropriate measures shall be taken to minimize excessive erosion, silting and seepage during and subsequent to development.

Respectfully submitted,

Sherrie Samuels

SHERRIE SAMUELS
Staff Planner

Attachment

APPROVAL FOR SUBMITTAL:

S. Ono

SUSUMU ONO, Chairman
Board of Land and Natural Resources

EXHIBIT D

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

File No.: HA-3233
180-Day Exp. Date: December 10, 2005

October 28, 2005

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

REGARDING:	Conservation District Use Application (CDUA) HA-3233 for a Single Family Residence (SFR) & Related Improvements
APPLICANT:	Steven Lim for the Gadler Family Trust
LANDOWNER:	Gadler Family Trust
LOCATION:	Keonepoko Iki, Puna, island of Hawaii
TMKs:	(3) 1-5-009:040
AREA OF PARCEL	Approximately (≈) 10 acres
USE:	≈ 1 acre
SUBZONE:	Resource

DESCRIPTION OF AREA AND CURRENT USE

The proposed project site is located on unimproved oceanfront property makai of a Government Beach Road, and is adjacent and North (Hilo side) of the Hawaiian Beaches subdivision located at Keonepoko Iki, District of Puna on the island of Hawaii. The 10,005 acre parcel identified as TMK (3)1-5-009:040 appears to lie entirely within the Resource subzone of the Conservation District. To the northeast is the Pacific Ocean, to the southeast is private property noted as the Klein residence within the Urban District and the Hawaiian Beaches subdivision beyond, to the southwest is the Government Beach Road and unimproved private property within the Agricultural District, and to the northwest are two approved Single Family Residence (SFR) and other private properties within the Conservation District **(Exhibit 1, 2, 3, 4 & 5)**.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
OCT 28 2005

ITEM K-2

An existing rock wall borders the property's southern (mauka) boundary. Rock wall remnants are located in the center of the property, mauka of an existing lauhala grove. Remnants of a tree house exist in a large banyan tree. There are two gated entry ways which breach the southern boundary wall with two existing roadways one that is 12 feet wide and ≈ 258 feet long and the other that is 15 feet wide and ≈420 feet long **(Exhibit 6,7, 8 & 9)**.

Access to the property is via provided from the Keaau-Pahoa highway that connects to Kahakai Boulevard in the Hawaiian Paradise Park subdivision to the Government Beach Road, also known as the Puna Trail, an improved gravel/dirt roadway having a 10-foot wide right-of-way. A 40-foot building setback line runs along the makai portion of the right of. Way. Electrical and Telephone service have underground entries located along the Government Beach Road and at the end of Welea Street within the Hawaiian Beach Subdivision **(Exhibit 10 & 11)**. There is no municipal water system available.

The shoreline of the subject area is rocky consisting of low/medium height sea cliffs **(EXHIBIT 12)**. The property is characterized by a gradual slope of predominantly historical a'a lava flow which covers the entire area makai of the Government Beach Road. The elevation of the property ranges from sea level to approximately 54 feet above mean sea level along the mauka boundary near the Government Beach Road.

According to the applicant, community contacts and consultation with kupuna familiar with the area disclosed that there are no known traditional or customary native Hawaiian practices within the subject property. Opihi, limu gathering and fishing take place at the shoreline areas.

According to the applicant, no plant species listed by the U.S. Fish & Wildlife Services or State protected plant species as threatened or endangered, proposed, or a candidate species or "species of concern" occur on the property or immediate vicinity. The shoreline of the property and adjoining oceanfront properties are bare of vegetation. Plants on the property consist of mature coconut, octopus, gunpowder, autograph, Norfolk pine, avocado and pandanus (hala).

According to the applicant, no endangered or otherwise rare bird or mammal species were observed within the project area. The area is not included within the critical habitat for protected species. Known avifauna consists of lowland urban birds such as the mynah, house finch, cardinal, and majiro. No resident endemic and indigenous land birds, water birds, seabirds and migratory birds have been recorded on the property. Mammal species most expected to occur on the property include mongoose, feral cat, mouse and rat. Marine mammals and sea turtles have not been observed along the low/medium height jagged, barren lava sea cliffs along the property.

PROPOSED USE

According to the applicant, the proposed Single Family Residence consists of a one-story concrete floor dwelling with two bedrooms, two and a half baths, a kitchen, a dining room, a living room, a foyer and entry that is approximately 2849 square feet. There are covered lanais (≈594.5 ft²), arcade and breezeway of (≈352.5 ft²), a utility and storage area (≈300.68 ft²) with all structures connected. An approximately 900 square foot swimming pool and a perimeter 4 foot-high chain link fence are proposed on the makai side of the SFR **(Exhibit 13)**.

According to the applicant, the area of the SFR is at the maximum of 5,000 square feet. The SFR will be sited along the northeastern boundary of the property. The front or mauka setback is 500 feet, the side setbacks are 224 feet and 111 feet and the back or makai setback is 159 feet. The maximum height shall not exceed 25 feet. Neutral colors and materials such as wood, stone and slate will be used on the exterior of the dwelling to harmonize with the existing physical environment **(Exhibit 14, 15, 16 & 17)**.

According to the applicant, the existing topography will require grading/contouring of 7% of the property. The proposed house site will require grading of approximately 1,138.67 cubic yards and fill of 1,215.84 cubic yards to accommodate the natural contours of the land. An individual waste water treatment system is proposed for domestic wastewater disposal meeting all applicable County and State regulations. The disposal system will be located adjacent to the dwelling. Potable water will be by private catchment system consisting of a concrete underground storage catchement water tank to be housed underground beneath the utility and storage area.

Driveway improvements include two 6.5' high rock column and gate at the existing entrances. The applicant proposes to place 3 inches of red cinder on the existing dirt roads and proposes "an additional pea gravel driveway and parking area of approximately 15-feet wide by 270 lineal feet, 24-feet wide by 851 lineal feet, and 25-feet by 40 lineal feet to connect both dirt roads to the dwelling."

Landscaping improvements will consist of planting of small shrubbery and ground cover around the perimeter of the house. Plant species being considered are pohinahina, akia, hinahina kukahakai, ma'o, naupaka kahakai, nehe, wiliwili, ilima, a'ali'i and ulei. The final landscaping plan will depend upon the availability of planting materials. 10-20 Norfolk Pines and 10-20 Coconut trees, 20 feet tall are proposed to be removed or relocated along with juvenile Norfolk pines and coconut trees 4-feet or less. A landscaping plan shall be submitted with the construction plans to the Department for approval.

Regarding the wall remnants on the subject property, based upon a field inspection and the applicants commitment to avoid any impact to the area of the parcel containing the wall remnants, the State Historic Preservation Division has determined that "no historic properties will be affected" by the proposed project.

Alternatives to the proposed action

The applicant has reduced the size of the proposed residence and related accessory use improvements as initially envisioned. Under the "No-Action" alternative, the Applicant would abandon the proposed project and the area would remain vacant land. This alternative deprives the Applicant of the reasonable use of their property.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: the **State**: Department of Health; Office of Hawaiian Affairs; Office of Environmental Quality Control; Department of Land and Natural Resources Divisions of: Aquatic Resources, Conservation and Resource Enforcement, Engineering, Forestry and Wildlife, Hawaii District Land Office, Historic Preservation; and the **County of Hawaii:** Department of Planning, Department of Environmental Management. In addition, this application and Final Environmental Assessment was also sent to Malama O Puna, a non-profit organization and the nearest public library, the Pahoa Public Library, to make this information readily available to those who may wish to review it.

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

STATE OF HAWAII

DEPARTMENT OF HEALTH

Clean Water Branch

An National Pollutant Discharge Elimination System (NPDES) permit is required before the commencement of the construction activities. The operation and maintenance of the proposed swimming pool will not result in any discharges into State waters. Any discharge related to project construction or operation activities, will comply with the applicable State Water Quality Standards as specified in HAR, Chapter 11-54.

There are no site specific Best Management Practices (BMPs) measures proposed to properly isolate and confine the construction activities and to contain and prevent any potential pollutant discharge from adversely impacting State waters. At a minimum, the BMP shall include site characterization; construction sequence construction method; characteristics of the discharge and potential pollutants associated with the proposed construction activity; and control measures and/or treatment.

The is no Applicable Monitoring and Assessment Plan proposed to demonstrate how the project construction activity would be in compliance with the applicable State Water Quality Standards.

Pursuant to Hawaii Revised Statutes (HRS), §342D-50(a), requires that "No person, including any public body, shall discharge any water pollutants into state waters, or cause

or allow any water pollutant to enter State waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director."

APPLICANT'S RESPONSE

The Applicant will comply with the NPDES permitting requirements prior to commencement of the construction activities. The Applicant will also comply with applicable rules and regulations to ensure that the operation and maintenance of the proposed swimming pool will not result in any discharge into State waters.

Wastewater Branch

The subject project lies in the Critical Wastewater Disposal Area with One Acre Lot Exception. Wastewater treatment and disposal has been briefly mentioned in the draft Environmental Assessment (EA). As there is no County service system within the vicinity, and the property is larger than one acre, we concur with the application. Although our rules allow cesspools to be used in this area, we strongly recommend that wastewater be handled by a non-cesspool treatment system and effluent be disposed of into shallow soil absorptions systems rather then seepage pits. All wastewater plans must conform to applicable provisions of the Department of Health's Rules. We do reserve the right to review the detailed wastewater plans for conformance to applicable rules.

APPLICANT'S RESPONSE

Wastewater for the project will be handled via a private septic tank and perk field system meeting with all applicable governmental regulations.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL

Please consult with all immediate neighbors. Describe in as much details the proposed wastewater system. Describe whether there are any anchialine pools in the vicinity of the project.

APPLICANT'S RESPONSE

The Applicant has made contact with adjacent property owners on the Kapoho side who have written a letter of support for the proposed project. Other adjacent properties are vacant with no full-time residents. The Wastewater for the project will be handled via a septic tank and perk field system meeting with all applicable governmental regulations. There are no anchialine pools in the vicinity of the project.

OFFICE OF HAWAIIAN AFFAIRS (OHA)

OHA commends the property owner for choosing to develop the proposed dwelling away from known archaeological sites and an old-growth hala tree. And does not intend to impede any traditional cultural practices, including procurement, along the shoreline.

Regarding the complex of walls within the property State Site numbers should be assigned to the sites and significance should be assessed, just as they would in a formal Archaeological Inventory Survey. OHA recommends that an Archaeological Monitoring Plan be drafted in support of this project. A Cultural Impact Statement should be prepared. Identify the cultural consultant who prepared the synopsis. Identify the community members consulted. Should iwi or Hawaiian cultural or traditional deposits be found during ground disturbance work shall cease and the appropriate agencies will be contacted.

APPLICANT'S RESPONSE

A site visit conducted on 09/11/03 by Jeanne Knapp, Hawaii island Assistant Archaeologist revealed several wall remnants which were located outside of the proposed development area. Given these findings from the field inspection, State Historic Preservation Division (SHPD) stated that it believed that "no historic properties will be affected by this undertaking."

The Cultural Impact Statement was prepared by Virginia Goldstein, former County of Hawaii Planning Director who consulted with local residents, Grant Togashi, and Hamilton and Pat Ahlo who are familiar with the area. The EA has been revised to incorporate this information. The applicant will stop work in the immediate vicinity and contact SHPD if any archaeological or historic sites are found.

DEPARTMENT OF LAND AND NATURAL RESOURCES

AQUATIC RESOURCES

The proposal as described should not significantly impact aquatic resource values provided construction activities are restricted to periods of minimal rainfall and low runoff, and the areas denuded of vegetation or susceptible to erosion are appropriately stabilized. Precautions shall be taken to prevent debris, landscaping chemicals, eroded soil, petroleum products and other potential contaminants from flowing blowing or leaching into coastal waters. Additional or undescribed construction or landscape modifications within the Conservation District should be submitted to the Department for review.

APPLICANT'S RESPONSE

The applicant will comply with the NPDES permitting requirements prior to commencement of the construction activities. The Applicant will also comply with applicable rules and regulations to ensure that construction and landscaping activities will not result in any discharge into coastal waters.

ENGINEERING

The project site is located in minimal tsunami inundation area. Please refer to the Federal Emergency Management Agency (FEMA) , instead of the U.S. Corps of Engineers Flood Insurance Rate Maps (FIRM)

APPLICANT'S RESPONSE

The Final EA will reflect reference to the Federal Emergency Management Agency, and not the U.S. Corps. of Engineers Flood Insurance Rate Maps (FIRM).

FORESTRY AND WILDLIFE

No Comments

COUNTY OF HAWAII

DEPARTMENT OF PLANNING

By letter dated March 11, 2005, the proposed use was determined to be exempt form the Special Management Area definition of development. The requirement to submit a current certified shoreline survey was waived because all proposed improvements were located a minimum of 110-feet from the ocean.

ANALYSIS

After reviewing the application, by correspondence dated June 17, 2005, the Department has found that:

1. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to §13-5-24, Hawaii Administrative Rules (HAR), R-8, SINGLE FAMILY RESIDENCE, (D-1), "A single family residence that conforms to design standards as outlined in this chapter." Please be advised, however, that this finding does not constitute approval of the proposal;

2. Pursuant to §13-5-40 of the Hawaii Administrative Rules, a Public Hearing will not be required;

3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) is anticipated for the proposed project.

It had been determined that satisfaction of the Special Management Area has been met with documentation dated March 11, 2005, from the County of Hawaii which states that the proposed construction of the single-family dwelling and related improvements are exempt from the definition of development. This exemption is based on the location of all

proposed improvements as depicted on a site plan dated June 22, 2004, which illustrates that the proposed swimming pool deck is located approximately 159 feet from the ocean and the chain-link fence is located approximately 110 feet from the ocean.

In addition, a FONSI to the environment was published in the September 23, 2005 Environmental Notice.

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. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

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

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. A Single Family Residence is an identified land use pursuant to HAR, §13-5-24, R-8, SINGLE FAMILY RESIDENCE (D-1) A single family residence that conforms to design standards s outlined in Chapter 13-5, HAR. Providing for one SFR and associated improvements within one acre of a ten-acre parcel should not adversely affect the open space and public views along the shoreline. The applicant has stated the remaining portion of the property shall remain in its natural state.

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

Staff believes the proposed project complies with provisions and guidelines contained in Chapter 205, HRS regarding Coastal Zone Management. It had been determined that satisfaction of the Special Management Area has been met with documentation dated March 11, 2005, from the County of Hawaii which states that the proposed construction of the single-family dwelling and related improvements are exempt from the definition of development. This exemption is based on the location of all proposed improvements as depicted on a site plan

dated June 22, 2004, which illustrates that the proposed swimming pool deck is located approximately 159 feet from the ocean and the chain-link fence is located approximately 110 feet from the ocean.

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, community or region. There may be short-term adverse effects on the surrounding area associated with construction activities such as potential noise and air quality. No changes in the shoreline or topography are envisioned. Pedestrian access along the shoreline will not be curtailed. The Hawaiian beach subdivision within the Urban District is immediately adjacent to the subject parcel.

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 proposed SFR and associated improvements are proposed on approximately one acre of a ten-acre parcel and the remaining portion of the property will continue to remain in its natural condition. A SFR exists in the Urban Land Use District to the east (Kapoho side) and an approved SFR exists to the west (Hilo side) within the Conservation District. The Agricultural Land Use District exists to the South across the street from the subject parcel.

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

The proposed home site is set back over a hundred feet from the shoreline. The proposed design and siting of the residential dwelling and related accessory use improvements and the property's gradually slopping terrain helps to facilitate the preservation of the natural beauty of the coastline's views and vistas. The applicant has stated that the remaining portions of the property will remain in its natural condition.

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

There will be no subdivision of land for this proposed project.

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

Staff believes the proposed land use will not be materially detrimental to the public health, safety and welfare.

DISCUSSION

Staff has no objections to a Single Family Residence that adheres to Conservation District Rules on the subject site. The subject property abuts the Urban and Agricultural State Land Use Districts. The adjacent residents within the Conservation District have received Conservation District Use Permits. The subject area is adjacent to the Hawaiian Beaches subdivision and some utilities are available to service homes. The area has established residential use and the proposed use shall be compatible with the locality and surrounding area.

Staff visited the subject parcel on the morning of August 29, 2005. Staff noted the area appeared as represented in the CDUA. Staff noted the remnants of the tree house. Staff noted off of the existing roadway, the ground was very rocky and uneven, heavily vegetated with numerous mosquitoes. Staff noted very large groves of hala and coconut trees. Staff noted the shoreline area consisted of a wide expanse of barren rock. There was unimpeded lateral access along the shoreline and the siting of the subject SFR will not affect this access in any way.

Staff believes the tree house was in disuse and recommends immediate removal. Within the application, discussions regarding the driveway areas were unclear. However because plans are preliminary and the Department will be approving final construction and grading plans, Staff believes all proposed improvements will be clarified and shall met our approval prior to construction.

The applicant proposes to disturb approximately 1 acre of land and leave the remaining natural areas of the parcel "as is." In addition, remnant stone walls located in the middle of the property will not be disturbed. Staff notes the groves of hala and coconut trees adds to the beauty and maintains the character of the Puna coastline. The landscaping plan should reflect and maintain the natural beauty of Puna and also soften and mitigate the inland view towards the residence.

RECOMMENDATION:

Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources APPROVE this application for a one-story Single Family Residence as described in CDUA HA-3233 located at Keonepoko, Puna, island of Hawaii, TMK: (3) 1-5-009:040 subject to the following conditions:

1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;

2) The applicant, 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 or 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 applicant shall comply with all applicable Department of Health administrative rules;

4) The applicant shall remove the unauthorized tree house within 30 days of Board approval of CDUA HA-3233;

5) The single-family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;

6) All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit;

7) The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;

8) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

9) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his 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 applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

10) The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

11) The applicant will minimize visual impacts using appropriate lighting, house color and landscaping. Existing trees shall be maintained to screen the structure from the surrounding lands. No mature trees shall be removed without the approval of the Department;

12) No outdoor lighting shall be directed towards the sea;

13) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this 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/or the Department may, in addition, institute appropriate legal proceedings;

14) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;

15) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

16) Potable water supply and sanitation facilities shall have the approval of the appropriate agencies;

17) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;

18) The applicant 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;

19) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the aquatic environment, off-site roadways, utilities, and public facilities;

20) Cleared areas shall be re-vegetated within thirty days of the completion of construction as described in a landscaping plan on file with the Department;

21) Obstruction of public roads, trials, and pathways shall be minimized. If obstruction is unavoidable, the applicant shall provide roads, trails, or pathways acceptable to the department;

22) The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules, Title 13-5;

23) Other terms and conditions as may be prescribed by the Chairperson; and

24) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

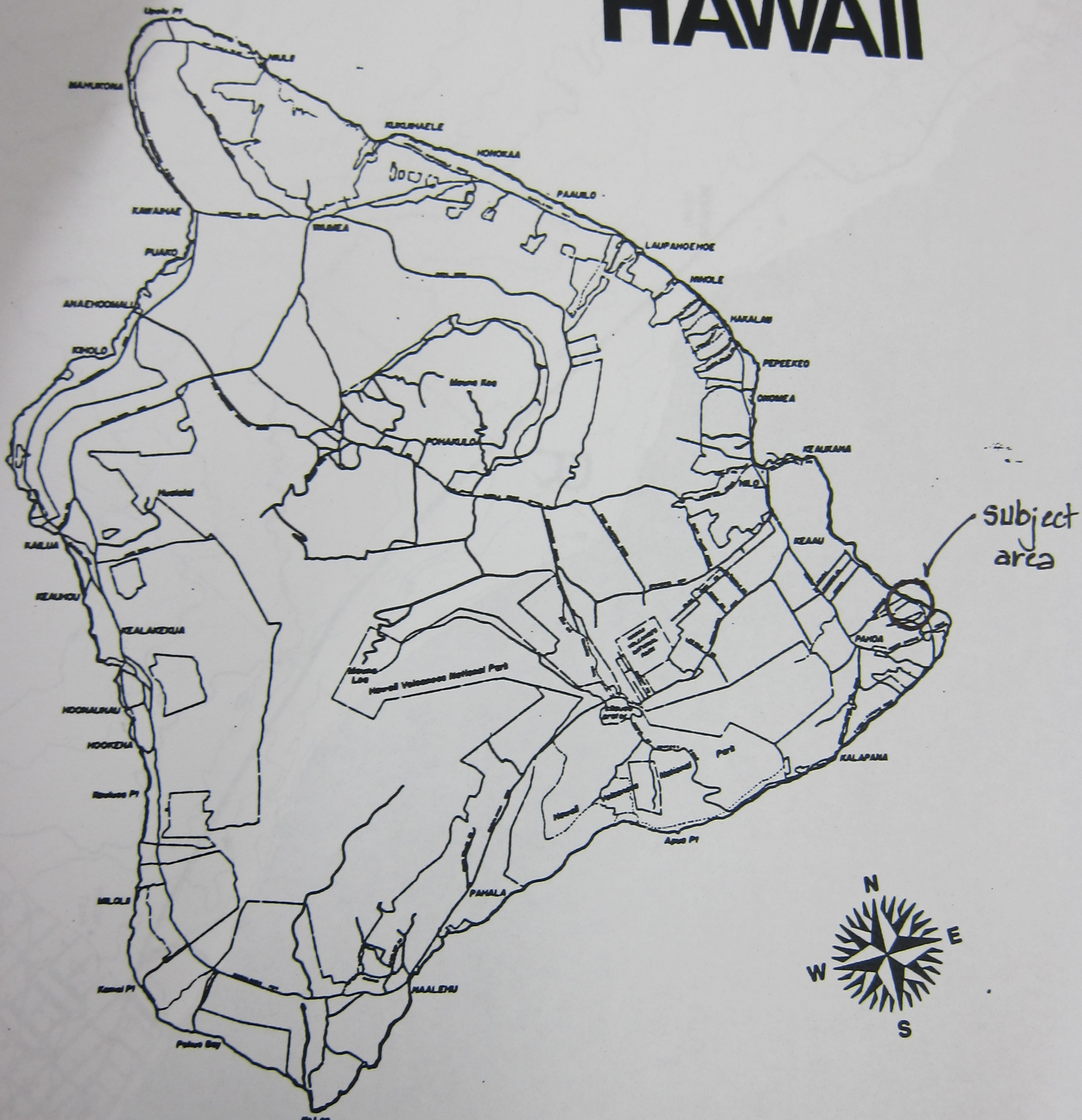
Respectfully submitted,

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

Approved for submittal:

Peter T. Young, Chairperson
Board of Land and Natural Resources

HAWAII



subject area

EXHIBIT 1

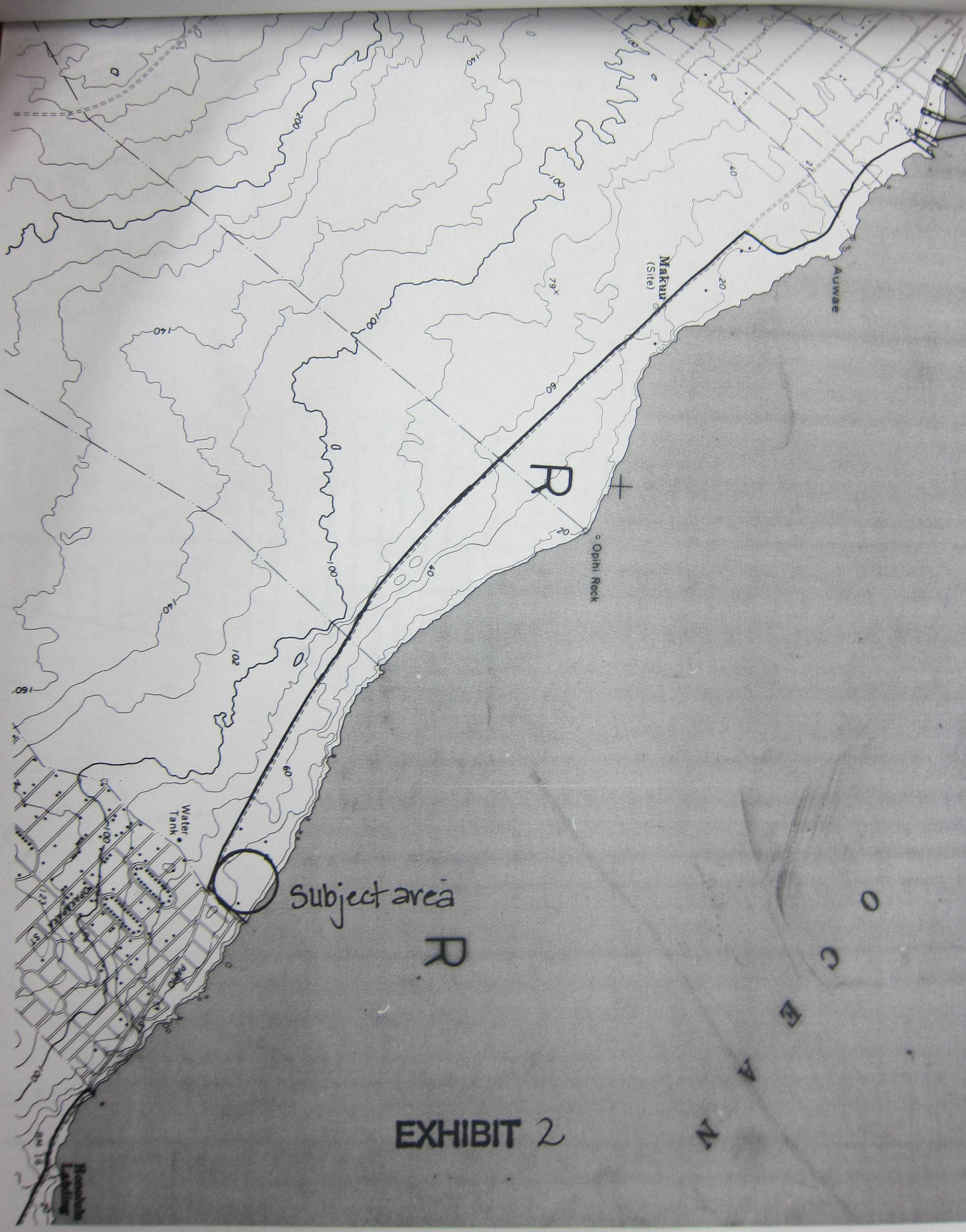

Makuu
(Site)
Auwae
Opihi Rock
Water Tank
Subject area
R
R
CEAN
Honolulu Landing

EXHIBIT 2

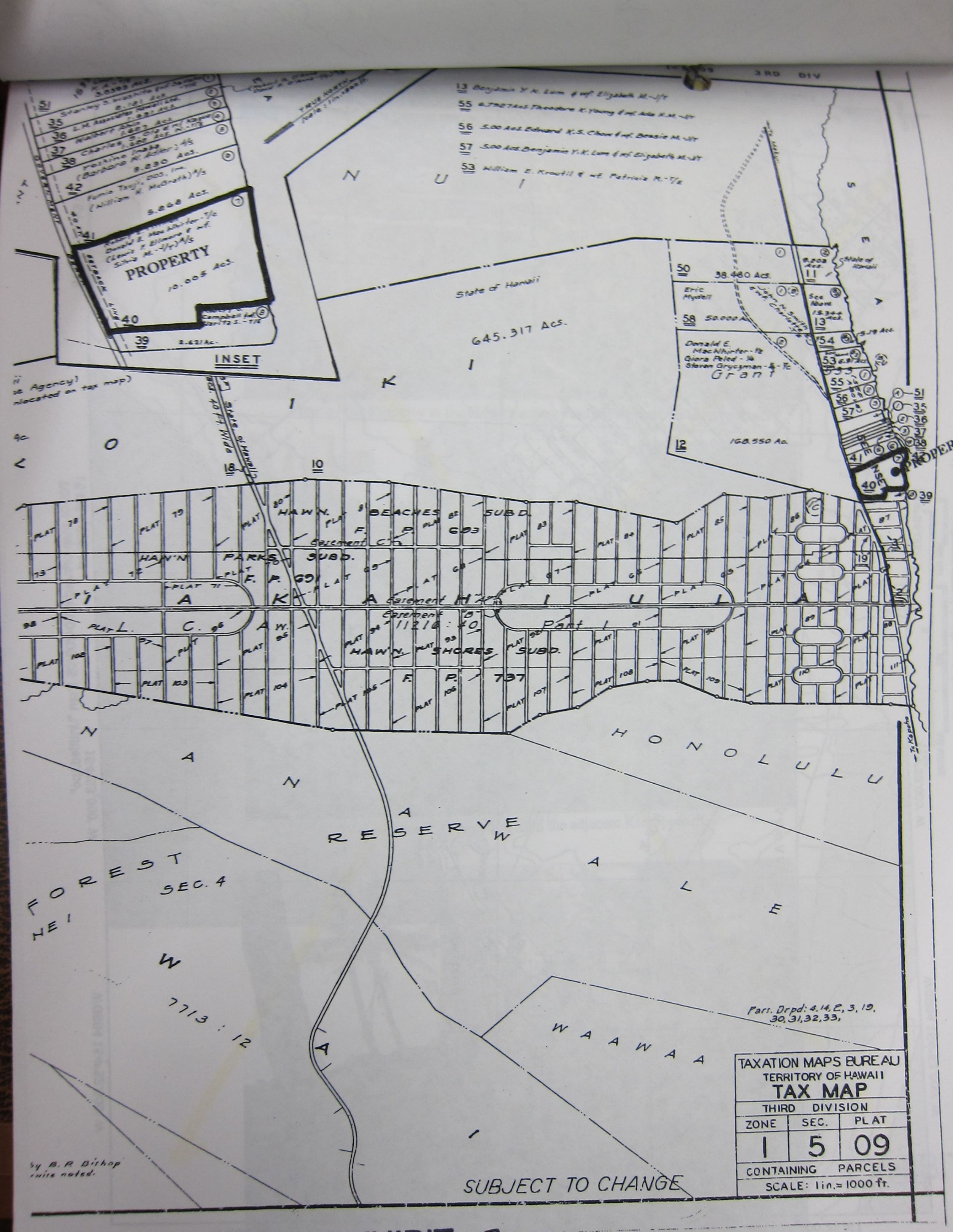
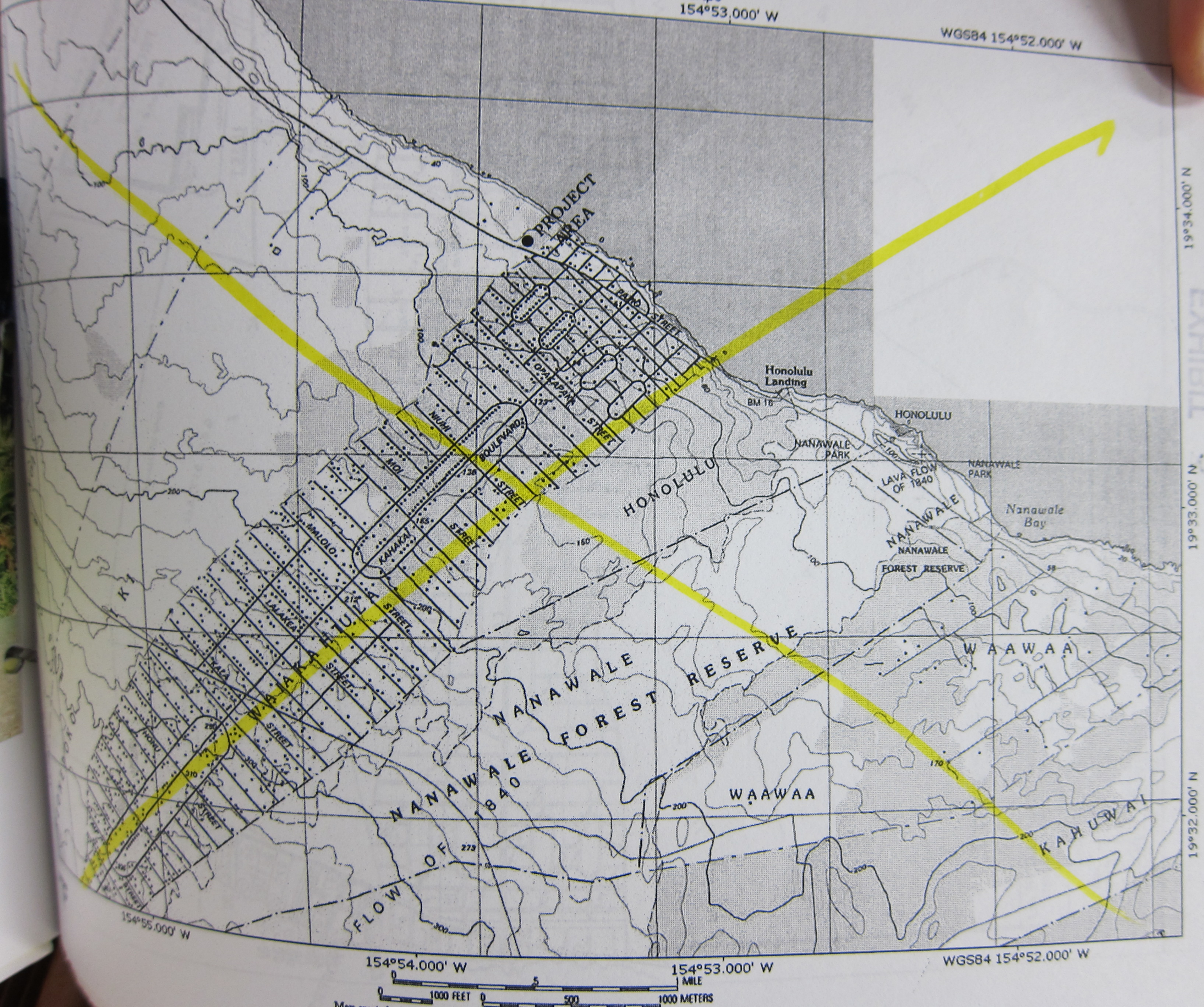

PROPERTY
10.005 Acs.
5.868 Acs.
8.830 Acs.
2.621 Ac.
INSET
645.317 Acs.
State of Hawaii
38.480 Acs.
50.000 Acs.
168.550 Acs.
Grant
Eric Myalell
Donald E. MacNhirter - ½
Glora Field - ¼
Steven Grycyman - ¼ - ½
Easement "B" 11216 : 40
Part 1
Easement "C"
Easement "H"
737
HAWN. BEACHES SUBD.
HAWN. PARKS SUBD.
HAWN. SHORES SUBD.
F. P. 603
F. P. 605
F. P. 606
F. P. 607
Parts. Drpd: 4, 14, E, 3, 19, 30, 31, 32, 33,
SUBJECT TO CHANGE
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
THIRD DIVISION
ZONE 1 | SEC. 5 | PLAT 09
CONTAINING PARCELS
SCALE: 1 in. = 1000 ft.

EXHIBIT 3



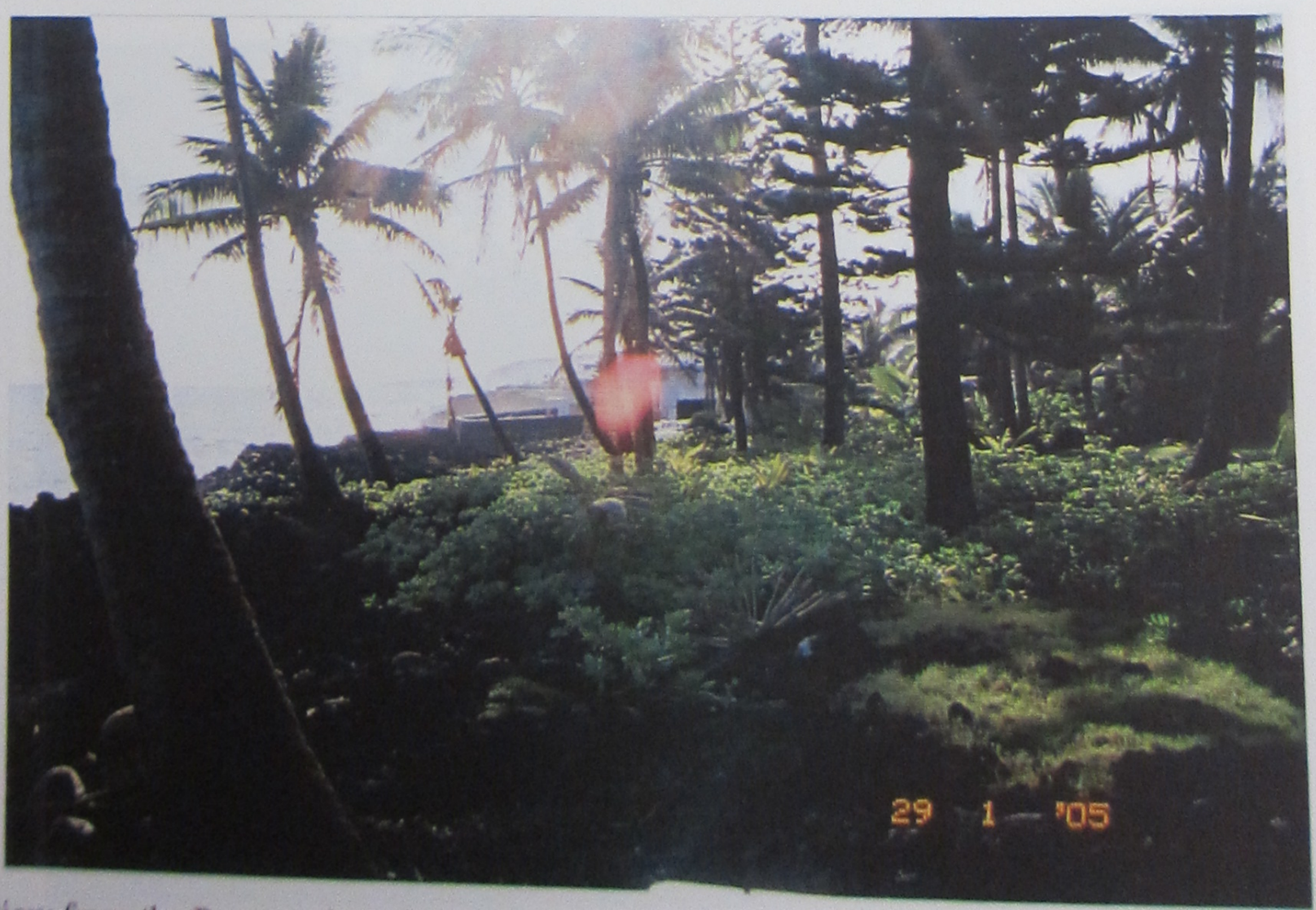
154°53.000' W
WGS84 154°52.000' W
PROJECT AREA
Honolulu Landing
BM 16
HONOLULU
NANAWALE PARK
LAVA FLOW OF 1840
Nanawale Bay
NANAWALE FOREST RESERVE
WAAWAA
KAHUWAI
NANAWALE FOREST RESERVE
NANAWALE FLOW OF 1840
WAIAKAHIULA
PARO STREET
OPAKAPAKA STREET
NIUHI
BOULEVARD
MOI
STREET
KAHAKAI
MALOLO
LALAKEA
KALA
HONU
19°34.000' N
19°33.000' N
19°32.000' N
154°55.000' W
154°54.000' W
154°53.000' W
WGS84 154°52.000' W
0 .5 1 MILE
0 1000 FEET
0 500 1000 METERS



View of the Property in the Hilo direction from the adjacent Klein property.



View in the Hilo direction from the adjacent Klein property.



EXHIBIT



View of first adjacent single-family dwelling (Hilo side).



View of first adjacent single-family dwelling (Hilo side) from the ocean.

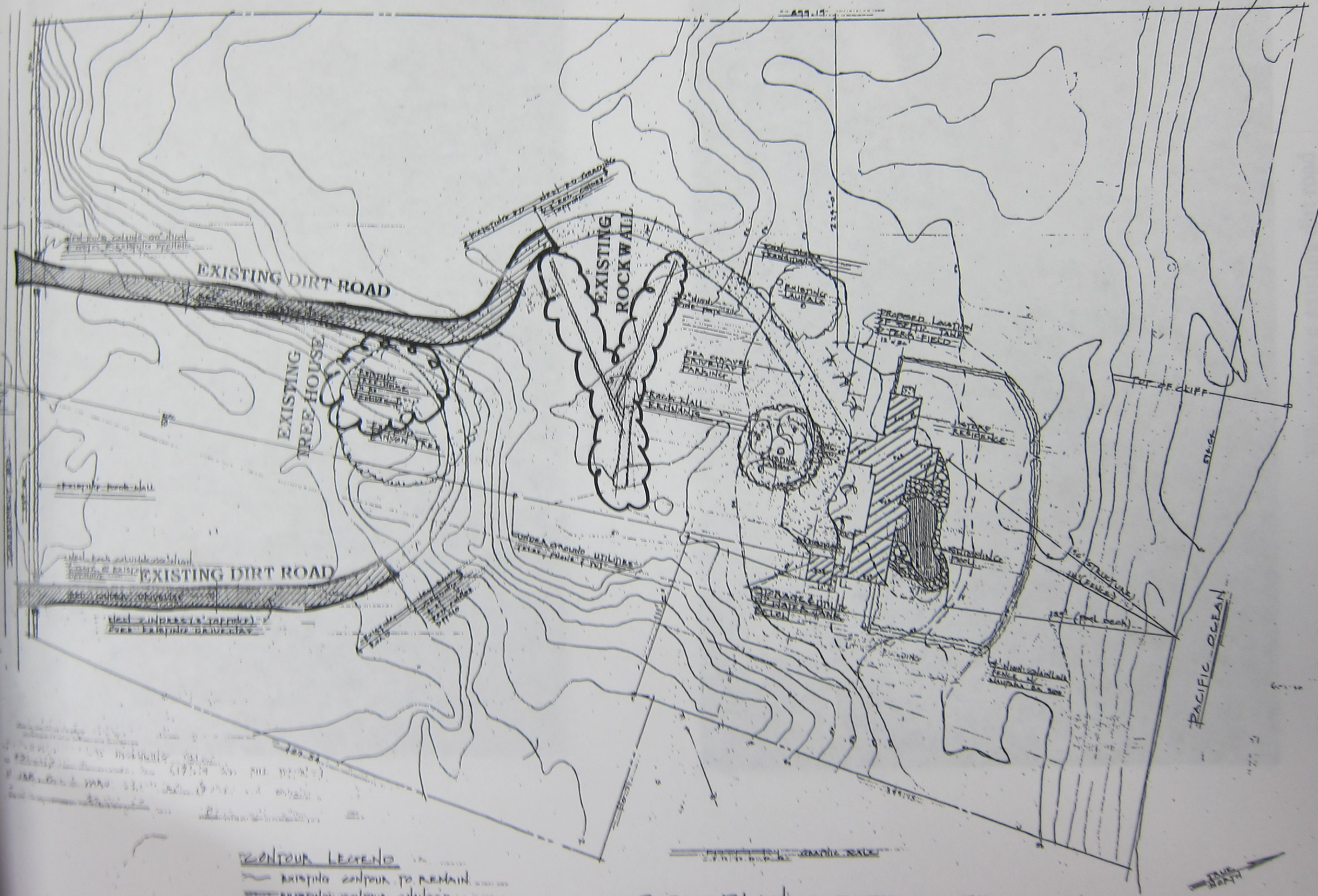


View of the second adjacent single-family dwelling (Hilo side) from the Old Government Road.

EXHIBIT 5

EXHIBIT 6

EXISTING STRUCTURE



PROPOSED NEW SINGLE FAMILY RESIDENCE FOR
MR. & MRS. NICHOLAS GADLER
GOVERNMENT BEACH ROAD KEONOPOKO DISTRICT, PUNA, HAWAII

1



Hilo entrance existing dirt road



Hilo entrance existing dirt road

EXHIBIT 7



Kapoho side entrance and existing dirt road



Hilo side entrance and existing dirt road

EXHIBIT 8



ree house in the Banyan tree to be removed.



Lauhala grove to be retained and located next to the proposed driveway to the single-family residence



EXHIBIT 9

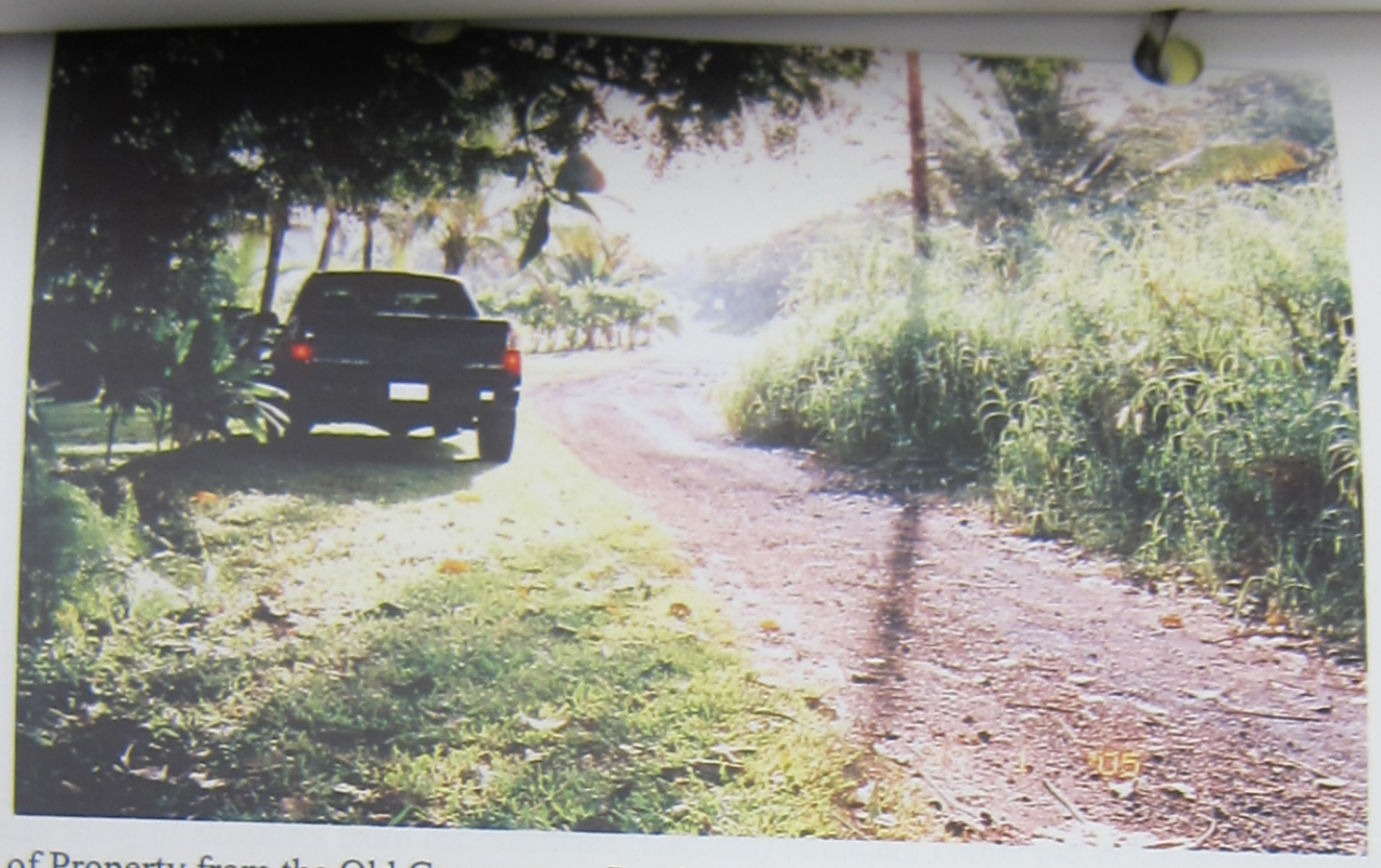
Norfolk Pine and Coconut trees to be removed and/or relocated

MAKAI SIDE OF THE PROPERTY

Subject parcel

EXHIBIT 10

MAUKA ENTRANCE TO THE PROPERTY



View of Property from the Old Government Road to Hawaiian Beaches Subdivision (Kapoho direction).



View of Property from the Old Government Road in the Kapoho direction.



Property entrance from the Old Government Road.

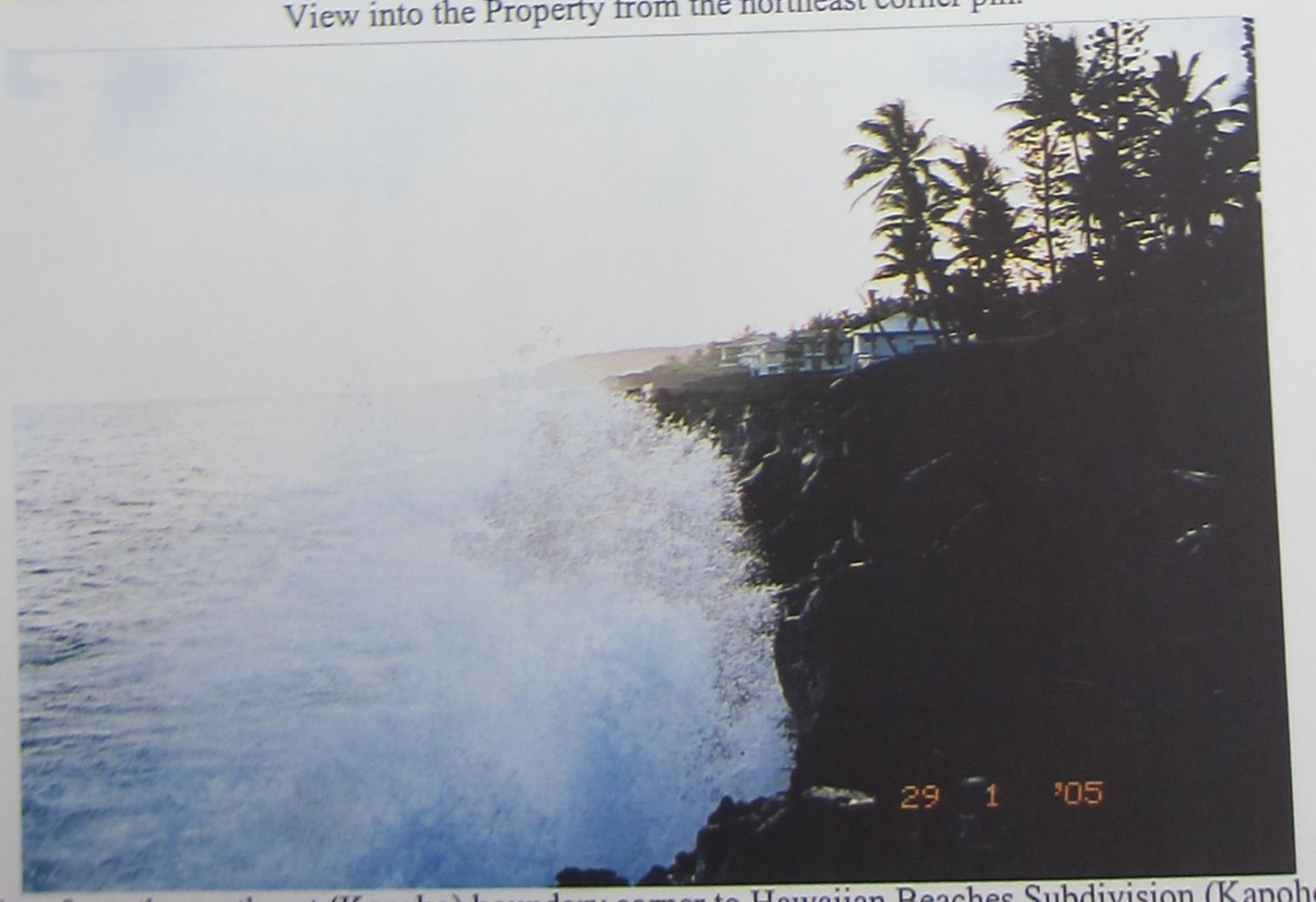
EXHIBIT 11



Ocean view of Property from the northeast (Kapoho) boundary corner pin in the northwest direction (Hilo direction).



View into the Property from the northeast corner pin.



Ocean view from the northeast (Kapoho) boundary corner to Hawaiian Beaches Subdivision (Kapoho direction).

EXHIBIT 12

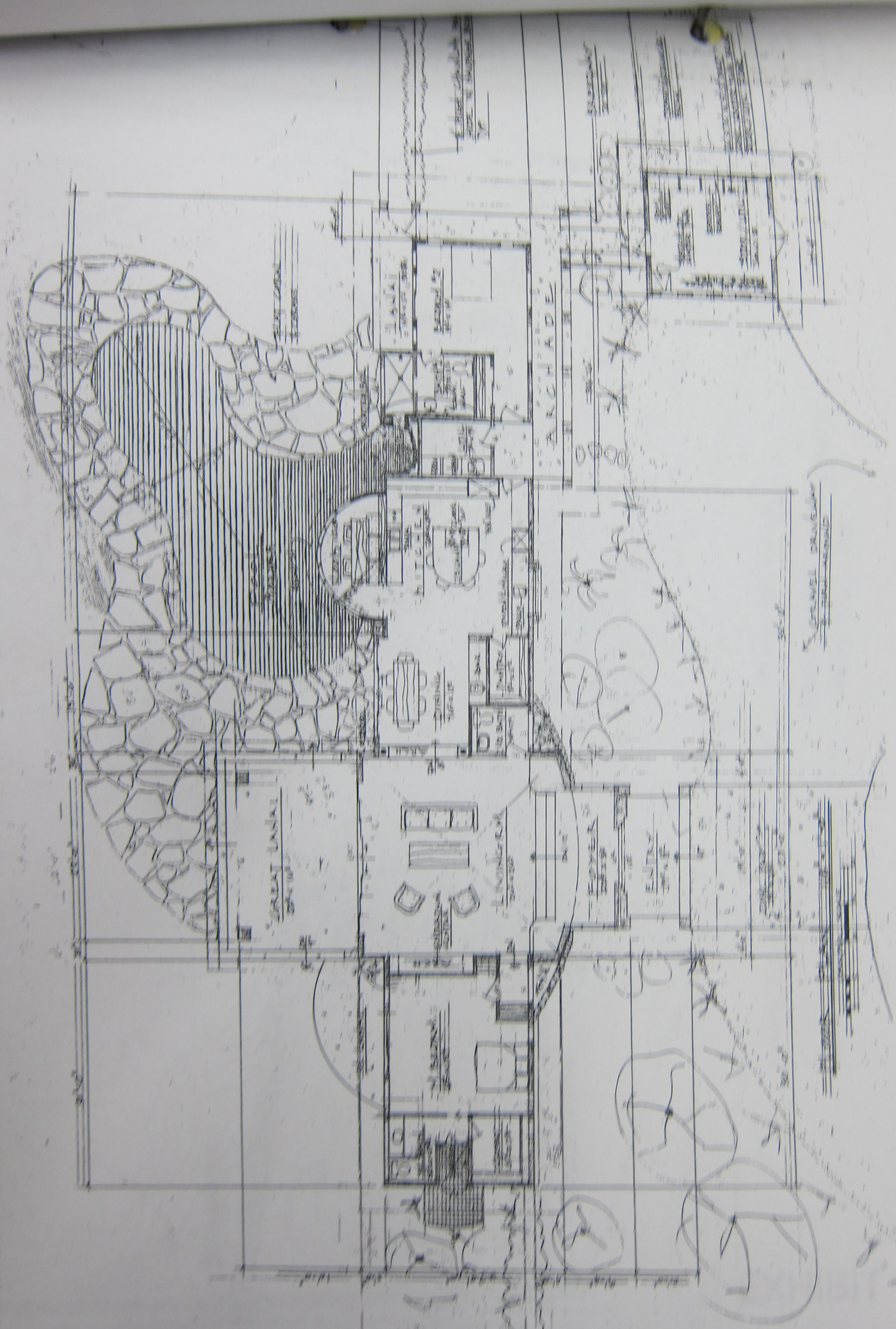
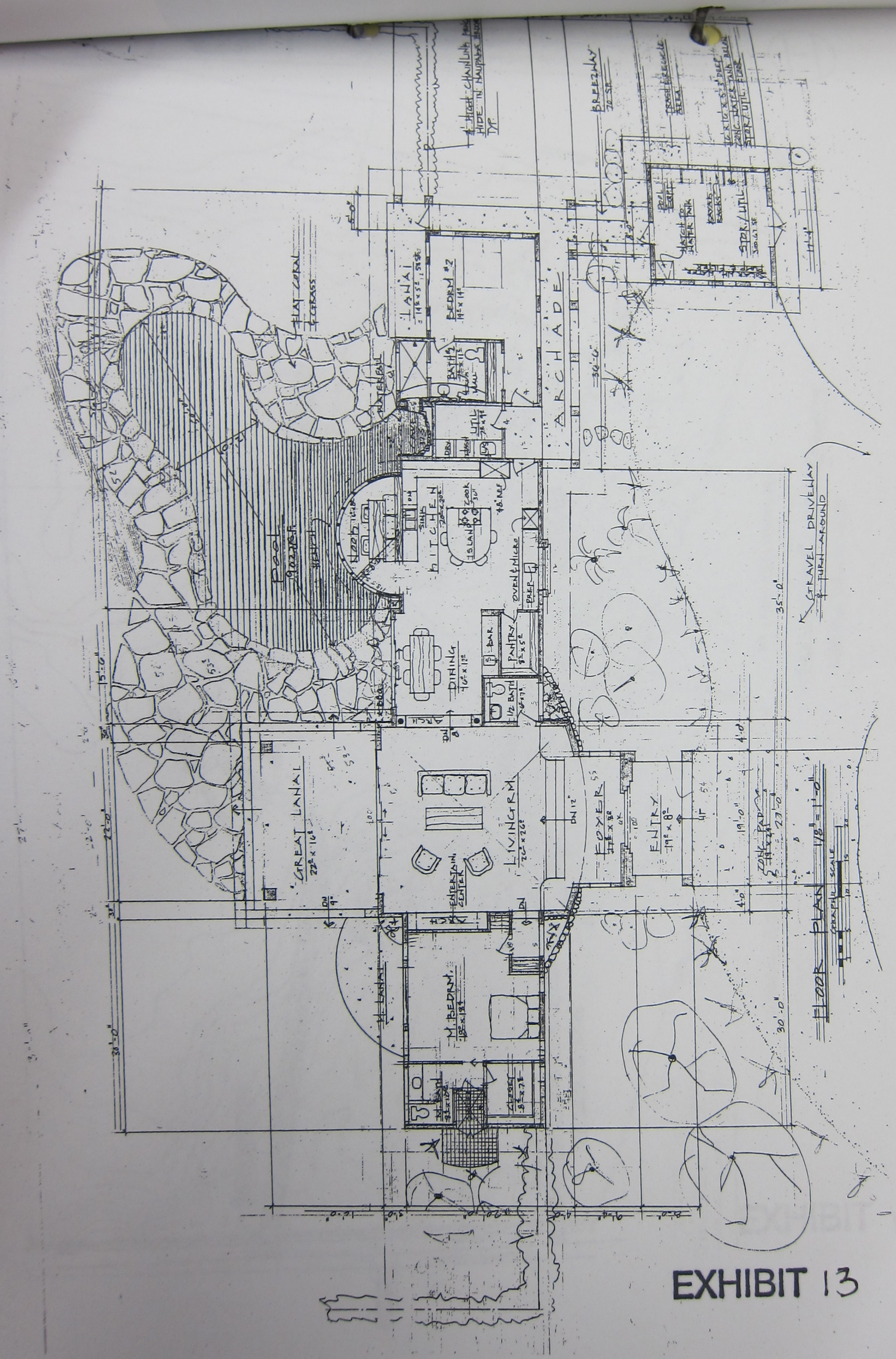


EXHIBIT 13



LANAI
BEDRM #2
ARCHADE
BREEZEWAY
FLAT CORAL & GRASS
WATERFALL
BATH #2
UTIL
DRY
WASH
KITCHEN
ISLAND
COOK
OVEN & MICRO
PREP
PANTRY
BAR
DINING
1/2 BATH
GREAT LANAI
LIVING RM
ENTERTAIN CENTER
FOYER
ENTRY
M. BEDRM.
CLOSET
GRAVEL DRIVEWAY & TURN AROUND
FLOOR PLAN
GRAPHIC SCALE

EXHIBIT 13

EXISTING ROCK WALL

NEW ROCK COLUMN 28'-0" HIGH @ EXISTING RETAINING

NEW ZINPERS (3" TAPERED) OVER EXISTING DRIVEWAY

NEW ROCK COLUMN 28'-0" HIGH @ EXISTING RETAINING

EXISTING TREE TO BE REMOVED

EXISTING BANYAN TREE

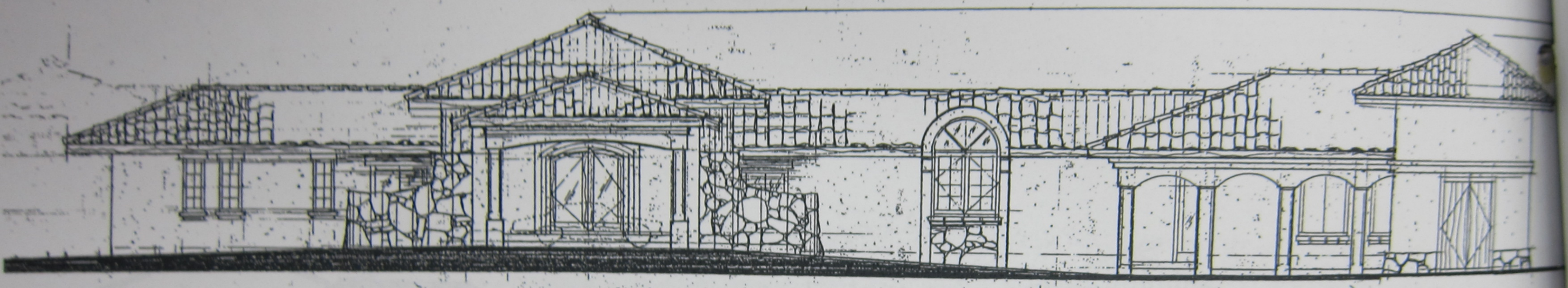
NEW 6" SEWER LATERAL

NEW 6" SEWER LATERAL

EXISTING SEWER MANHOLE

EXISTING SEWER MANHOLE

EXISTING SEWER MANHOLE



MAUKA ELEVATION - GADLER RESIDENCE 1/8" = 1'-0"

GRAPHIC SCALE

EXHIBIT 15

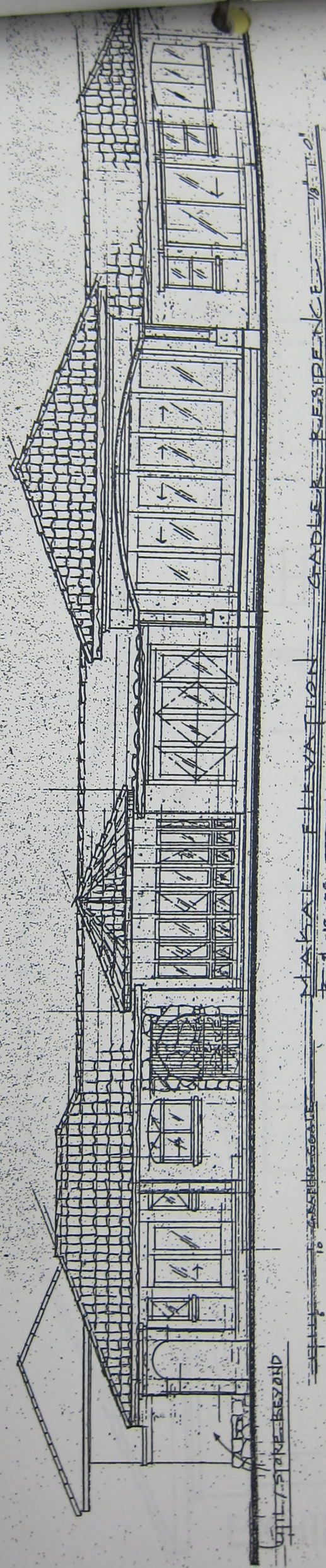

MAKAI ELEVATION GABLER RESIDENCE
GRAPHIC SCALE
GILL/STONE BEYOND

EXHIBIT 16

ROOFING: BUFF/BROWN
MISSION TILES

FASCIA:
MAHOGANY

SIDING:
BUFF
CEM. PLASTER

LAVA ROCK
ACCENTS

22'

SOUTH ELEVATION 1/8" = 1'-0"

4.12.05

1 5 10 GRAPHIC SCALE

EXHIBIT 17

NORTH ELEVATION 1/8" = 1'-0"

4.12.05

1 5 10 GRAPHIC SCALE

EXHIBIT E

LINDA LINGLE
GOVERNOR OF HAWAII





PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

CDUP HA-3233
Acceptance Date: June 13, 2005
180-Day Exp. Date: December 10, 2005

Mr. Steven S.C. Lim
Carlsmith Ball LLP
121 Waianuenue Avenue
Hilo, Hawaii 96720

OCT 28 2005

Dear Mr. Lim:

SUBJECT: Conservation District Use Permit (CDUP) HA-3233

This is to inform you that on October 28, 2005, the Board of Land and Natural Resources approved your client's Conservation District Use Application (CDUA) for a one-story Single Family Residence as described in CDUA HA-3233 located at Keonepoko, Puna, island of Hawaii, TMK: (3) 1-5-009:040 subject to the following conditions:

1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;

2) The applicant, 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 or 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 applicant shall comply with all applicable Department of Health administrative rules;

4) The applicant shall remove the unauthorized tree house within 180 days of Board approval of CDUA HA-3233;

5) The single-family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;

6) All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit;

7) The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided

during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;

8) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

9) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his 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 applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

10) The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

11) The applicant will minimize visual impacts using appropriate lighting, house color and landscaping. Existing trees shall be maintained to screen the structure from the surrounding lands. No mature trees shall be removed without the approval of the Department;

12) No outdoor lighting shall be directed towards the sea;

13) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this 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/or the Department may, in addition, institute appropriate legal proceedings;

14) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;

15) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

16) Potable water supply and sanitation facilities shall have the approval of the appropriate agencies;

17) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;

18) The applicant 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;

19) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the aquatic environment, off-site roadways, utilities, and public facilities;

20) Cleared areas shall be re-vegetated within thirty days of the completion of construction as described in a landscaping plan on file with the Department;

21) Obstruction of public roads, trials, and pathways shall be minimized. If obstruction is unavoidable, the applicant shall provide roads, trails, or pathways acceptable to the department;

22) The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules, Title 13-5;

23) Other terms and conditions as may be prescribed by the Chairperson; and

24) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, please feel free to contact Tiger Mills at 587-0382.

Sincerely,

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

Applicant's Signature

Date 11-3-05

c: Chairperson
Hawaii District Land Office
County of Hawaii, Department of Planning

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 1533 to Kekoa) situate, lying and being at Keonopoko Iki, District of Puna, Island and County of Hawaii, State of Hawaii, being LOT 7, same being a subdivision of Lots 1 to 8, inclusive, and thus bounded and described:

Beginning at the southwest corner of this parcel of land at the southeast corner of Lot 6 and on the north side of the existing Government Beach Road (Kapoho-Maku), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPOHO" being 23,695.90 feet north and 17,322.18 feet west and running by azimuths measured clockwise from true South:

1.	201°	30'	30"	899.19	feet along Lot 6;
2.	302°	13'	40"	594.64	feet along sea shore;
3.	40°	15'	20"	349.15	feet along Lot 8;
4.	310°	15'	20"	110.71	feet along Lot 8;
5.	40°	15'	20"	427.54	feet along Lot 8;
6.	108°	48'		389.65	feet along existing Government Beach Road (Kapoho-Maku);
7.	112°	31'		50.30	feet along the same to the point of beginning and containing an area of 10.005 acres, more or less.

EXHIBIT B