

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
BACKGROUND REPORT

DAVID EBENAL
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2025-000076)

DAVID EBENAL has submitted the following application for a Special Management Area Use permit No. PL-SMA-2025-000076 to construct a two (2) story, 4,942-square foot single-family residence that includes four (4) bedrooms, four and a half (4.5) bathrooms, two (2) single car garages, a lanai, a 12-foot by 22-foot spa, and related improvements on a 0.345-acre shoreline parcel within the Special Management Area. The subject property is located within the Lanihau Point Subdivision of Kona Bay Estates at 75-5436 Kona Bay Drive, approximately 0.7-miles from the intersection of Kona Bay Drive and Kuakini Highway, Kailua Airport, North Kona District, Hawai‘i Island, TMK: (3) 7-5-005:094.

PROPOSED DEVELOPMENT

1. **Request:** David and Bonita Ebenal are requesting a Special Management Area (SMA) Use Permit to construct a two-story, single-family residence on a 0.3446-acre shoreline parcel located at 75-5436 Kona Bay Drive within the Kona Bay Estates subdivision in North Kona, Hawai‘i. The proposed home will consist of approximately 4,942 square feet of total development area, including 4,467 square feet of interior space, four bedrooms, four-and-a-half bathrooms, two single-car garages, a lanai, and a 12-by-22-foot spa. The parcel is located in an established, gated residential subdivision and is relatively level due to prior grading, with no vegetation in the buildable area. Existing utility infrastructure—water, sewage, electricity, and telecommunications—is already available on-site, and the proposed development will connect to these existing systems. A public shoreline access path, which connects Keiki Ponds to the Old Kona Airport State Recreation Area, runs along the makai edge of the property and will remain open and unaffected during and after construction. The site is situated within FEMA Flood Zones D and AE-10, with development confined to the higher elevation Zone D portion to mitigate flood risks. A cultural and archaeological review determined that there are no historic or cultural resources within the project area, and a determination of “no historic properties affected”

has been requested from the State Historic Preservation Division (SHPD). The area does not support endangered species or significant coastal ecosystems, and no traditional or customary Native Hawaiian practices were identified on the property. In summary, the proposed development is a compliant, well-integrated residential project that maintains public access, respects environmental and cultural sensitivities, and aligns with local and state land use policies. The proposed dwelling will be consistent with the character of surrounding residential uses, and no significant adverse environmental or ecological effects are expected. **(Planning Department Exhibit 1 – SMA Use Permit Application Packet dated March 4, 2025).**

2. **Project Objectives:** The purpose of the project is to develop a single-family dwelling for use by the landowner.
3. **Cost/Time of Project:** The total estimated cost of the project is \$2.9 million, which exceeds the \$500,000 threshold for requiring an SMA Major Use Permit. The project will begin as soon as all permits and approvals are granted.
4. **Landowner:** David Ebenal

BACKGROUND INFORMATION

5. **Chapter 343, HRS:** The proposed improvements are not subject to the requirements of Chapter 343, Hawai‘i Revised Statutes regarding Environmental Impact Statements as there is no work proposed within either the Conservation District or the Shoreline Setback Area.

STATE AND COUNTY PLANS

6. **State Land Use Designation:** Urban.
7. **General Plan LUPAG MAP:** Open (ope).
8. **County Zoning:** Single-Family Residential 15,000 square feet (RS-15)
9. **Kona Community Development Plan (KCDP):** The Kona Community Development Plan was adopted by the Hawai‘i County Council by Ordinance No. 18-131 on September 25, 2008.
10. **Special Management Area (SMA):** The entire project area is located within the Special Management Area (SMA) as well as located within the “shoreline area” as defined by section 205A-41, Hawai‘i Revised Statutes (HRS). The applicant received a shoreline

certification from the Department of Land and Natural Resources which delineated the shoreline as of January 13, 2024.

DESCRIPTION OF PROJECT AREAS AND SURROUNDING AREA

11. **Subject Project Area:** The landscape of the project area, located within the Kona Bay Estates subdivision along the coastline of Kailua Bay, is characterized by a relatively flat, previously graded parcel with minimal elevation variation—only about nine inches across the buildable area. The parcel sits at an elevation between 9.7 and 10.45 feet above sea level and encompasses approximately 0.3446 acres. Its surface consists primarily of thin layers of sand, coral, marine shell fragments, small to medium-sized cobbles, and exposed pāhoehoe lava bedrock from an ancient Hualālai eruption. There is no native vegetation within the buildable area; however, a maintained hedge of naupaka (*Scaevola sericea*) and heliotrope is present just outside the public access sidewalk along the southern boundary of the lot.
12. **Surrounding Land Zoning/Uses:** The area surrounding the project site is primarily residential in character, situated within the Kona Bay Estates subdivision, which is zoned RS-15 (Residential Single-Family, 15,000 square feet) by the County of Hawai‘i. Of the 40 lots in the subdivision, 34 are already developed with single-family homes, creating a low-density, established residential environment. To the north of the subject parcel lies Kona Bay Drive, the main access road through the subdivision. To the west, the parcel is bordered by a developed residential lot, while to the east, it abuts an undeveloped but previously graded residential lot. To the south, the lot is adjacent to an undeveloped strip of shoreline, composed of pahoehoe lava rock and tidal pools, which forms part of the open coastal zone. In the broader vicinity, to the south and east of the subdivision, is the Old Kona Airport State Recreation Area, which is zoned Limited Industrial and serves as a major public recreational space. Offshore, the adjacent waters are part of a Marine Life Conservation District, indicating a heightened level of environmental protection for marine resources in the area. The project site is therefore located within a mixed-use coastal setting, but its immediate surroundings are dominated by residential land uses consistent with the RS-15 zoning.
13. **Soil Type:** The ground surface in this area consists of a thin soil layer, predominately

accumulated via previous clearing and grading of the parcel. The soil designation for this area is “Lava Flows (2-20% Slope)” which indicates little soil development and little vegetative cover.

14. **Land Study Bureau's Detailed Land Classification System:** The project site is listed as unclassified.
15. **Flood Insurance Rate Map (FIRM):** The subject property is designated as Zone D and Zone AE (with a base flood elevation of 10 feet) on the Flood Insurance Rate Maps (FIRM). All development and habitable structures will occur within the Zone D portion, above 10 feet in elevation.
16. **Flora/Fauna Resources:** The floral and faunal resources of the project site are limited due to prior grading and the parcel’s location within a developed coastal subdivision. As noted in the Special Management Area Use Permit application, no vegetation is present within the buildable area of the subject parcel. The only plant life observed is a maintained hedge of naupaka (*Scaevola sericea*) and heliotrope located to the west of the public shoreline access sidewalk, outside of the proposed development footprint. A review conducted for the application confirmed that no rare, threatened, or endangered plant species are present on the site. In terms of fauna, the project area hosts common non-native animal species, including birds such as the Japanese white-eye (*Zosterops japonicus*) and the mynah (*Acridotheres tristis*), along with introduced mammals like the mongoose (*Herpestes auropunctatus*) and domestic pets. Some native waterbirds, such as the ulili (*Heteroscelus incanus*) and kolea (*Pluvialis fulva*), are known to frequent the rocky shoreline and tidepools makai of the parcel, though not within the actual development site. No bird habitats of high conservation value exist on the parcel itself. The application did not identify any critical floral or faunal resources at risk from the proposed development. All runoff from the proposed residence is to be contained on-site, further reducing the likelihood of any negative effect on adjacent marine or terrestrial ecosystems.
17. **Archaeological Resources:** The archaeological resources of the project site have been thoroughly reviewed as part of the Special Management Area (SMA) Use Permit application process. According to the documentation submitted, the subject parcel has

been the focus of both historical and recent archaeological investigations, including a comprehensive field inspection conducted on January 12, 2025, by Dr. William Gardner, a Senior Archaeologist with ASM Affiliates. During this inspection, the entire 0.3446-acre parcel was visually assessed using systematic north-south pedestrian transects spaced at three-meter intervals to ensure 100% surface coverage. The survey found no archaeological sites, features, or cultural deposits present within the project area. The parcel was previously graded during subdivision development in 1985, leaving a flat surface composed of thin soil layers and pāhoehoe bedrock, with no naturally occurring deposits that might contain buried cultural materials. The inspection confirmed that even the small area of natural terrain makai of the public access sidewalk—where no development is planned—contained no archaeological significance. This conclusion is supported by prior studies, including work conducted in the early 1980s during the original development of the Kona Bay Estates subdivision. These earlier studies also found no cultural resources within the subject parcel, and subsequent surveys confirmed that the nearest identified archaeological features and burials were located well outside of the project site, primarily in other areas of the subdivision or further along the coastline.

18. **Cultural/Historic Resources:** The assessment of cultural and historic resources for the subject parcel was conducted as part of the Special Management Area (SMA) Use Permit application and is detailed in a Cultural Analysis prepared by ASM Affiliates, dated February 14, 2025. The study determined that the project area does not contain any known cultural or historic sites. Historically, a segment of the ancient ala loa coastal trail is believed to have traversed the general area. However, due to subdivision development, this traditional route has been replaced with a dedicated shoreline access easement located along the makai boundary of the property. The preservation of this access path ensures that traditional shoreline use by the public remains intact, thus maintaining the spirit and function of the historic trail without impacting the proposed development. No evidence was found indicating that the site is currently or historically used for gathering, ceremonial, or religious purposes by Native Hawaiians, nor were any cultural practices or historic sites identified within the project footprint. While cultural activities such as fishing and marine gathering continue along the shoreline outside the project area, the

proposed residence will not obstruct or interfere with these practices. The site itself does not contain or abut any designated historic landmarks or cultural properties.

19. **Recreational/Scenic and Open Space Resources:** The subject parcel is located within the Kona Bay Estates subdivision and fronts a strip of shoreline adjacent to Old Kona Airport State Recreation Area. A critical recreational feature associated with the property is a four-foot-wide public access easement along the makai edge of the lot, which forms part of a shoreline walking path connecting Keiki Ponds to the Old Airport Recreation Area. This pedestrian pathway is heavily utilized by residents and visitors for walking, sightseeing, shoreline fishing, and general coastal recreation. The project proposal explicitly states that this public access path will remain open and fully accessible throughout construction and after the home is completed. No development is proposed makai of the sidewalk, and shoreline access will not be impeded in any way. This ensures that recreational activities along the coast, such as sunbathing, swimming, and fishing, can continue unimpeded. In terms of scenic resources, the project area is minimally visible from public vantage points, such as the Old Kona Airport outdoor hockey rink and distant viewpoints beyond tall vegetation. The proposed residence, consistent with surrounding single-family homes, is designed to blend with the character of the neighborhood and will not obstruct significant public views toward the ocean. Moreover, the parcel is located in a developed subdivision where scenic corridors are already framed by existing residences and landscaping. Regarding open space, the project adheres to all required setbacks and density regulations, preserving the visual and physical sense of openness consistent with the RS-15 zoning district and surrounding land use. No portion of the development encroaches upon designated shoreline setback areas, and no public open spaces are being converted or diminished as part of the project.
20. **Coastal Hazards:** The subject property lies within FEMA-designated Flood Zones D and AE-10, as indicated on the Flood Insurance Rate Map (FIRM). Zone D denotes areas where flood hazards are undetermined but possible, while Zone AE-10 represents areas subject to inundation by the 1% annual chance flood, with a base flood elevation of 10 feet. However, all habitable structures associated with the proposed residence will be located within the higher elevation Zone D, which is above the AE-10 base flood level,

thereby reducing potential exposure to flood damage. Additionally, the site is located within a Tsunami Evacuation Zone, as defined by the Hawai'i Emergency Management Agency. As such, the property is subject to evacuation in the event of a tsunami warning. In the event of a tsunami, residents of the proposed residence would evacuate by traveling mauka (inland) via Kona Bay Drive, then turning onto Kuakini Highway. From there, they would continue uphill to reach areas outside the tsunami evacuation zone, ideally above 100 feet elevation. Recommended evacuation points include locations like Kealahou High School or other inland areas beyond Queen Ka'ahumanu Highway. While occasional overtopping of the shoreline walking path (located makai of the development area) during high wave or storm events may result in localized flooding, this is expected to be minor. Any such flooding would likely affect only the landscaping or peripheral features within the confines of the existing rock walls that frame the property. The design of the residence and the associated infrastructure will follow appropriate building code requirements for structures located in flood-prone areas, including elevation and drainage design to minimize flood-related impacts. Importantly, the development does not include any structures within the shoreline setback area, and no construction staging or activities will occur makai of the public access sidewalk. The application notes that runoff will be fully managed on-site to prevent contamination of nearshore waters and coastal ecosystems.

PUBLIC UTILITIES AND SERVICES

21. **Access:** The site is accessed from Kona Bay Drive, a private roadway that extends approximately 0.7 miles from Kuakini Highway through the gated Kona Bay Estates subdivision to the subject parcel.
22. **Water:** Potable water for the proposed residence will be supplied through a connection to the existing municipal water infrastructure already established within the Kona Bay Estates subdivision. The subdivision is serviced by the County of Hawai'i Department of Water Supply, and utility connections, including water, are already available at the project site and ready to serve the new home.
23. **Wastewater:** Wastewater for the proposed residence will be serviced through a connection to the existing sewer system within the Kona Bay Estates subdivision. The

property will be tied into public sewer lines running along Kona Bay Drive, which are part of the established utility infrastructure in the area. All wastewater generated by the residence, including from bathrooms, kitchen, laundry, and the spa, will be directed to this municipal sewer system, ensuring proper treatment and disposal in accordance with County of Hawai'i regulations.

24. **Other Essential Utilities and Services:** Electricity, telephone, and internet services are available to the site.

AGENCIES' COMMENTS

25. **State Department of Health: (Planning Department Exhibit 2 – April 1, 2025, Memo).**
26. **Hawaii County Police Dept.: (Planning Department Exhibit 3 – April 9, 2025, Memo).**
27. **State Office of Planning and Sustainable Development (OPSD): (Planning Department Exhibit 4 – April 15, 2025, Letter).**

AGENCIES - NO RESPONSE

28. **County Dept. of Public Works – Engineering & Building; County Dept. of Water Supply; County Dept. of Environmental Management, County Fire Dept.; DLNR-ENG/DOFAW/Land/SHPD.**

PUBLIC COMMENTS

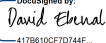
29. **Nicole and Frank Tobias: (Planning Department Exhibit 5 – April 20, 2025, Email)**

SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION

COUNTY OF HAWAII PLANNING DEPARTMENT

(Type or legibly print the requested information)

APPLICANT: David Ebenal

APPLICANT'S SIGNATURE:  DATE: 3/4/2025

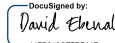
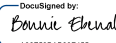
ADDRESS: 75-5436 Kona Bay Drive
Kailua-Kona, HI. 96740

LIST APPLICANT'S INTEREST IF NOT OWNER: _____

LIST PRINCIPAL(S) INCLUDING NAMES OF MAIN OFFICERS: _____

PHONE: (Bus.) 3603190898 (Res.) _____ (Fax) _____

LANDOWNER(S): David & Bonita Ebenal

LANDOWNER SIGNATURE(S):   DATE: 3/4/2025
(May be by letter)

LANDOWNER(S) ADDRESS: PO Box 31548
Bellingham, WA. 98228-3548

REQUEST: New construction of a single-family residence

New construction of a single-family residence

TAX MAP KEY: (3) 7-5-005-094-0000 ZONING: RS-15

SIZE OF PROPERTY OR AFFECTED AREA(S): 15,009 SF

AGENT: Winton Nicholson, Nicholson LLC

ADDRESS: 75-118 Lunapule Road
Kailua-Kona, HI. 96740

TELEPHONE: (Bus.) (808) 331-1511 (Res.) (808) 331-1511 (Fax) (808) 331-1511

Please indicate to whom original correspondence and copies should be sent.

ORIGINAL: David & Bonita Ebenal COPIES: Winton Nicholson, Nicholson LLC

Planning Dept.
Exhibit 1

Special Management Area Major Use Permit Application

Background Information on the Subject Request

Applicant: David and Bonita Ebenal

TMK: (3)7-5-005:094

A. Detailed written description of the proposed project and a statement of objectives and reasons for the request.

Description of Proposed Project

The applicants, David and Bonita Ebenal, are submitting an application for a Special Management Area Use Permit to construct a two-story, 4,942-square foot single-family residence on a 0.3446-acre parcel within the SMA boundary. The proposed residence will include four bedrooms, four-and-a-half bathrooms, two single-car garages, a lanai, and a 12-by-22-foot spa. The subject property is located within the Lanihau Point Subdivision of Kona Bay Estates at 75-5436 Kona Bay Drive in North Kona, approximately 0.7 miles from the intersection of Kona Bay Drive and Kuakini Highway. The Tax Map Key for the parcel is (3)7-5-005:094.

Statement of Objectives and Reason for Request

1. Request: The Ebenal's seek a SMA Use Permit to build a single-family residence on a 0.3446-acre shoreline property located within the Lanihau Point Subdivision of Kona Bay Estates in Kailua-Kona on the Island of Hawai'i. The two-story home would have 4,467 square feet of interior space, with four bedrooms and four-and-a-half bathrooms, and various other rooms. Together with the two single-car garage, a lanai, and a swimming pool, the Total Development Area for the residence is 4,942-square feet. The home will be connected to existing utility lines already established within Kona Bay Estates subdivision.
2. Project Objective: The purpose of the project is to construct a single-family residence on the subject parcel for personal use.
3. Cost/Time of Project: The current estimated cost of the construction is \$2,900,000. The project would be initiated after completion of the final design and the granting of all necessary permits.
4. Landowner: David and Bonita Ebenal.

B. Description of the subject property in sufficient detail to precisely locate the property. Describe existing uses, structures, and topography.

Description of Subject Property

The subject property is along the shoreline in Lanihau Point and Kona Bay Estates in Kailua-Kona on the Island of Hawai'i. It is located west of the Old Kona Airport State Recreation Area within a previously developed, gated subdivision on the coast of Kailua Bay. It is a part of the Regional Center, Urban Core per the Kona Community Development Plan and is zoned Residential Single Family, 15,009-square feet (RS-15) by the County of Hawai'i. The parcel is identified as TMK: 3-7-5-005-094-0000, also known as Lot 2 of the Lanihau Point subdivision, Lanihau 2nd Ahupua'a, North Kona District, Island of Hawai'i.

Existing Uses

The subject parcel is bounded to the west by a developed residential parcel, to the north by Kona Bay Drive, to the east by an undeveloped (but previously graded) residential parcel, and to the south by an undeveloped strip of pahoehoe coastline that fronts the Kona Bay Estates subdivision at the coast. A four-foot-wide easement for public shoreline access is located at the makai side of the lot and connects Lanihau and Kona Bay Estates to the beach adjacent to the subdivision, Old Kona Airport State Recreation Area. An additional thirty-foot easement exists on the eastern side of the lot for road and utility purposes. Kona Bay Drive extends through this easement. The proposed development will not suspend or affect public shoreline access or traffic at Kona Bay Drive, the private thoroughfare.

Existing Structures

Modern rock walls exist on site, present along the northern and western boundaries of the parcel, built to delineate parcel lines for the Kona Bay Estates subdivision. There is a concrete sidewalk within a four-foot-wide easement for public shoreline access. Additionally, Kona Bay Drive extends through the subject property within the mauka-side road and utility easement.

Existing Topography

The property is relatively level since extensive grading has already occurred on the property during the preparation for the Kona Bay Estates subdivision. The surface of the subject property is relatively flat, consisting of thin soil accumulations, sand, coral, marine shell, small to medium-sized cobbles, and exposed bedrock within some portions of the buildable area. The change in elevation from the highest to lowest point within the buildable area is nine inches. No vegetation is present within the buildable area of the subject parcel.

C. A statement of the valuation of the proposed use, activity, or operation.

The valuation of the proposed development, the new construction of a single-family residence is \$2,900,000.

D. State/County Plans affecting the subject request: General Plan designation and Community Development Plans.

State Land Use Commission

The property is located within the State Land Use “Urban” Zone district, which encompasses areas characterized by city-like concentrations of people, structures, and services. The subject property is a graded lot within the established Kona Bay Estates subdivision, consisting of 36 existing residences. This neighborhood is a concentrated area of development adjacent to the center of town. It is a 20-minute walk or a 5-minute drive from the subject parcel to the Kailua Pier. The proposed project aligns with the regulations and intent of the “Urban” zone designation.

County Zoning

The parcel is zoned as Residential Single Family, 15,000-square feet (RS-15) by the County of Hawai‘i. This zoning classification (RS-15) is defined as a Single-Family Residential District where the minimum building site area is 15,000-square feet. The subject parcel has a building site of 15,009-square feet. The proposed single-family residence complies with all applicable building and shoreline setback requirements and is consistent with the lot's RS-15 zoning designation. Furthermore, the development will not exceed the intended density permitted under this zoning.

Hawaii County General Plan

The Hawaii County General Plan contains goals, policies, standards, and the Land Use Pattern Allocation Guide (LUPAG) Map. On the current LUPAG map, which depicts long-term land use for the islands, the subject parcel is designated as Open (Ope). According to the 2005 Hawaii General Plan, Open Land Use is defined as “parks and other recreational areas, historic sites, and open shoreline areas.” This designation aligns with the existing development of Kona Bay Estates, which is oriented towards public recreation and use. A makai-side easement extends along the shoreline lots within the subdivision, providing a pedestrian pathway connecting the Keiki Ponds to the Old Airport Recreation Area. This path is frequently used by both locals and tourists, serving as a thoroughfare as well as a space to observe tidal pools and fish from the coastline (outside of the project area).

In keeping with the other established residences of the Kona Bay Estates, the proposed new development is designed around the public connection to the shoreline and will not hinder access to it. The four-foot makai-side easement providing shoreline access will remain open and accessible throughout construction and after the project is completed.

The goals for Open Land Use spaces are to “provide and protect open space for the social, environmental, and economic well-being of the County of Hawaii and its residents” and to “protect designated natural areas.” The proposed development supports these goals by maintaining public access to the coastline and ensuring that the natural environment is preserved while managing engagement with the shoreline.

Community Development Plans – North Kona

The subject parcel is located in North Kona. The Community Development Plans for the area of North Kona are as follows, “preserving the diverse coastlines, protected nearshore waters, open space, and vast untouched upland landscapes.” Additionally, one of the guiding principles of the Kona Community Guidelines is to “direct future growth patterns toward compact villages, preserving Kona’s rural, diverse, and historical character.”

The proposed development is in accordance with the Community Development Plans as it is situated within a designated, subdivided lot, surrounded by existing single-family residences. It does not disrupt untouched landscapes or the natural environment. Additionally, no portion of the development is planned within the shoreline setback, ensuring the preservation of the coastline.

The proposed development preserves recreational access to the shoreline through the existing pedestrian path. It supports the vision of the Community Development Plan to establish an Open Space Network Program, which aims to provide opportunities for subsistence, recreational, and educational activities. By maintaining the shoreline path connecting Keiki Ponds to the Old Airport State Recreation Area, the development contributes to a network of open spaces that foster public engagement with these activities. This frequently used path highlights how Kailua Village urban setting can coexist with Hawai’i’s natural areas, offering access in a way that is thoughtfully designed to minimize environmental impact.

E. A written statement discussing the proposed development in relationship to the objectives and policies as provided by Chapter 205A, HRS, and the Special Management Area guidelines as contained herein.

The subject property is located within the Special Management Area (SMA). The proposed land use complies with provisions and guidelines contained in Chapter 205A, Hawai'i Revised Statutes (HRS), also known as the *Coastal Zone Management Act*. The proposed development is consistent with the objectives of Chapter 205A, as it will not adversely impact historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, or public access to recreational areas, as summarized below.

1. Recreational Resources: The subject property is a coastal parcel situated between roughly nine and eleven feet above mean sea level. The proposed development will be a private residence that will not be considered a recreational resource. The existing shoreline walking path makai of the proposed residence will remain open and accessible throughout construction and after the project's completion. Hikers, sunbathers, and fishers who utilize the shoreline and the shoreline path makai of the site will be able to continue their activities without disruption. The proposed development will not impact the recreational resources of the area in any way.
2. Historic Resources: An archaeological inventory survey of the project site was conducted prior to subdivision and grading, and no sites appear to be present on the surface. The area of development proposed was already excavated once, and there was no evidence of historic properties. Please see the attached letter request for a State Historic Preservation Division determination of "no historic properties affected" associated with the proposed development. The site is not used for gathering, ceremonial or other cultural purposes by Native Hawaiians, indicating minimal potential for cultural impact. Cultural practices in the area, such as fishing and gathering of marine resources along the shoreline makai of the property, will not be restricted or disrupted by the construction of the proposed residence.

3. Scenic and Open Space Resources: The guidelines outlined in Rule 9 of the Hawai'i County Planning Commission Rules, which govern the SMA, express the intent to minimize development that would "substantially interfere with or detract from the line of sight toward the sea from the State Highway nearest the coast or from other scenic areas identified in the General Plan." The proposed project site is minimally visible from public vantage points, including the view through the Outdoor Hockey Rink at Old Airport State Recreation Area and the tall trees beyond it. The proposed project will not impact scenic or open space resources. Furthermore, the proposed single-family residence is consistent with the character and use of other homes along this section of the shoreline.
4. Coastal Ecosystems: The subject property adjacent to the shoreline. The design of the proposed residence, along with compliance with construction permit conditions, will minimize any potential impacts to coastal resources. All mandated setbacks and government regulations related to runoff and nearshore waters will be adhered to. No threatened or endangered animal or plant species are present. No adverse impacts to flora, fauna, or ecosystems are anticipated as a result of the proposed development or its associated activities.
5. Economic Uses: The proposed residence is expected to have minimal impact on the broader socioeconomic environment. The project aligns with the County's RS-15 zoning designation for the property. Given the context of this area in North Kona, the economic impact of the development is anticipated to be minor.
6. Coastal Hazards: The subject property is designated as Zone D and Zone AE-10 on the Flood Insurance Rate Maps (FIRM). All development and habitable structures are planned for the Zone D portion, situated above an elevation of 10-feet. Occasional overtopping of the raised makai shoreline path could cause localized flooding in the development area. This may result in some damage to landscaping and the residence within the confines of the raised path and modern rock walls. However, significant impacts to water quality or coastal processes are unlikely.

F. Surrounding zoning and land uses.

The surrounding area is characterized by single-family residential structures within Kona Bay Estates, which is zoned RS-15. This shoreline neighborhood consists of 40 lots, 34 of which are developed with single-family residences. Adjacent to the subdivision is Old Kona Airport State Recreation Area, zoned as a Limited Industrial District. The ocean off the coast of the shoreline is considered a Marine Life Conservation District.

G. Flood Insurance Rate Map (FIRM) designation (contact Department of Public Works – Engineering Division)

The subject parcel is within Zone D and Zone AE. Please see the attached FHAT Report showing FIRM designation.

H. Archaeological Resources

Please see the attached letter request for a State Historic Preservation Division determination of “no historic properties affected” associated with the proposed development. The request letter was prepared by William Gardner, Senior Archaeologist of ASM Affiliates, dated February 10, 2025.

I. Floral and Faunal Resources

Since the subject property has previously been graded and there is no vegetation within the building area, no floral resources will be affected by the proposed development. The only vegetation present within the project area is a maintained hedge of naupaka (*Scaevola sericea*) and heliotrope located to the west of the public access sidewalk. No rare, threatened, or endangered plant species are present on site. Animals likely to be on the project site are non-native birds such as Japanese White-eye (*Zosterops japonicus*) and Mynah (*Acridotheres tristis*) and the alien mammal mongoose (*Herpestes auropunctatus*), along with domestic cats and dogs. Common native waterbirds such as ulili (*Heteroscelus incanus*) and kolea (*Phuvialis fulva*) utilize the rocky shelf and tidepools makai of the project site. In terms of conservation value, however, no valuable bird habitat is present on the project site itself. The ocean off the coast of the shoreline is considered a Marine Life Conservation District. All runoff from the proposed development is to be contained on site. No adverse impacts to floral and faunal resources on the subject parcel and surrounding environment are anticipated.

J. Valued Cultural Resources: Identify any traditional and customary native Hawaiian rights that are exercised in the area; the extent in which the proposed development will affect these rights; and feasible action to be taken to protect native Hawaiian rights if they exist.

Please see Cultural Analysis study prepared by William Gardner, Senior Archaeologist of ASM Affiliates attached, dated February 27, 2025.

K. Public Access: Existing public access to and along the shoreline or to mountain areas and knowledge of whether public access is being used.

Existing public access to the shoreline is available through three designated access points within Lanihau and Kona Bay Estates, the subdivision of the subject parcel. These access points lead to 'Keiki Pond,' a large tidal pool, and a paved walking path along the shoreline. The paved walking path stretches from the Keiki Pond to the Old Airport State Recreation Area, extending through the makai side of the subject parcel. The shoreline, characterized by lava rock, tidal pools, and patches of white sand, is popular with fishers, swimmers, sunbathers, and hikers. While Kona Bay Estates is a private community, public access to the shoreline is available via the makai side of a public baseball and football field north of the subject parcel. The nearest public entry point to the walking path from the subject parcel is a shoreline access point located nine parcels to the south. Additional access to the walking path is available from the Old Airport State Recreation Area, two parcels north of the subject parcel. The shoreline access points and shoreline walking path will not be impacted by the proposed project.

**I. Description of access(es) to the area (e.g. width, type of surface and condition of roadway).
If a private roadway, submit evidence of access rights.**

The subject parcel is accessible via Kona Bay Drive, a partially private road that begins at Kuakini Highway and extends approximately 0.7 miles, terminating in front of the subject parcel. The roadway easement for Kona Bay Drive is typically thirty feet wide, with an eighteen-foot-wide asphalt road that is well maintained. The subject parcel, located near the end of Kona Bay Drive, is the third to last residence within Kona Bay Estates. The subject parcel has a roadway and utility easement that is fifty-three feet wide. The roadway is a double lane thoroughfare, with one lane going in each direction. Kona Bay Drive becomes a private road at the entrance to the Kona Bay Estates subdivision, which features a gatehouse with an attendant. Evidence of access rights to Kona Bay Drive is attached for reference.

J. Traffic impacts – assessment of existing traffic conditions, anticipated increase in traffic and traffic impacts from proposed use (a formal study may be requested by Department of Public Works or Department of Transportation during the review process).

The proposed development, a single-family dwelling, is expected to have minimal traffic impact. The design includes a two single-car garage. Kona Bay Drive, a private road, will not experience traffic increases from the addition of the proposed residence.

Kona Bay Drive connects to Kuakini Highway, a County Collector-Major roadway. The proposed development, a single-family dwelling, will not attract a detrimental amount of traffic to environmentally sensitive areas that are not designed to support a greater frequency of visitors. Additionally, the subject property is located within the Kona Urban Area and is within walking distance of town.

K. Availability of Utilities: Water, telephone, electricity, sewage disposal.

The proposed development is located within an established neighborhood with existing utility infrastructure. Connections for water, telephone, electricity, and sewage disposal are already in place on the project site and ready to serve the proposed residence.

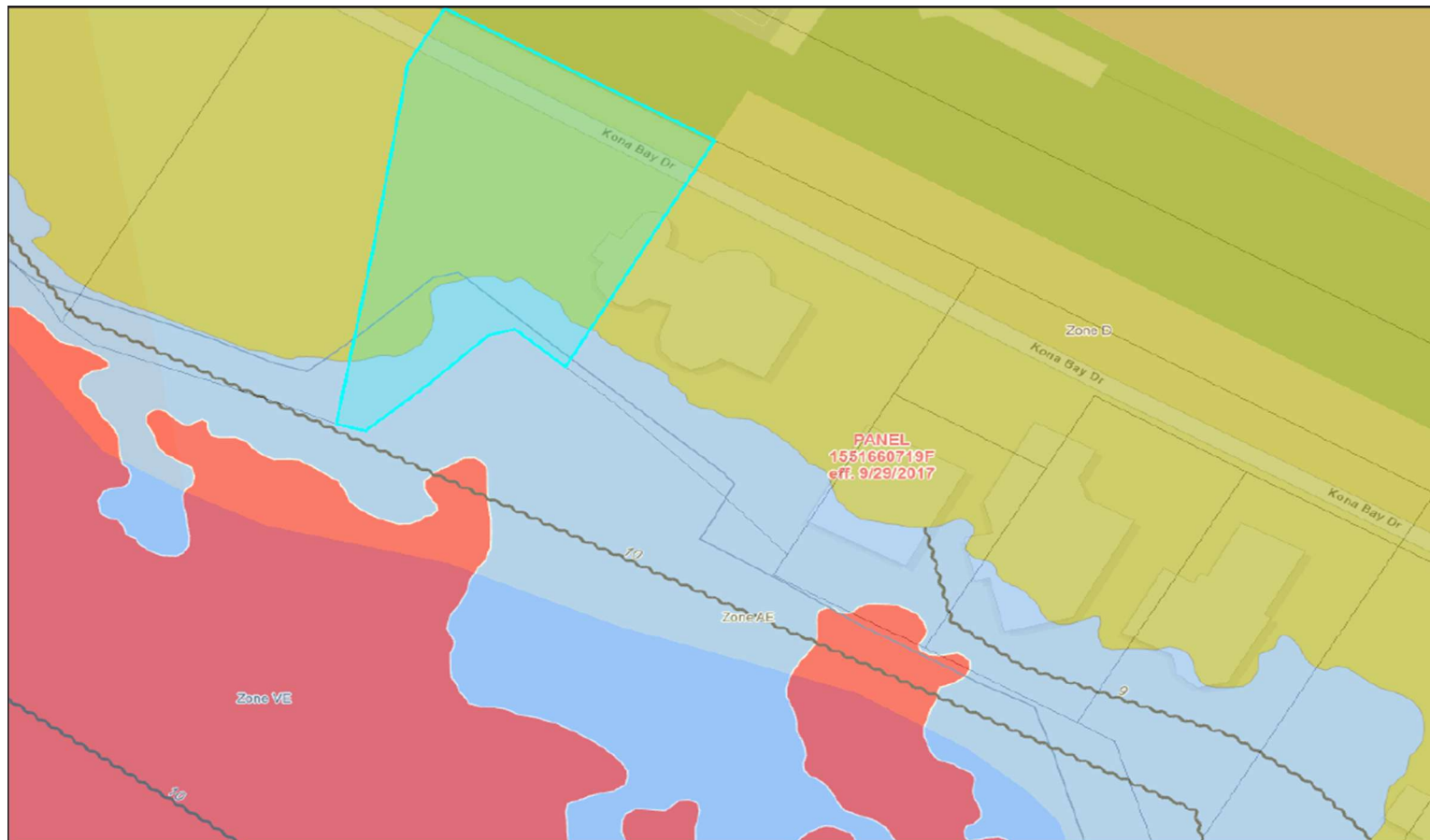
L. In the case of an applicant whose proposed development has been assessed, any information as to the areas of critical concern delineated by the director.

The Planning Director's review of the proposed development under the Special Management Area (SMA) Assessment did not identify any critical areas of concern. The following notes regarding SMA Determination were included in the Planning Director's letter:

Pursuant to Planning Commission Rule 9-4(r) relating to the Special Management Area: *"Special Management Area Use Permit" means an action by the Commission authorizing development, **the valuation of which exceeds \$500,000** or which may have a cumulative impact, or a substantial adverse environmental effect on the Special Management Area.*

According to the Planning Commission Rule 9-10(f): *The Director shall declare that a Special Management Area Use Permit is required if it is found that the proposed use, activity, or operation has **a valuation in excess of \$500,000** or may have a substantial adverse effect on the SMA. Should a determination be made that the proposed use, activity, of operation requires a Special Management Area Use Permit, the applicant shall submit such application in accordance with Section 9-11.*

The project valuation is \$2,900,000, which exceeds \$500,000, requiring the application of a Special Management Area Major Use Permit.



BASEMAP: FIRM BASEMAP



Flood Hazard Assessment Report

www.hawaiiinfip.org

SMA Major

Property Information

COUNTY: HAWAII
 TMK NO: (3) 7-5-005:094
 WATERSHED: WAIAHA
 PARCEL ADDRESS: ADDRESS NOT DETERMINED
 KAILUA KONA, HI 96740

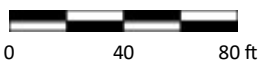
Notes:

Flood Hazard Information

LETTER OF MAP CHANGE(S): NONE

THIS PROPERTY IS WITHIN A TSUNAMI EVACUATION ZONE: YES
 FOR MORE INFO, VISIT: <http://www.scd.hawaii.gov/>

THIS PROPERTY IS WITHIN A DAM EVACUATION ZONE: NO
 FOR MORE INFO, VISIT: <http://dlnreng.hawaii.gov/dam/>



Disclaimer: The Hawaii Department of Land and Natural Resources (DLNR) assumes no responsibility arising from the use, accuracy, completeness, and timeliness of any information contained in this report. Viewers/Users are responsible for verifying the accuracy of the information and agree to indemnify the DLNR, its officers, and employees from any liability which may arise from its use of its data or information.

If this map has been identified as 'PRELIMINARY', please note that it is being provided for informational purposes and is not to be used for flood insurance rating. Contact your county floodplain manager for flood zone determinations to be used for compliance with local floodplain management regulations.

FLOOD HAZARD ASSESSMENT TOOL LAYER LEGEND

(Note: legend does not correspond with NFHL)

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

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

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

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

OTHER FLOOD AREAS

	Zone D: Unstudied areas where flood hazards are undetermined, but flooding is possible. No mandatory flood insurance purchase applies, but coverage is available in participating communities.
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Special Management Area Major Use Permit Application

Anticipated Impacts of Subject Request on the SMA

Applicant: David and Bonita Ebenal

TMK: (3)7-5-005:094

A. Description of environmental setting

The subject parcel is located along the coastline of Kailua Bay within Lanihau 2nd Ahupua'a in the gated subdivision, Kona Bay Estates. The subject parcel is zoned Residential Single Family, 15,000 square feet (RS-15) by the County of Hawai'i. The parcel is designated as Open (ope) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map and designated Urban by the State Land Use Commission. The proposed development of a single-family dwelling is consistent with the use and density of its zoning.

The subject parcel is 0.3446-acre, bounded to the west by a developed residential parcel, to the north by Kona Bay Drive, to the east by an undeveloped (but previously graded) residential parcel, and to the south by an undeveloped strip of pahoehoe coastline that fronts the Kona Bay Estates subdivision. The climate in this part of Kona is hot and dry, averaging between twenty and thirty inches of rain annually, with a mean annual temperature of approximately seventy-six degrees Fahrenheit.

The subject parcel was previously mechanically cleared and modern stone walls were built at the front and sides of the parcel by the subdivision, Kona Bay Estates, to delineate lot lines. A four-foot-wide easement for public shoreline access is located along the makai side of the parcel with a concrete sidewalk connecting to the beach adjacent to the subdivision, Old Kona Airport State Recreation Area. The lot is relatively flat with elevations within the buildable area ranging between 9.7' and 10.45'. A mixture of sand and gravel sits atop the entirety of the site (typically less than five centimeters thick) overlaying previously graded (bulldozer tracked) pahoehoe bedrock. The only vegetation present within the project area is a maintained hedge of naupaka (*Scaevola sericea*) and heliotrope located makai of the public access sidewalk. Beyond the public access sidewalk, makai, and outside of the project area, the shoreline is characterized by lava rock, tidal pools, and patches of white sand. No development is proposed in this area. The shoreline path and area within the shoreline setback are to remain untouched during the proposed construction and afterwards.

An additional easement exists on the mauka-side of the lot for road and utility purposes. Kona Bay Drive extends through and ends at this road and utility easement.

B. The relationship of the proposed action to land use plans, policies, and control of the affected area

The surrounding area is characterized by single family residential structures within the Kona Bay Estates, also zoned RS-15. Adjacent to the subdivision is Old Kona Airport State Recreation Area, zoned as limited Industrial District. The ocean off the coast of the shoreline is considered a Marine Life Conservation District. The proposed design for a single-family dwelling is consistent with the Hawai'i County General Plan and the Zoning Code. The proposed project will not create greater density than zoning intends.

C. The probable impact of the proposed actions on the environment

A possible impact of the proposed development on the environment could include runoff during construction and from the proposed development. To prevent this possible impact on the nearshore fisheries, which are a valued cultural resource and are associated with customary native Hawaiian subsistence practices, all waste that will be generated from construction, sewage, landscaping runoff, pool and other household waste will be disposed of properly to prevent runoff from entering the nearshore fisheries. All construction waste will be hauled away and disposed of off-site. The proposed single-family dwelling will connect to existing sewer lines along Kona Bay Drive. No staging of materials will occur within the shoreline setback.

D. Any probably adverse environmental effect which cannot be avoided

The granting of this request will not have any adverse environmental or ecological effects on the area. Runoff and erosion will be contained and managed on site. The proposed project will not reduce public access to the beaches or shoreline. The coastal access walkaway would remain open and accessible through construction and after the project is completed.

The proposed project will not have a negative impact to the view from the public way to the shoreline. The shoreline is minimally visible from the vantage point of the public way, which looks through the outdoor Hockey Rink at Old Airport State Recreation Area as well as tall trees beyond it.

A. Alternatives to the proposed action

Since the proposed project does not anticipate any adverse impacts on the SMA or surrounding environment, we find this design to be the most optimal option. No alternatives are sought.

B. Mitigating measures proposed to minimize impact

Since the proposed project does not anticipate any adverse impacts on the SMA or surrounding environment, we find this design to be the most optimal option. No adverse impacts to minimize are anticipated.

C. Any irreversible and irretrievable commitment of resources

No irreversible and irretrievable commitment of resources are anticipated with this request.

SPECIAL MANAGEMENT AREA USA PERMIT APPLICATION

OWNERS AND LESSEES OF SURROUNDING PROPERTIES

The subject property is located within the State Land Use Urban District. The list below are the owners and lessees of record for all lots within three hundred feet (300') of the perimeter boundary of the subject property (TMK: 3750050940000)

- TRIVETT, MARK DONOVAN
75-5432 Kona Bay Drive
Kailua-Kona, HI 96740
TMK: 3750050960000

Mailing Address

TRIVETT, MARK DONOVAN
174 POWERS DR
EL DORADO HILLS CA 95762 4495

- OLD AIRPORT LLC
75-5434 Kona Bay Drive
Kailua-Kona, HI 96740
TMK: 3750050950000

Mailing Address

OLD AIRPORT LLC
PO BOX 3223
EL MONTE CA 91733 0223

- LAWRENCE, JOHN/LINDA TRST
75-5438 Kona Bay Drive
Kailua-Kona, HI 96740
TMK: 3750050680000

Mailing Address

LAWRENCE, JOHN/LINDA TRST
PO BOX 3223
SOUTH EL MONTE CA 91733

- MOORE LP
75-5440 Kona Bay Drive
Kailua-Kona, HI 96740
TMK: 3750050920000

Mailing Address

MOORE LP
75-5440 KONA BAY DR
KAILUA KONA HI 96740 3140

- KONA HOLDINGS LLC
75-5442 Kona Bay Drive
Kailua-Kona, HI 96740
TMK: 3750050420000

SPECIAL MANAGEMENT AREA USA PERMIT APPLICATION

OWNERS AND LESSEES OF SURROUNDING PROPERTIES

Mailing Address

[KONA HOLDINGS LLC](#)

75-5442 KONA BAY DR

KAILUA KONA HI 96740 3140

- STATE OF HAWAII*
75-5500 Kuakini Highway
Kailua-Kona, HI 96740
TMK: 3750050830000
- STATE OF HAWAII*
75-5560 Kuakini Highway
Kailua-Kona, HI 96740
TMK: 3750050070000

*Notice letters for the properties owned by the State of Hawai'i are to be sent to DLNR, Land Division at the following address, under the advisement of Tracie-Lee Camero, Planning Department:

Department of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, HI 96813

February 27, 2025

Susan Lebo, Ph.D.
Archaeology Branch Chief
DLNR-SHPD
601 Kamokila Blvd., Rm.555
Kapolei, Hawaii 96707
Email: susan.a.lebo@hawaii.gov

via *HICRIS*

Subject: Request for a State Historic Preservation Division determination of “no historic properties affected” associated with the proposed development of a single-family residence on TMK: (3) 7-5-005:094, Lanihau 2nd, North Kona, Hawai‘i.

Dear Susan:

At the request of Nicholson, LLC, on behalf of the landowners (David and Bonita Ebenal), ASM Affiliates (ASM) has prepared this request for a State Historic Preservation Division (SHPD) determination of “no historic properties affected” associated with the proposed development of a single-family residence on the 0.34-acre TMK: (3) 7-5-005:094 (also known as Lot 2 of the Lanihau Point subdivision), Lanihau 2nd Ahupua‘a, North Kona District, Island of Hawai‘i (Figures 1-3). This request has been prepared in accordance with Hawai‘i Administrative Rules (HAR) §13-284-5(2) in support of a Special Management Area (SMA) use permit application for the proposed development of a single-family residence within the 0.38-acre subject parcel (Figure 4).

The subject parcel (the “project area”) is situated to the west of the Old Kona Airport State Recreation Area within the previously developed, Kona Bay Estates gated subdivision located along the coast of Kailua Bay within Lanihau 2nd Ahupua‘a. The project area is bounded to the southeast by a developed residential parcel (Figure 5), to the north by Kona Bay Drive (Figure 6), to the northwest by a developed residential parcel that is under construction (Figure 7), and to the south by an undeveloped strip of *pāhoehoe* coastline that fronts the subdivision at the coast (Figure 8 and 9). Modern rock walls are present along all four sides of the parcel, and a concrete sidewalk, built for public shoreline-access, crosses the far southern section of the parcel (Figure 10; see also Figure 8). The sidewalk also demarks the southern extent of the area available for development. The small portion of the parcel makai of the sidewalk is not part of the development area.

The entire surface of the developable portion of the parcel has been graded flat. The only remaining natural terrain in the project area is located south of the sidewalk that provides public beach access, within a portion of the parcel that is not designated for development. This terrain consists entirely of *pāhoehoe* lava from an eruption of Hualālai that occurred 1,500 to 3,000 years before present (Sherrod et al. 2021). Vegetation in the small area of natural terrain consists of a maintained *naupaka* hedge (see Figure 10). Due to the lack of soil development, soils in this general area are classified as Lava flows of the Honokohau complex (Soil Survey Staff 2022).

Prior Archaeological Studies

The project area was previously included in two archaeological studies conducted by Paul H. Rosendahl, Ph.D. Inc. (PHRI) that were associated with a SMA use permit (SMA Application Number 81-31) granted to The Hilton Head Company by the Hawai‘i County Planning Commission on May 19, 1983. The first study, an archaeological reconnaissance survey of the Hilton Head Company Kona Property “B” site

(Rosendahl 1979), occurred prior to the creation of the existing subdivision. That study included 23.5 acres of shoreline property within Lanaihau 2nd Ahupua'a, and identified 16 archaeological features (Features A to P) consisting of petroglyphs, bait cups, surface artifacts, a modified outcrop, a brackish pool, a wall, and a platform (Rosendahl 1979:5). None of the identified features were within the current subject parcel. The nearest identified features, located south and southeast of the project area (Figure 11), included two bait cups (Feature D) and the probable remains of a disturbed, shallow, cultural deposit (Feature E). Rosendahl (1979:6) summarized the archaeological finding within the area as follows:

Archaeological reconnaissance survey of the Hilton Head Company Kona Property "B" site revealed relatively few features. The principal types found were bait cups and petroglyphs. Aside from the isolated individual examples, the petroglyphs are found concentrated in two relatively small clusters (Features J, P). The figures comprising these clusters are generally in poor to fair condition. In neither case do there seem to be any really outstanding examples such as those to be seen in the extensive petroglyph fields further up the coast in the South Kohala District, at Anaehoomalu and Puako.

With the exception of the immediate shoreline portion, most of the survey area has been bulldozed and/or scraped in the past...

In 1983, PHRI returned to the location of the 1979 reconnaissance survey in Lanaihau 2nd to conduct intensive archaeological survey and testing of the (by that time) existing residential subdivision within the Hilton Head Company Kona Property "B" site as well as the Hilton Head Company Kona Bay Club site (located further to the south), which was the subject of a reconnaissance survey conducted by Rosendahl (1980). A preliminary report documenting the findings of that study was submitted to the SHPD upon completion of the fieldwork for that study (Jensen and Rosendahl 1983), but a final report for the area was never completed by PHRI. The preliminary report indicates that 23 additional features (Features Q to MM) were identified as a result of that study, including at least 5 burial features that were eroding out of the sand along the seaward edge of the subdivision. Although a map showing the locations of the features documented by Jensen and Rosendahl (1983) was not included in the report, parcel numbers provided for the newly identified features indicate that they were all located to the southeast of the current project area, and that the burial features were situated on Parcels 016 and 024, near the southeastern end of the subdivision "to the northwest of Feature K" (see Figures 2 and 11). In the vicinity of the current project area Jensen and Rosendahl (1983) thoroughly examined Feature E for any new evidence of surface artifacts, but none were observed so a single 1-meter by 1-meter test pit was excavated to bedrock (approximately 15 centimeters below the sandy surface) within the feature, which yielded "a very few number of volcanic glass flakes but no evidence of a significant accumulation of cultural material and considerable evidence that the remaining cultural material has been mixed and crushed by past bulldozing" (Jensen and Rosendahl 1983:5). No further study was undertaken at Feature D (two bait cups), which was described by Jensen and Rosendahl (1983) as being in similar condition to what was observed in 1979. Based on the results of the survey PHRI recommended that archaeological clearance be granted for the entire project area, with the exception of the burials identified on Parcels 016 and 024, where it was recommended "that the burial cluster (Features FF, GG, KK, LL, MM) situated within the setback area northwest of Feature K be salvaged and all human skeletal remains disinterred and reburied in accordance with State Health Department regulations" (Jensen and Rosendahl 1983:11).

A preliminary fieldwork report prepared by Rosendahl (1984), indicates that following the intensive archaeological survey and testing conducted by Jensen and Rosendahl (1983), in order to satisfy one of the conditions of the SMA for the development of the subdivision, PHRI disinterred 42 sets of human remains from the 20-foot shoreline setback area of Parcel 016, and that 8 additional sets of human remains were disinterred by the SHPD from adjacent State land at that same time. No information on where these burials were ultimately reinterred was found in the files at the SHPD Office in Hilo, and a final report for the project was never prepared by PHRI. Although not explicitly stated in the Rosendahl (1984) preliminary fieldwork report, is likely that the burials disinterred from Parcel 016 were exposed by high wave events that occurred in Kailua-Kona on January 8-10, 1980 and again on November 19-25, 1982. Following the

January 1980 storm event, Neller (1980:1) reported that “human bones were scattered all along the beach in the vicinity of the old Kona airport,” and that most were reburied in place. He also noted the existence of a buried midden deposit associated with the burials. A December 1, 1982, article printed in the *West Hawaii Today* newspaper (McCamant 1982), reported that the 1982 storm surge associated with Hurricane Iwa exposed many more sets of human remains along the beach in this area, and that those bones were collected and then reburied “at a safer, more protected place.” Records on file at the SHPD office in Hilo indicate that over the last 30 years human skeletal remains have often been found eroding from sand deposits at Old Kona Airport State Park, as well as near the southeastern end of the Lanihau Point subdivision, following high wave events.

While several archaeological studies have been conducted since the initial inventories by PHRI (e.g., Gardner 2024), a particularly relevant study for the current project is Clark (2022: Figure 12). In preparation for the development of a parcel located immediately northwest of the current project area (TMK: (3) 7-5-005:095; see Figure 2), ASM Affiliates conducted a comprehensive archaeological surface inspection of the 0.38-acre parcel.

The survey was carried out using systematic north-south pedestrian transects with 3-meter spacing intervals, ensuring complete visual coverage of the parcel. No archaeological sites, features, or cultural deposits were identified on the surface. However, during the field inspection, the presence of sand deposits was noted, prompting ASM Affiliates to conduct subsurface testing through the excavation of 16 shovel tests. The results of the subsurface investigation confirmed the absence of archaeological sites, features, or cultural deposits within the parcel.

Archaeological Fieldwork

On January 12, 2025, ASM Principal Investigator, William Gardner, Ph.D., conducted an archaeological surface inspection of the entire project area (100% coverage). During the field inspection, the ground surface of the 0.34-acre parcel was visually inspected utilizing north/south pedestrian transects, maintaining a 3-meter spacing interval. No archaeological sites, features, or cultural deposits of any kind were identified on the surface of the subject parcel as a result of the field inspection. Moreover, no natural deposits with the potential to contain cultural deposits or burials were noted in the project area as the entire surface of the project area has been graded flat (Figure 13, see also Figure 6). In the southern portion of the development area, there is a push pile composed of sand and rubble from nearby construction activities (Figure 14). The only remaining natural terrain in the project area is located south of the sidewalk that provides public beach access, within a portion of the parcel that is not designated for development (see Figure 8 and 9).

Determination of Effect

Given the negative findings of the archaeological field inspection, pursuant to HAR §13-284-7, the current landowners (David and Bonita Ebenal) are requesting an SHPD determination of “no historic properties affected” associated with the issuance of an SMA use permit for the development of a single-family residence on TMK: (3) 7-5-005:094, Lanihau 2nd Ahupua‘a, North Kona District, Island of Hawai‘i. In the unlikely event that any archaeological resources are encountered during development activities proposed on the property, such activities will be halted and SHPD contacted immediately.

Should you have any questions, or if you would like further information, please feel free to contact me directly.

Sincerely,



William Gardner
Senior Archaeologist – ASM Hilo

References Cited

Clark, Matthew

- 2022 Request for a State Historic Preservation Division determination of “no historic properties affected” associated with the proposed development of a single-family residence on TMK: (3) 7-5-005:095, Lanihau 2nd, North Kona, Hawai‘i. ASM Affiliates Project # 39770. Prepared for Meneghetti Trust.

Gardner, William

- 2024 Request for a State Historic Preservation Division determination of “no historic properties affected” associated with the proposed alterations and additions of a single-family residence on TMK: (3) 7-5-005:039, Lanihau 2nd, North Kona, Hawai‘i. ASM Affiliates Project # 44780. Prepared for Laura Ann McCallum.

Jensen, P. and M. L. K. Rosendahl

- 1983 Intensive Archaeological Survey and Testing Existing Residential Subdivision “B” Site, Lanihau, North Kona, Island of Hawaii (TMK: 3-7-5-05:1, 11, 14-51): Preliminary Report Upon Completion of Field Work. Paul H. Rosendahl, Ph.D., Inc. Ms. 84-072983. Prepared for Mr. John Michael White, Hilo, HI.

McCamant, P.

- 1982 “Bones of History: Storm Waves Uncover Beach Burial Site.” *West Hawaii Today* Vol XIX No. 225, December 1, 1982. Page 3.

Neller, E.

- 1980 An Archaeological Reconnaissance at the Old Kona Airport Beach Park, Keahuolu and Lanihau, Kona, Hawaii. Department of Land and Natural Resources, Hawaii, Division of State Parks, Historic Sites Section.

Rosendahl, M.L.K..

- 1984 Preliminary Fieldwork Report: Oxford First Company Disinterment Project, Lanihau, North Kona, Hawaii. Paul H. Rosendahl, Ph.D., Inc. Project 122. Prepared for Oxford First Company, Honolulu, HI.

Rosendahl, P. H.

- 1979 Archaeological Reconnaissance Survey of the Hilton Head Company Kona Property Site. Paul H. Rosendahl, Ph.D., Inc.
- 1980 Archaeological Reconnaissance Survey of the Hilton Head Company Kona Bay Club Site (TMK:3-7-5-05:12,63), Kailua-Kona, Island of Hawaii. Archaeological Research Associates. Prepared for Belt Collins and Associates.

Sherrod, D. R., J. M. Sinton, S. E. Watkins, and K. M. Brunt

- 2021 Geologic Map of the State of Hawai‘i. U.S. Department of the Interior, U.S. Geological Survey. USGS Numbered Series. Scientific Investigations Map 3143. 1:100,000 and 1:250,000 scale. Electronic document, <https://doi.org/10.3133/sim3143>, accessed February 18, 2022.

Soil Survey Staff (United States Department of Agriculture, Natural Resources Conservation Service)

- 2022 Web Soil Survey. Electronic document, <http://websoilsurvey.nrcs.usda.gov>.



Figure 1. Project area location.



Figure 2. Tax Map (3) 7-5-05:094 showing the location of the current project area (project area in red).

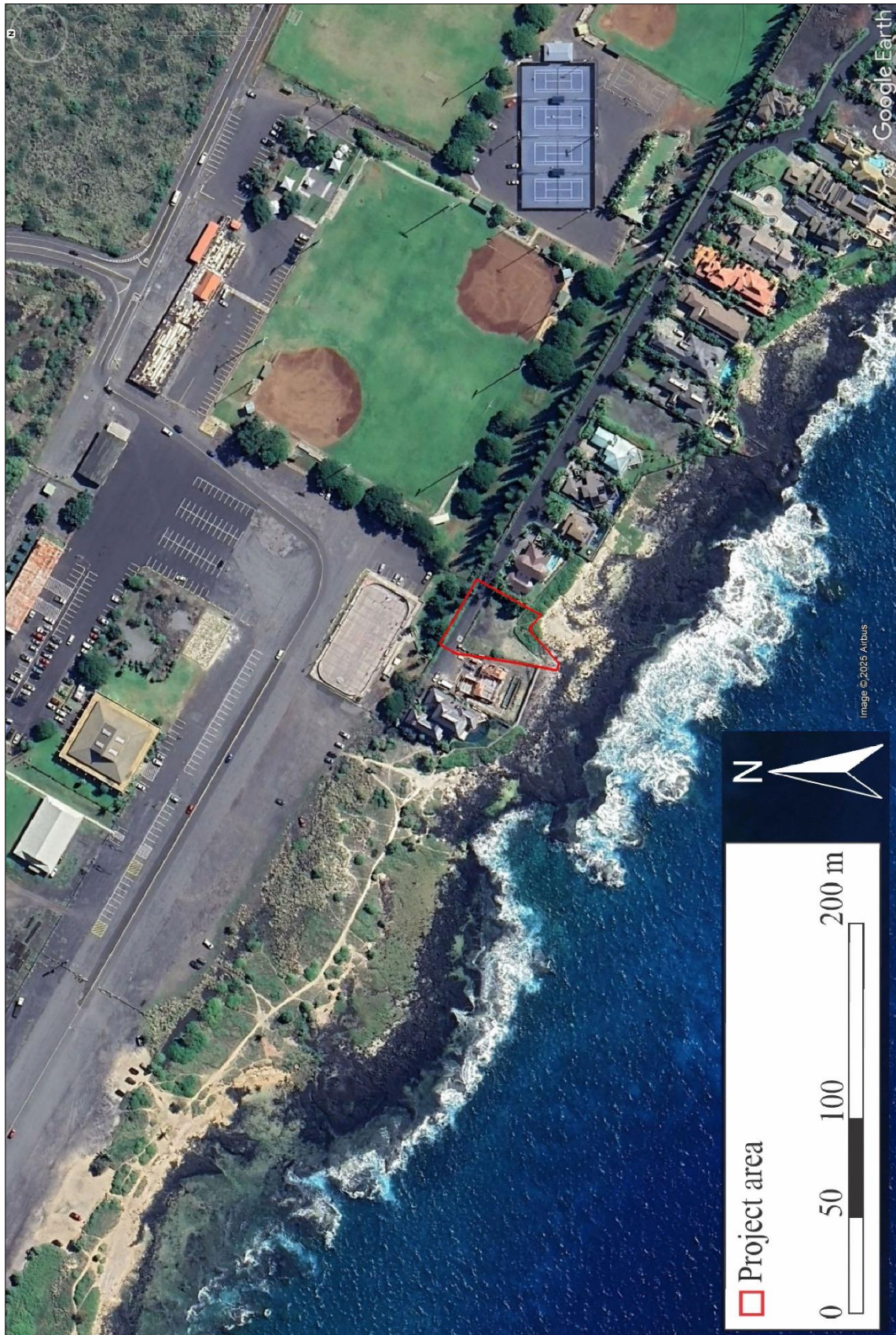


Figure 3. Google Earth aerial image showing project area location.

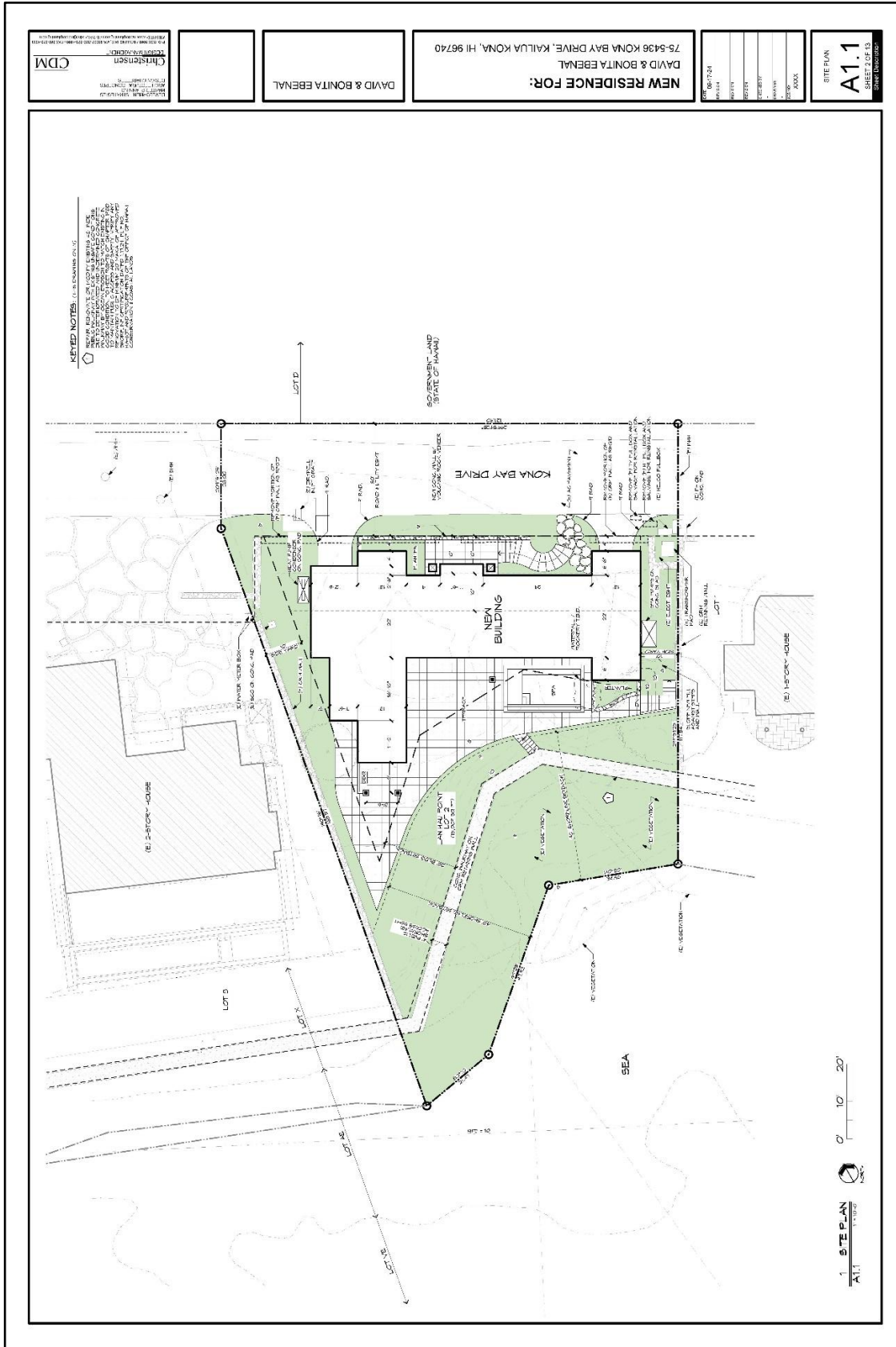




Figure 5. View of the project area to the southeast.



Figure 6. View of the project area to the north towards Kona Bay Drive.



Figure 7. View to the northwest of the project area.



Figure 8. Photo taken from the southern edge of the project area facing southwest. The concrete sidewalk provides public access to the shoreline. No development will occur makai of the sidewalk.



Figure 9. Photo facing north from the coastline towards the project area.



Figure 10. Photo facing southeast along the sidewalk that provides public access to the shoreline.

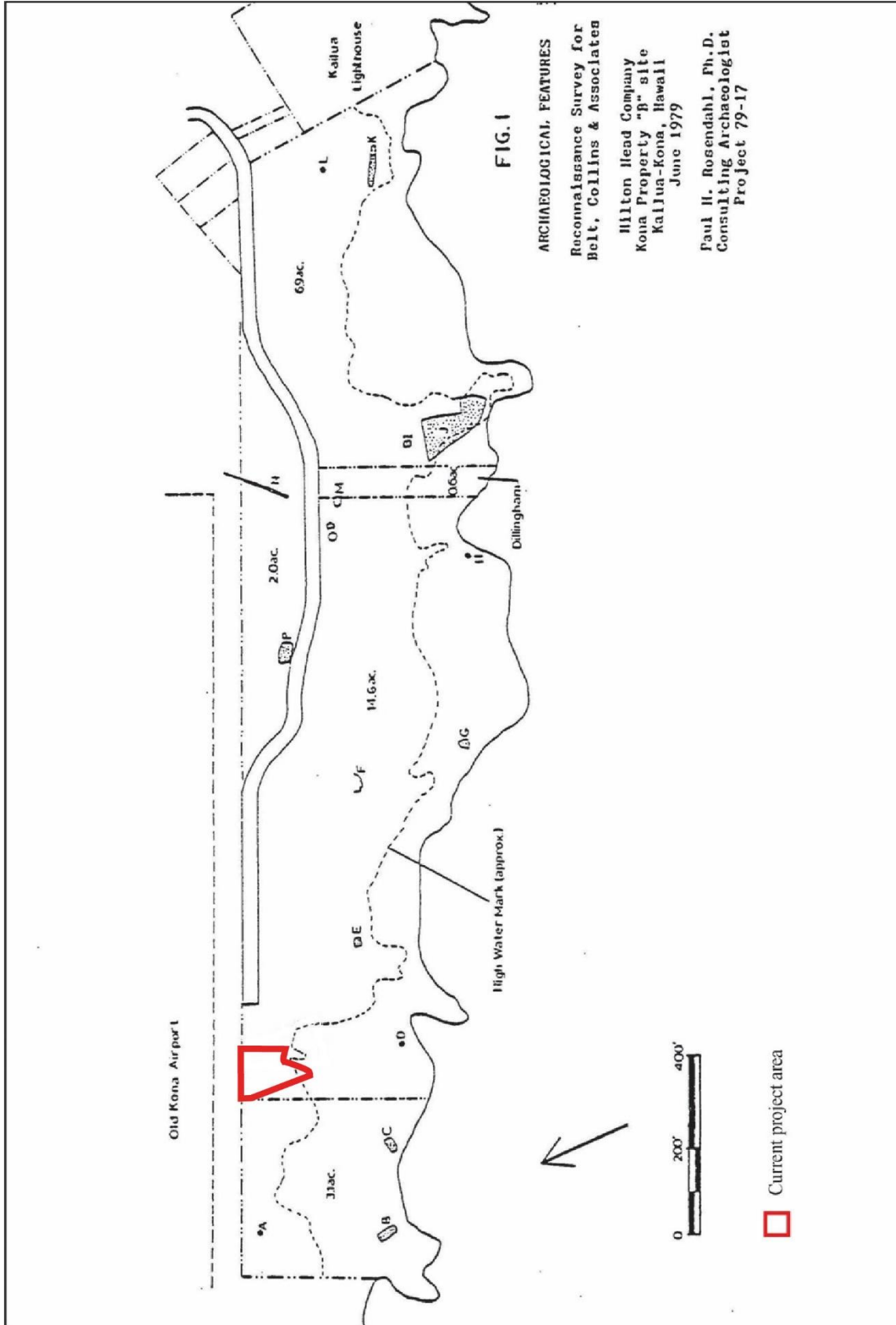


Figure 11. Rosendahl (1979) feature map with the location of the current project area indicated.

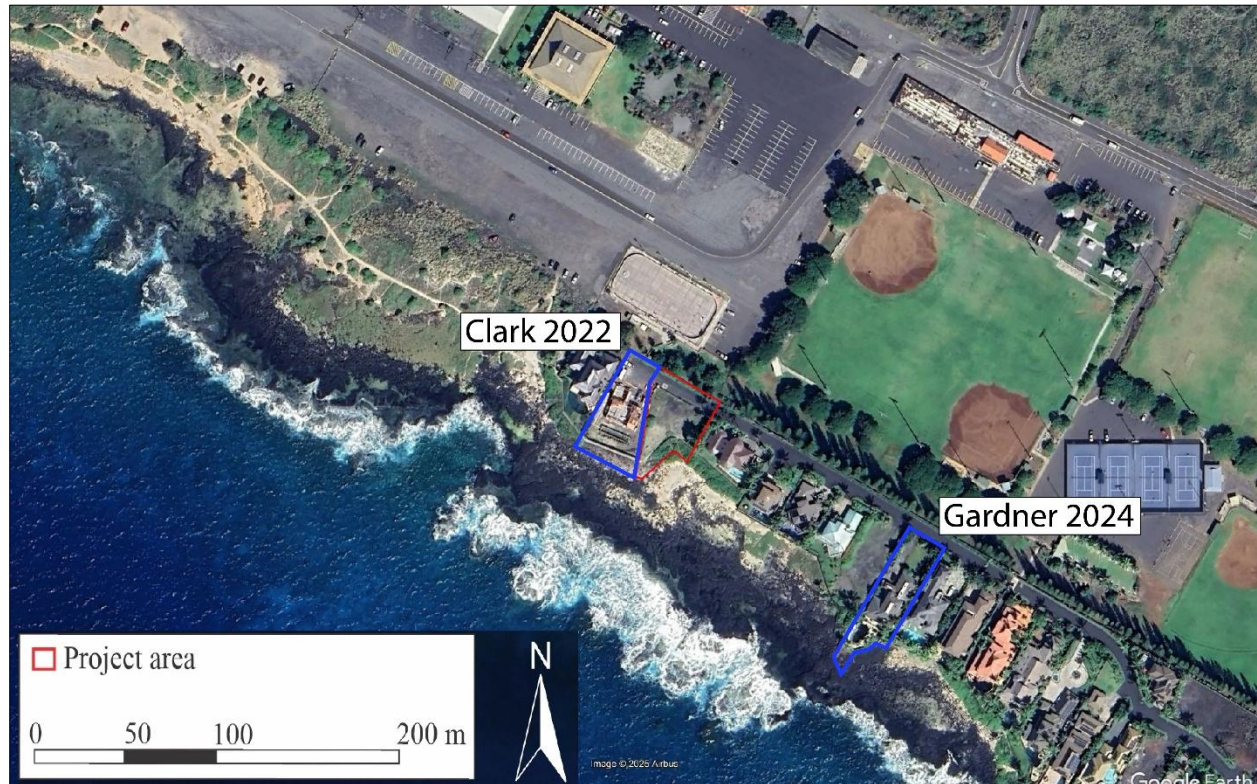


Figure 12. Examples of archaeological projects conducted by ASM near the current project area.



Figure 13. Photo from Kona Bay Drive facing south towards project area illustrating the graded development area.



Figure 14. Example of push pile consisting of construction rubble and sand that has resulted from the grading of the development area.



**Ka Pa‘akai O Ka ‘Āina Cultural Analysis of Lot 2 of the Kona Bay Estates,
Lanihau 2nd Ahupua‘a, North Kona District, Island of Hawai‘i**

TMKs: (3) 7-5-005:094

February 14, 2025

Prepared by:

Lokelani Brandt, M.A

ASM Affiliates

I. INTRODUCTION

At the request of Winton Nicholson, of Nicholson, LLC, on behalf of the David and Bonita Ebenal, ASM Affiliates, (ASM) prepared this Cultural Analysis for Tax Map Key (TMK) (3) 7-5-005:094, (also identified as Lot 2 of the Lanihau Point subdivision), a roughly 0.3446-acre parcel located in Lanihau 2nd Ahupua‘a, North Kona District, Island of Hawai‘i (referred to hereafter as the project area; Figures 1, 2, and 3). This analysis was prepared to satisfy the requirements of a Special Management Area (SMA) use permit application for the above-identified TMK parcel, the Department of Land and Natural Resources (DLNR), and the County of Hawai‘i’s review of that permit. The landowner is proposing to construct a two-story single-family dwelling with an attached two-car garage and covered *lānai*, a pool, paved driveway, utilities, landscaping, and a landscaping irrigation system. A site plan showing the proposed development is included in Figure 4.

Article XII, Section 7 of the Hawai‘i Constitution obligates the State and its agencies, “to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible” (Ka Pa‘akai O Ka ‘Āina v Land Use Commission, 94 Hawai‘i 31, 7 P.3d 1068 [2000]). Under Article XII, Section 7, the State shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by *ahupua‘a* tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

In the September 11, 2000, Hawai‘i Supreme Court landmark decision (Ka Pa‘akai O Ka ‘Āina v Land Use Commission), an analytical framework for addressing the preservation and protection of customary and traditional native practices specific to Hawaiian communities was created. The court decision established a three-part process relative to evaluating such potential impacts: first, to identify whether any valued cultural, historical or natural resources are present; and identify the extent to which any traditional and customary native Hawaiian rights are exercised; second, to identify the extent to which those resources and rights will be affected or impaired by the proposed action; and third, to specify the feasible action, if any, to be taken by the regulatory body to reasonably protect native Hawaiian rights if they are found to exist.

To identify whether any valued cultural, historical, or natural resources are present within the proposed project area, and to identify the extent to which any traditional and customary native Hawaiian rights are, or have been, exercised (the first part of the analytical framework); historical archival information was investigated, and prior archaeological studies were reviewed and summarized below. This is followed by a discussion describing the extent to which the valued cultural, historical, or natural resources and customary native Hawaiian rights will be impacted by the proposed project (part two of the analytical framework). Finally, part three of this analytical process summarizes these findings and recommends feasible actions and mitigative measures that may be taken by the approving agencies and the landowner to reasonably protect native Hawaiian rights, if they are found to exist within the proposed project area.



Figure 1. Project area location.

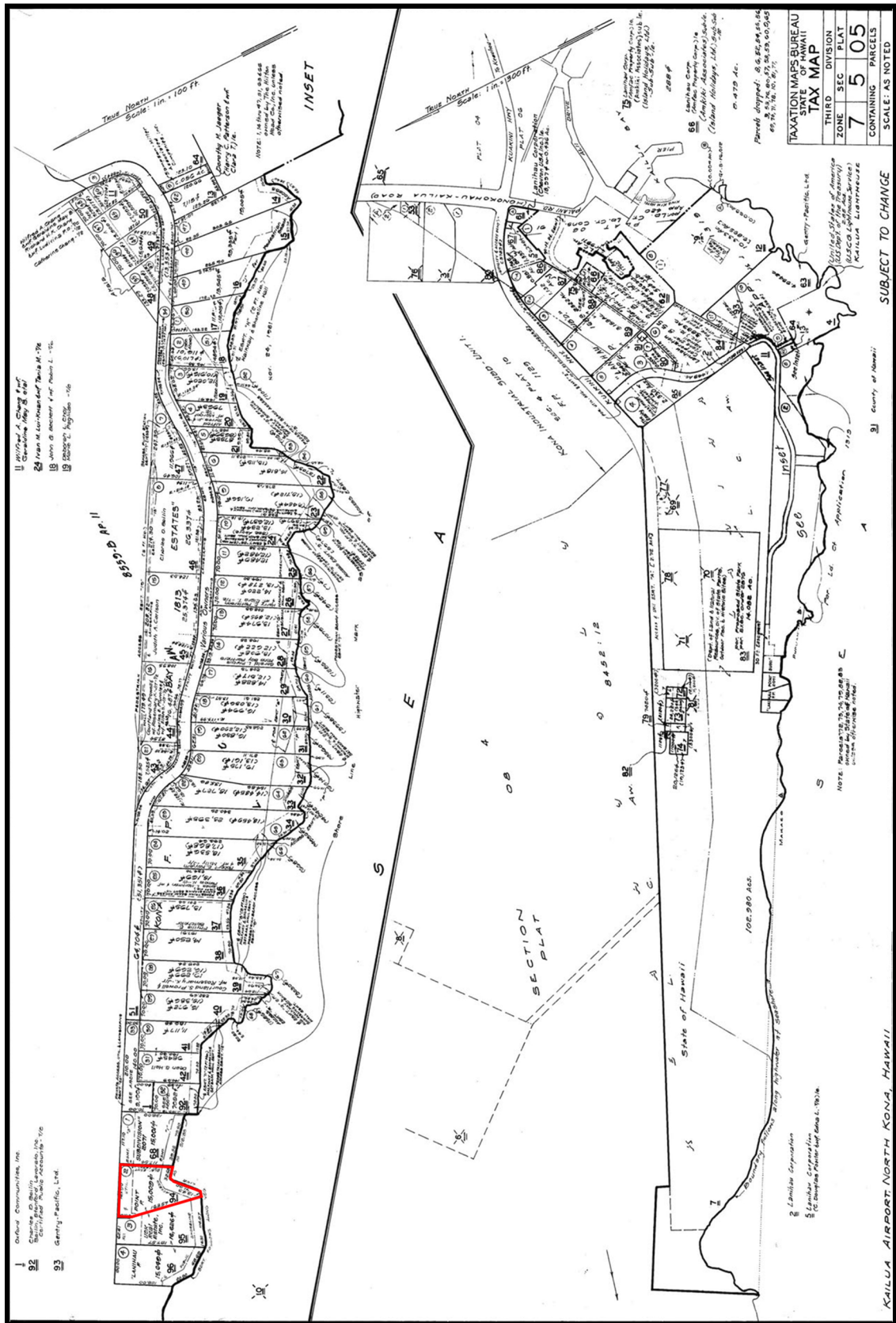




Figure 3. Google Earth aerial image showing project area location.

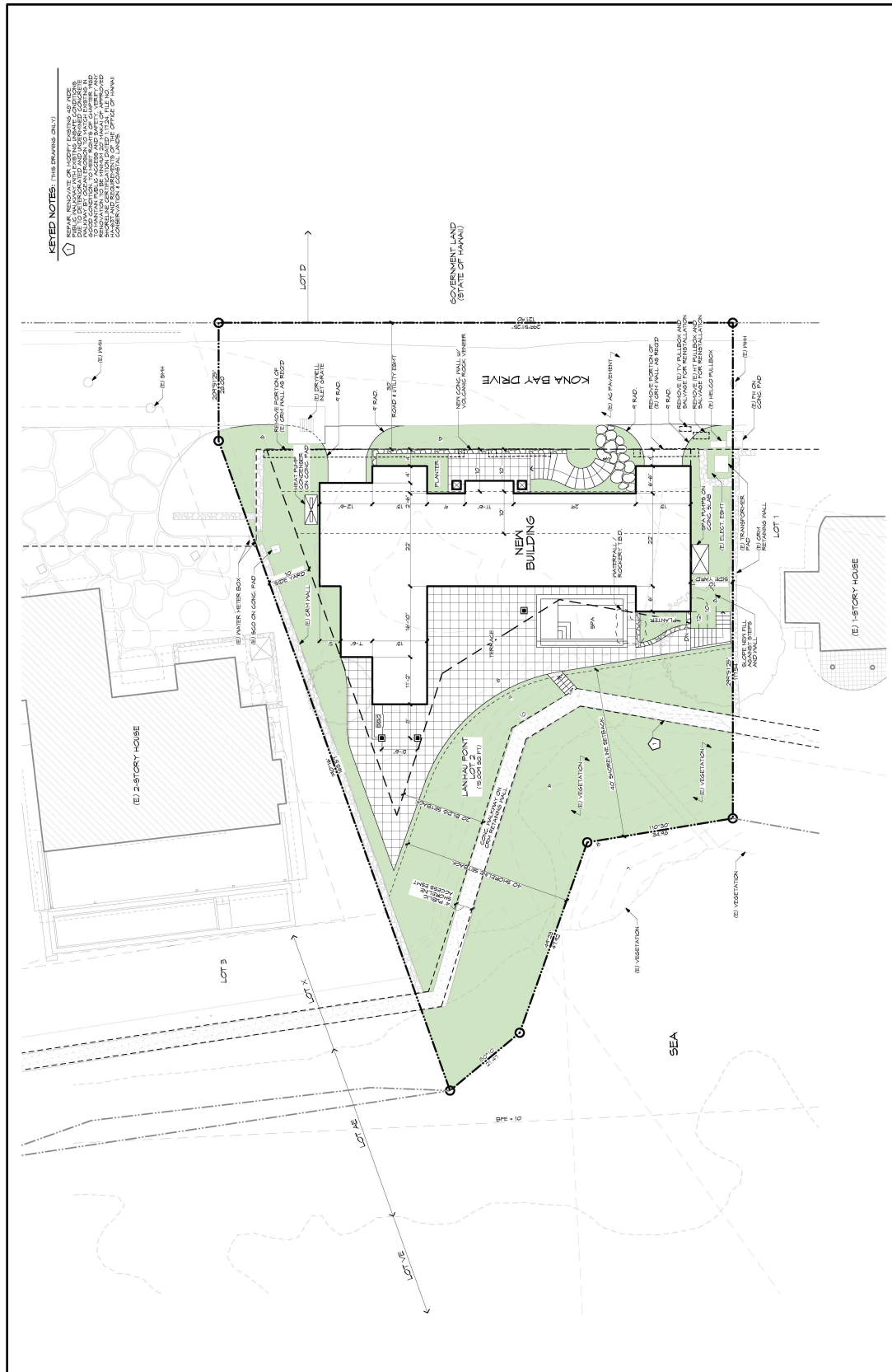


Figure 4. Site plan.

II. A CONCISE CULTURE-HISTORICAL BACKGROUND FOR LANIHAI

The roughly 0.3446-acre project area is located along the coastal margin of the traditional *ahupua'a* of Lanihau 2nd, whose name has been translated by Pukui et al. (1974:128) as “cool heaven.” *Ahupua'a* are land divisions that typically incorporated all of the ecozones from the mountains to the sea and for several hundred yards beyond the shore, assuring a diverse subsistence resource base (Hommon 1986). Lanihau has been divided into two modern *ahupua'a*, Lanihau 1st (also known as Lanihaunui) and Lanihau 2nd (Lanihauiki), and is bordered by the *ahupua'a* of Moeauoa to the south and Keahuolū to the north. Extending from the shore at Kailua (Kaiakeakua) Bay, Lanihau is cut off by Honua'ula *Ahupua'a* at about 2,400 feet elevation.

Lanihau is one of over seventy *ahupua'a* that make up the leeward most *moku* (district) of Kona. Due to its sheer size, the *moku* of Kona was further divided into a northern section, Kona 'Ākau (North Kona), and a southern section, Kona Hema (South Kona). The project area lies within Kona 'Ākau, a traditional geographical area that extended from Keahualono, an alter constructed on the Kohala-North Kona boundary to Pu'uohau, a hill marking the southern extent (Pukui 1983). Kona 'Ākau was further divided into two ancient subdistricts, one of which included the area affectionately known as Kona Kai 'Ōpua (interpretively translated as Kona of the distant horizon clouds), a land area that extended from Lanihau to Pu'uohau (Maly 1998).

Freshwater and Agricultural Practices

In Kona, where there were no regularly flowing streams to the coast, access to potable water (*wai*), was of great importance and played a role in determining the areas of settlement. The waters of Kona were found in springs and caves (found from shore to the mountain lands) or procured from rain catchments and dewfall. Traditional and historic narratives abound with descriptions and names of water sources and record that the forests were more extensive and extended further *makai* than they do today. These forests not only attracted rains from the clouds and provided shelter for cultivated crops, but also in dry times drew the *kēhu* and *kēwi* (mists and dew) from the upper mountain slopes to the low lands (Rechtman et al. 2001). Observing nature, particularly cloud formations was a practice that allowed the native inhabitant of Kona to forecast impending rain. Such knowledge is recorded in the following 'ālo no 'eau (poetical expressions):

Aia ka wai i ka maka o ka 'ōpua.

Water is in the face of the 'ōpua clouds.

In Kona, when the 'ōpua clouds appear in the morning, it's a sign that rain is to be expected. (Pukui 1983)

Ao 'ōpiopio.

Young cloud.

A cloud that rises from sea level or close to the cloud banks and is as white as steam. When seen in Kona, Hawai'i, this is a sign of rain (ibid.:27)

Māmā Kona i ka wai kau mai i ka maka o ka 'ōpua.

Kona is lightened in having water in the face of the clouds.

Kona is relieved, knowing that there will be no drought, when the clouds promise rain. (ibid.:232)

Wai was not only valued for its life-giving properties, but also its purifying qualities. The continuous *mauka* to *makai* flow of *wai* provided fresh drinking water, supplied water to irrigated fields, fishponds, recharged ground water supplies, and sustained productive estuaries and fisheries by transporting nutrients from the uplands to the sea (Sproat 2009).

In the uplands of Lanihau, where there was ample rainfall, native farmers adapted and intensified their agricultural production. Over time, their efforts transformed the landscape of Kona as evidenced in historical accounts that describe a vast plantation extending south from Kailua in Lanihau to Keauhou-Kahalu'u. Handy et al. (1991:524), in referencing an article published in the May 3, 1927, edition of the Hawaiian language newspaper *Ka Hōkū O Hawai'i* provide a general description of this vast plantation:

In the uplands above Kahalu'u, Keauhou, and Kailua, was a vast plantation named Kuahewa (huge), belonging to Kamehameha I. To protect these lands, which were cultivated for his people in the section, Kamehameha established the law that anyone who took one taro or one stack of sugar cane must plant one cutting of the same in its place. Weary of war in 1812, Kamehameha went to Kuahewa and himself worked as a farmer.

What Handy et al. (1991) described as 'Kuahewa' is a portion of what has been referred to by archaeologists as the Kona Field System; an agriculturally fertile region that includes multiple *ahupua'a* across the Kona District (Cordy

1995; Newman 1970; Schilt 1984). This dryland agricultural complex has been understood to be a nearly continuous series of agricultural fields covering approximately 34,350 acres from Kaū Ahupua'a in the north to Ho'okena Ahupua'a in the south, with an altitudinal range of 0-2,500 meters from the coastline to the forested slopes of Hualāli (Cordy 1995; Horrocks and Rechtman 2009). A large portion of the field system has been designated in the Hawai'i Register of Historic Places as Site 50-10-37-6601 and determined eligible for inclusion on the National Register of Historic Places (Newman 1974).

In the 1920s-1930s, Handy and Handy (1972) conducted extensive research and field interviews with elder native Hawaiians. In the lands of North and South Kona, they recorded native traditions describing agricultural practices and rituals associated with rain and water collection. Primary in these rituals and practices was the lore of Lono—a god of agriculture, fertility, and the rituals for inducing rainfall. Handy et al., observed:

The sweet potato and gourd were suitable for cultivation in the drier areas of the islands. The cult of Lono was important in those areas, particularly in Kona on Hawai'i . . . there were temples dedicated to Lono. The sweet potato was particularly the food of the common people. The festival in honor of Lono, preceding and during the rainy season, was essentially a festival for the whole people, in contrast to the war rite in honor of Ku which was a ritual identified with Ku as god of battle. (Handy and Handy 1972:14)

Handy and Handy (1972) noted that the worship of Lono was centered in Kona. The rituals of Lono—"The father of waters"—and the annual Makahiki festival (honoring Lono) preceding and during the rainy season, were of great importance to the native residents of this region (Handy and Handy 1972:14). The significance of rituals and ceremonial observances in cultivation and indeed in all aspects of life was of great importance to the wellbeing of the ancient Hawaiians, and cannot be overemphasized, or overlooked when viewing traditional sites of the cultural landscape.

Kamakahonu, A Royal Center

A little over a half a mile southeast of the project area is Kamakahonu, which during the Precontact and Early Historic Period served as one of several royal centers located along the shoreline between Kailua and Hōnaunau (Cordy 1995; Tomonari-Tuggle 1993). Kamakahonu, literally translated as "the turtle eye" is believed to have been established as a royal center as early as the 16th century by the chief 'Umi-a-Līloa. During the early 19th century Keawe-a-Mahi, a *kahu* (caretaker) of Keawe-a-Heulu presided over Kamakahonu and upon the death of Keawe-a-Mahi, Kamakahonu became the residence of Kamehameha I (Ii 1993). The following description of Kamakahonu, and the events that took place there, are summarized by Rechtman and Poepoe (2008). Wherever possible, information pertinent to the current project area has been added.

Native historian and member of the Kamehameha household, John Papa 'Ī'ī wrote about Kamehameha's move from Kalāke'e (site of the present-day Hulihe'e Palace) to Kamakahonu upon the death of Keawe-a-Mahi (Ii 1993; Pukui et al. 1974). 'Ī'ī purports that Kamehameha was drawn to Kamakahonu "because it was a place celebrated for the constant appearance of fishes." Kamehameha first moved into the former residence of Keawe a Mahi, then built another house on the seaward side of that residence, which 'Ī'ī calls a *hale nana mahina 'ai* (house that observes the planting fields). This house was built high on stones and faced directly upland toward the planting fields of Kuahewa. Like an observation post, this house afforded a view of the farmlands and was also a good vantage point to see canoes coming from South Kona and the Kailua vicinity. According to 'Ī'ī (1993:117-119), "this house was built on the west side of Ahuena [Ahu'ena], a heiau that stood beside Kamakahonu . . .". Kamehameha also built several more structures including three houses (*hale*) thatched with dried ti leaves, a sleeping house (*hale moe*) and separate men's (*hale mua*) and women's eating house (*hale 'āina*) that belonged to his wife Ka'ahumanu. Based on 'Ī'ī's descriptions, Paul Rockwood prepared a sketch (Figure 5) showing a possible spatial distribution of the features within Kamakahonu. Although the current project area is not reflected on the map, it provides a closer look at structures and natural features found around Kamakahonu. Figure 6 is a drawing of Ahu'ena Heiau prepared by Louis Choris, a member of the Kotzebue expedition that anchored in Kailua Bay in 1816 and 1817.

'Ī'ī goes on to describe a coastal trail that extended from the outside of the wall that encircled the royal compound and meandered in a northerly direction in the vicinity of the current project area. This trail is said to have traversed along the coast towards Pu'u O Kaloa and went as far as Kīholo. 'Ī'ī also described the presence of houses in the vicinity of Alanaio pond (Ii 1993).

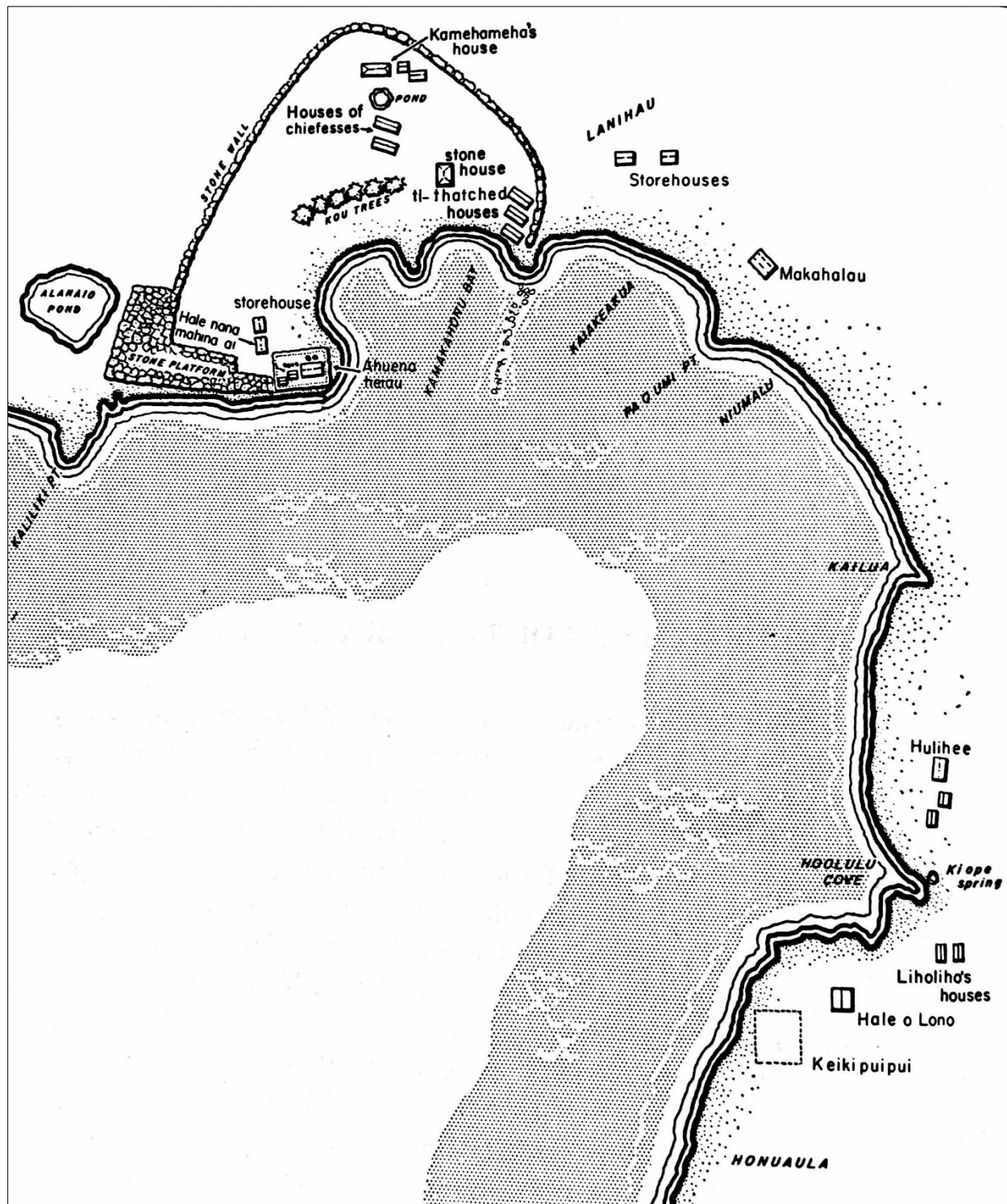


Figure 5. Paul Rockwood's map of Kamakahonu (project area not depicted) (Ii 1993:118).



Figure 6. View of Ahu'ena Heiau (southeast of the project area) in 1816-1817 (Choris 1822).

A series of early written Western accounts spanning a time frame from about 1815 to 1823 (see also Barrère 1975) describe the social and economic milieu of Kamakahonu. While these accounts contain descriptions of some of the interiors of the residential structures within the royal compound and the lands around them, the most detailed descriptions were focused on Ahu'ena Heiau, and they document the transition of Kamakahonu from royal compound to a fort (Arago 1823; Choris 1822; Corney 1896; Ellis 1827; Kotzebue 1821; Wiswell and Kelly 1978).

When the Freycinet expedition arrived in Kailua in 1819, three months after Kamehameha had died, Ahu'ena had been abandoned as a place of worship with a *kapu* placed on it, and "almost all of the images there had been thrown over, and the sacred house of the sovereign was open and filled with furniture of European or Chinese origin, which had been used by the deceased king" (Freycinet 1839 Vol. 2:598 translated in Wiswell and Kelly 1978:74).

The Freycinet expedition also prepared a map of Kailua Bay as it appeared in August of 1819 (Figure 7). While the map shows no structures in the vicinity of the current project area, several houses in the area south and north of the current project area and a battery of cannons along the western shore of the bay are shown. The map also includes notes on eight specific locations that are marked with letters: (a) Observatory of the Corvette *L'Uranie*; (b) Temple of late King Taméaméha; (c) Tomb of Taméaméha; (d) Royal shipyards for the canoes; (e) Battery of two cannon; (f) Storehouses of the King; (g) schooner in construction; (h) Temple of King Urio-Rio (Liholiho) (Freycinet 1839 Vol. 2; translated in Wiswell and Kelly 1978).

Eighteen months after the death of Kamehameha I, in November of 1820 Liholiho (Kamehameha II) relocated what was now his royal entourage to O'ahu, and in doing so, vested in John Adams Kuakini the governorship of Hawai'i Island (Kamakau 1992). Kuakini accepted Liholiho's instruction with zeal, and by 1824 had a new wood-frame house (brought from America) placed within Kamakahonu in the general vicinity of the ti thatched houses that were built by Kamehameha I. Liholiho died in London in July of 1824, and his body was brought back to the Hawaiian Kingdom on board the British warship *Blonde*. On its return voyage to England in June of 1825, the *Blonde* called in at Kailua and reported:

We made the land of Hawaii on the 9th. The first place we distinguished was Kairua [Kailua] which is the seat of government, Kuakini, or John Adams, the governor, residing there. The place contains about 3000 inhabitants, and has a fort mounting twenty guns. The aspect of the country is very rough and uninviting in the neighbourhood, being composed of lavas of various ages, all dark and forbidding. The beach, however, is adorned with cocoa-nut trees, dracaena and oil nut; a little valley, which extends about four miles inland, furnishes breadfruit, bananas, sweet potatoes, and mountain taro, which is a less productive variety of the water taro. At Kairua there is no fresh water, and the inhabitants, for the most part, content themselves with brackish water, which is found in the crevices of lava, and which is the product of the rain, which is retained in the various fissures, and the salt water filtering through the porous rock. (Byron 1826:161-162)

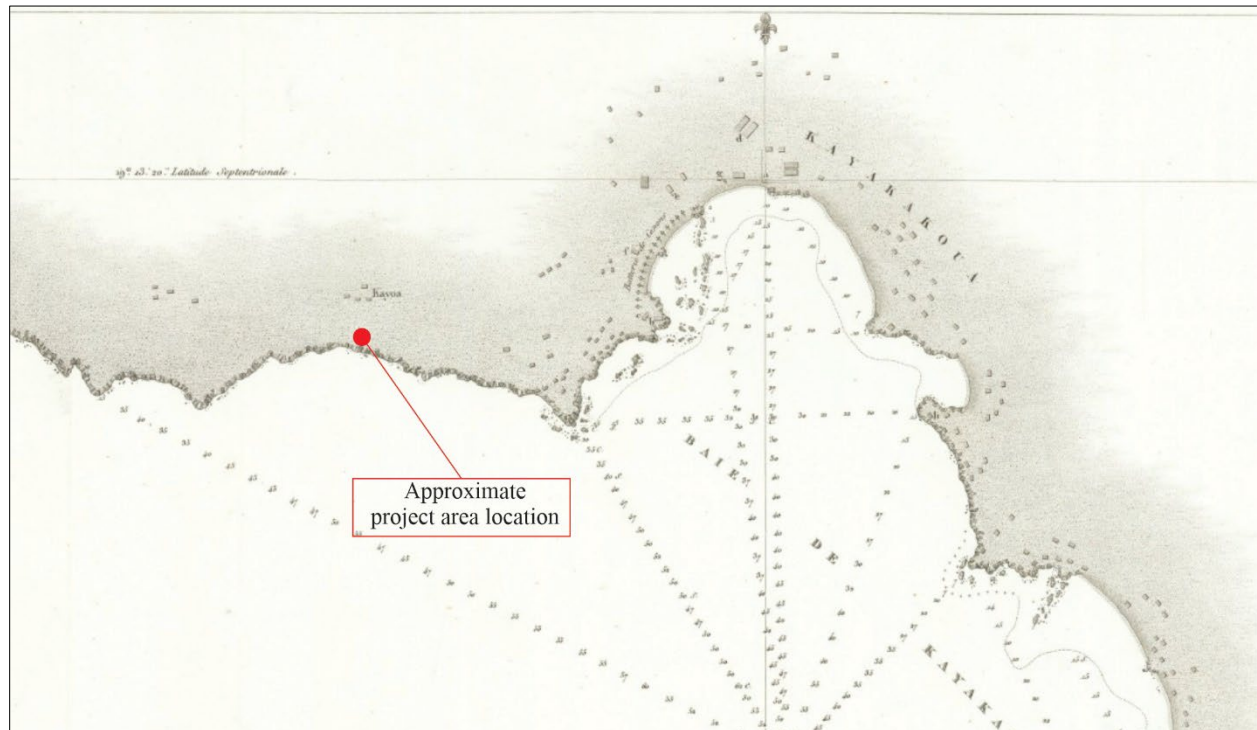


Figure 7. Hydrographic chart of Kailua Bay by Louis Dupprey in 1819 showing approximate location of project area.

It was during his term as governor that Kuakini completed the transformation of Kamakahonu into a fort. He remained there until 1837, then relocated to Hulihe‘e Palace at Kalāke‘e and by January of 1845, he died (Friend 1845). Kuakini had designated William Pitt Leleiohoku I as his heir and successor. However, the Governorship was a responsibility unsuited for Leleiohoku; he was removed by the Kingdom’s Privy Council and replaced by the deputy Governor George Luther Kapeau on an interim basis in November of 1846 with a permanent appointment following in 1850 (Rechtman and Poepoe 2008).

Māhele ‘Āina of 1848

It was at the time of Kapeau’s tenure as governor that the *Māhele* took place. In 1848, the traditional Hawaiian system of land tenure was radically altered in a process known as the *Māhele ‘Āina*. This change in land tenure was promoted by the missionaries and the growing Western population and business interests in the island kingdom who were hesitant to enter business deals on leasehold lands. The *Māhele* (division) defined the land interests of Kamehameha III (the King), the high-ranking chiefs, and the *konohiki*. As a result of the *Māhele*, all land in the Kingdom of Hawai‘i came to be placed in one of three categories: (1) Crown Lands (for the occupant of the throne); (2) Government Lands; and (3) *Konohiki* Lands with the caveat that the rights of the *hoa ‘āina* (tenants) were to be reserved (Chinen 1958:vii; 1961:13).

As a result of the *Māhele*, Lanihau 1st consisting of 302 acres was awarded to the chief William C. Lunalilo as parcel 11 of Land Commission Award (LCAw) 8559B, whereas Lanihau 2nd was retained as Government Land. Through the passage of the Kuleana Act (also known as the Enabling Act) of 1850, *hoa ‘āina* could claim fee simple ownership to parcels that they actively lived on, cultivated, or had improved. A review of the Waihona ‘Āina Database, reveals that in addition to the *konohiki* award to Lunalilo, thirty-nine claims were made by the *hoa ‘āina* for *kuleana* in Lanihau 1st and 2nd *ahupua‘a*. Twenty-eight of these claims were awarded, all of which were distributed in the vicinity of Kamakahonu and the uplands in the vicinity of the present-day Highway 180 (Māmalahoa Highway). No *kuleana* awards were located within or in the general vicinity of the current project area.

William C. Lunalilo, who received Lanihau 1st *Ahupua‘a* was born to Kekauluohi and Charles Kana‘ina in 1835. His mother, Kekauluohi, before marrying Kana‘ina, was a wife of Kamehameha I and then of Kamehameha II (Liholiho). Kekauluohi took the position of *kuhina-nui* from 1839 to 1845, representing Victoria Kamāmalu when she was too young to govern (Kelly 1983). Kekauluohi died in 1845. When Kamehameha V died in 1873, Lunalilo became the first popularly elected Hawaiian king. He ruled for only one year and twenty-five days, before succumbing to pulmonary tuberculosis on February 3, 1874, at the age of 39 (Kuykendall 1953). Lunalilo’s estate was used to provide

income for a home for the “poor, destitute, and infirm people of Hawaiian blood or extraction, giving preference to old people” (Kuykendall 1953:262). Many of his lands were sold over the years by the trustees of his estate (Kelly 1983).

Following the *Māhele*, Kapeau was succeeded as governor of Hawai‘i by Ruth Ke‘elikōlani, the widow of William Pitt Leleiohoku. She proceeded to move the office of governor to Hilo and the residences and fort at Kamakahonu fell into further disrepair. As Jones (1938:47) claims, “In 1861 there were neither soldiers nor policemen stationed at Kailua.” Adapting the map prepared by Dupprey in 1819, Jones provided additional annotation showing some of the changes in the Kamakahonu area, one of which shows a trail alignment extending along the coast in a northwest direction (Figure 8).

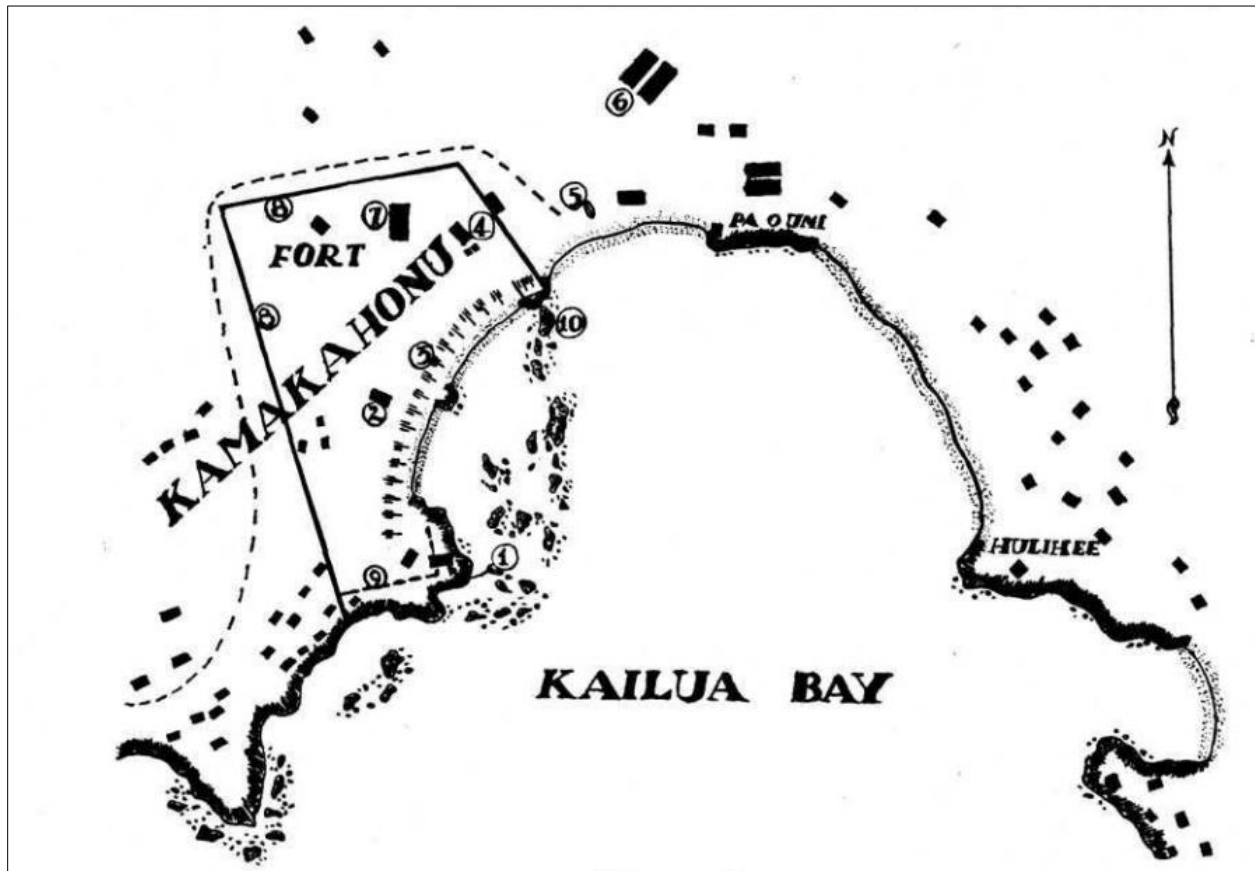
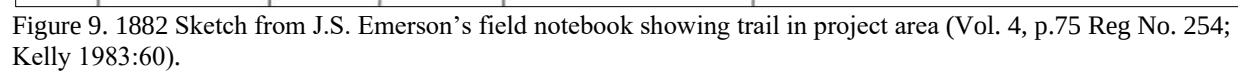


Figure 8. Map of Kailua Bay showing changes in the Kamakahonu area and a trail extending along the coast (project area not depicted) (Jones 1938:40).

As government land, Lanihau 2nd became part of the post-*Māhele* land granting program that the Kingdom established to provide native tenants further opportunity to obtain fee-simple land. In 1875, the government sold four royal patent grants in the vicinity of Kamakahonu as well as eight more grants that extended *mauka* from Kamakahonu to the uppermost boundary of Lanihau 2nd Ahupua‘a. Closest to the project area was parcel 2 of Grant 3148 sold to William Pitt Leleiohoku II, who was the *hānai* son of Ruth Ke‘elikōlani, his parents being Caesar Kapa‘akea and Analea Keohokālōle. Leleiohoku II died two years later in 1877 and his estate was inherited by his sisters Lili‘uokalani and Likelike and his brother King Kalākaua. The sisters sold their interest in Royal Patent Grant No. 3148 to their brother in 1885. Kalākaua converted the two-story stone warehouse/residence at Kamakahonu into a boathouse for whaleboats. Upon Kalākaua’s death in 1891, his estate went to his wife, Queen Kapi‘olani.

J. S. Emerson, who was surveying the lands of west Hawai‘i for the government in the 1880s, prepared a sketch in his field notebook on August 4, 1882, of the coastal lands from Kailua to Keahuolū. This sketch (Figure 9) shows several trails, including a coastal trail that crosses along the coast of Lanihau 1st and is likely in the vicinity of the current project area. Beginning in the early 20th century, the lands encompassed by the current project area were sold as part of Grant No. 7456 as shown in Hawai‘i Registered Map No. 1280 (Figure 10).



In the early part of the 19th century, there were few changes to the project area. A review of Tax Maps revealed that by the 1930s, the project area was part of a larger 91-acre parcel owned by Frank Greenwell (Figure 11). By the 1940s, Greenwell retained a roughly 33-acre portion, in which the project area is located but turned over the remaining section to the Territory of Hawai'i as part of the planned Kona Airport (Figures 12 and 13).

In 1935, Hilo aviator Alfred W. Smith landed the first single-seated monoplane in an area along the coast that he cleared of stones just north of the project area. Smith's aeronautical adventure marked the beginning of what would become the future runway of the Kona Airport. In 1941, the Territorial Governor and the Superintendent of Public Works signed a contract with the Federal government to maintain and operate the future Kona Airport upon completion. However, with the onset of World War II, construction was halted (Hawaii Aviation 2021). By 1944, planning of the airport resumed, and a master plan (Figure 14) was developed that called for the construction of a 200-foot wide by 5,00-foot-long asphalt runway. The master plan map shown below depicts the location of the project area. The airport plans were redesigned, and the size of the runway was reduced to a 100-foot wide by 3,500-foot-long runway (Figure 15). The airport was officially opened on July 10, 1949 (Figures 16 and 17). As air traffic into Kona steadily increased, plans to expand the airport were made, and by 1951, an additional 300 feet of runway was added, 100-foot-wide shoulders were graded on either side of the runway, and a parking lot was added, plus an air freight and access road. Over the next two decades, the airport infrastructure would undergo additional improvements and expansion (Hawaii Aviation 2021).

On April 23, 1951, the Kona Bay Estates subdivision was granted final subdivision approval by the County of Hawai'i. The subdivision included forty lots and a 30-foot right-of-way for access purposes. A historical aerial taken in 1954 shows the project area on the *makai* side of the airport runway and terminal area (Figure 18). The 1954 aerial also shows a graded unpaved road (present-day Kona Bay Drive) traversing along the coast and the project area and continuing in a northwest direction in the area *makai* of the runway. This graded road would eventually become the main access route for residents of the beachfront subdivision known today as the Kona Bay Estates. By 1950, the bulk of the subdivision was laid out except for the northernmost section within which the project area lies (Figure 19). The 1950 TMK map (see Figure 19) also depicts the route of the coastal trail extending through the central portions of the subdivision lots.

By 1970, the Kona Airport was closed and all operations were relocated to the newly built, Keāhole Airport (Hawaii Aviation 2021). By the 1970s, development continued to expand outward from Kailua, however, the project area remained undeveloped as shown in a 1976 historical aerial (Figure 20).

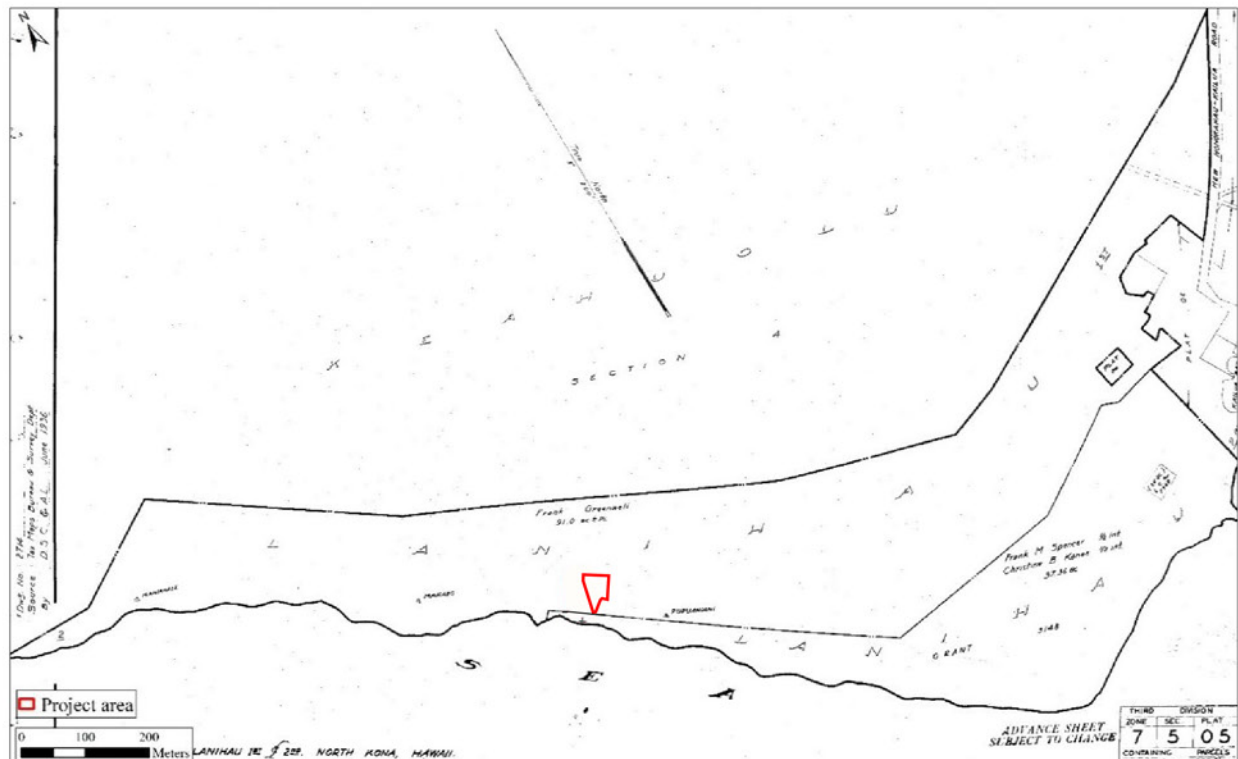


Figure 11. Tax Map (3) 7-5-04 from 1936 showing project area.

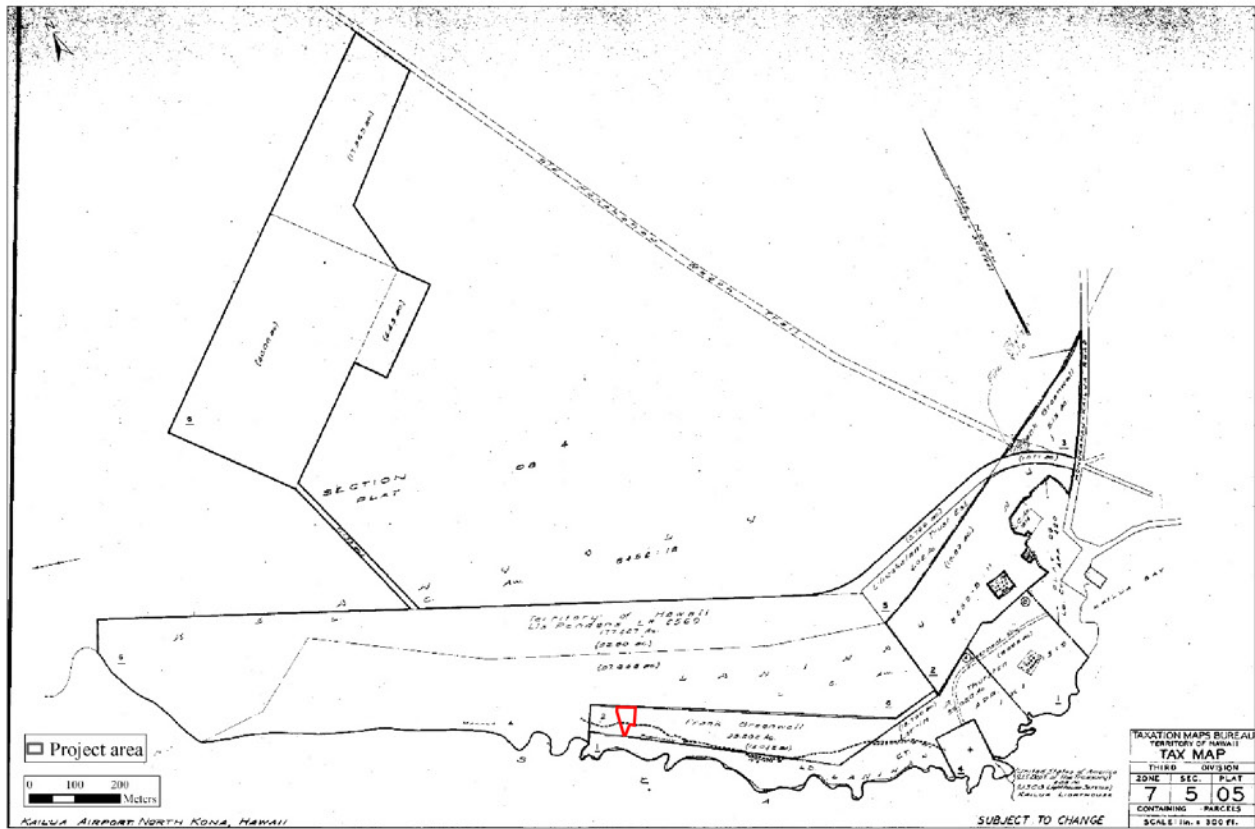


Figure 12. Tax Map (3) 7-5-04 from 1949 showing project area.

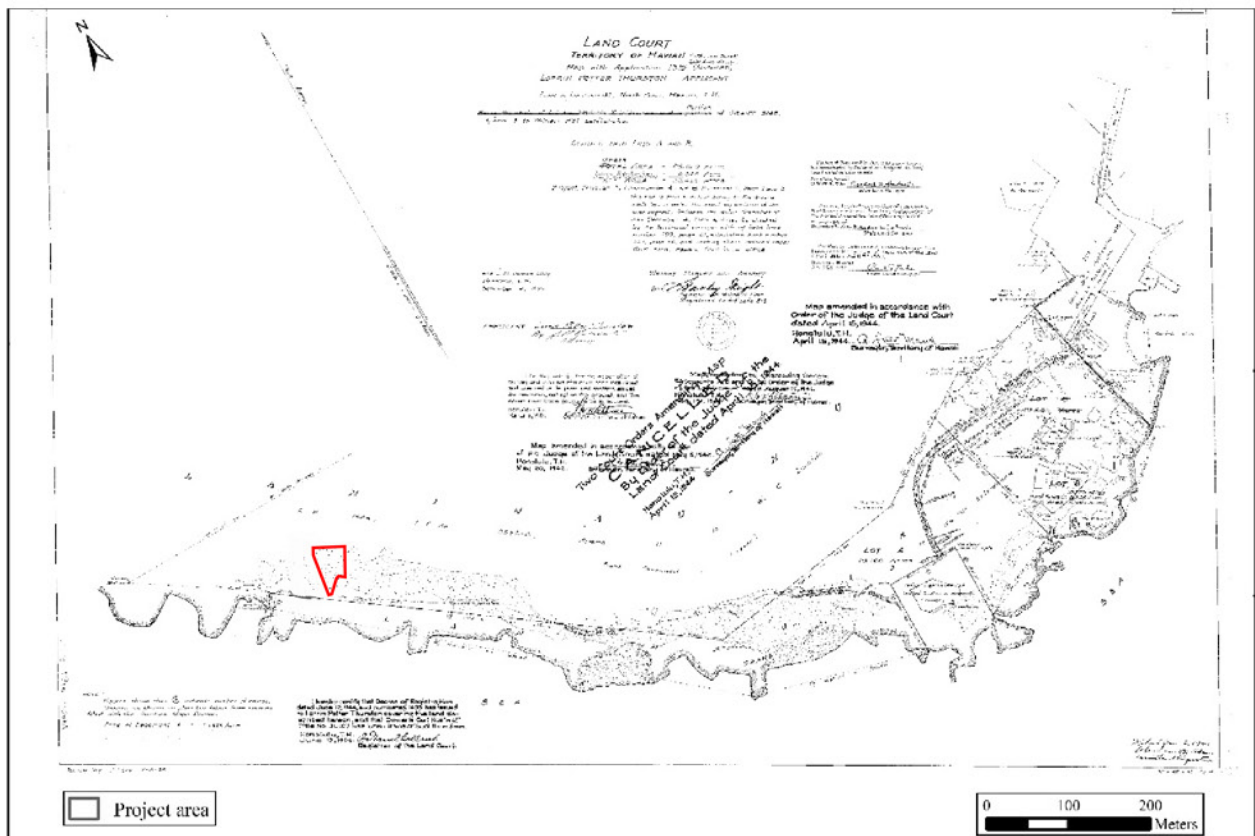


Figure 13. Land Court Application Map 1319 dated 1941 showing project area.

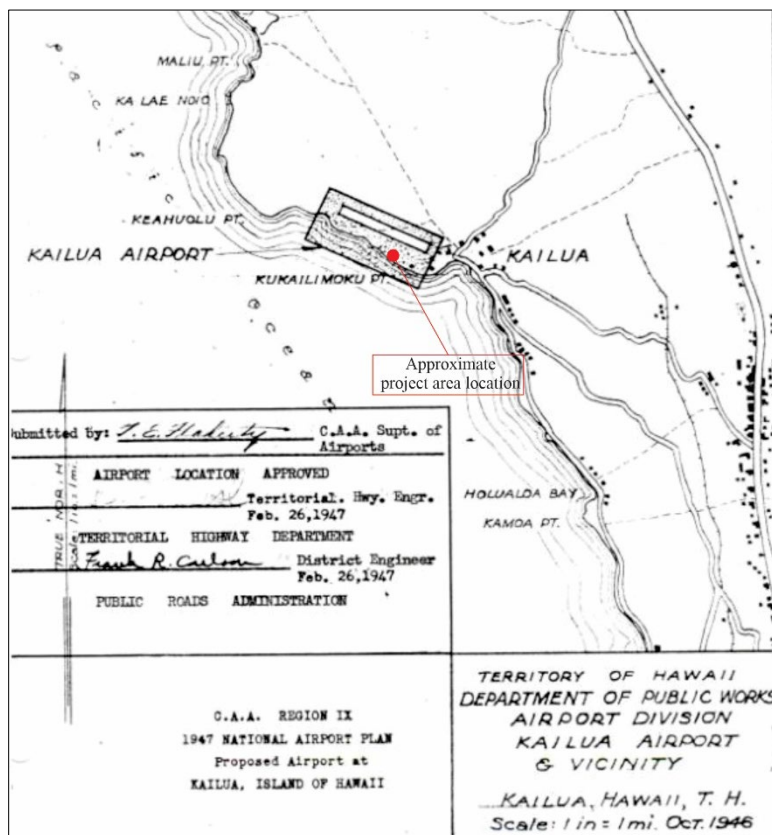


Figure 14. Project area depicted within the planned Kona Airport (Hawaii Aviation 2021).

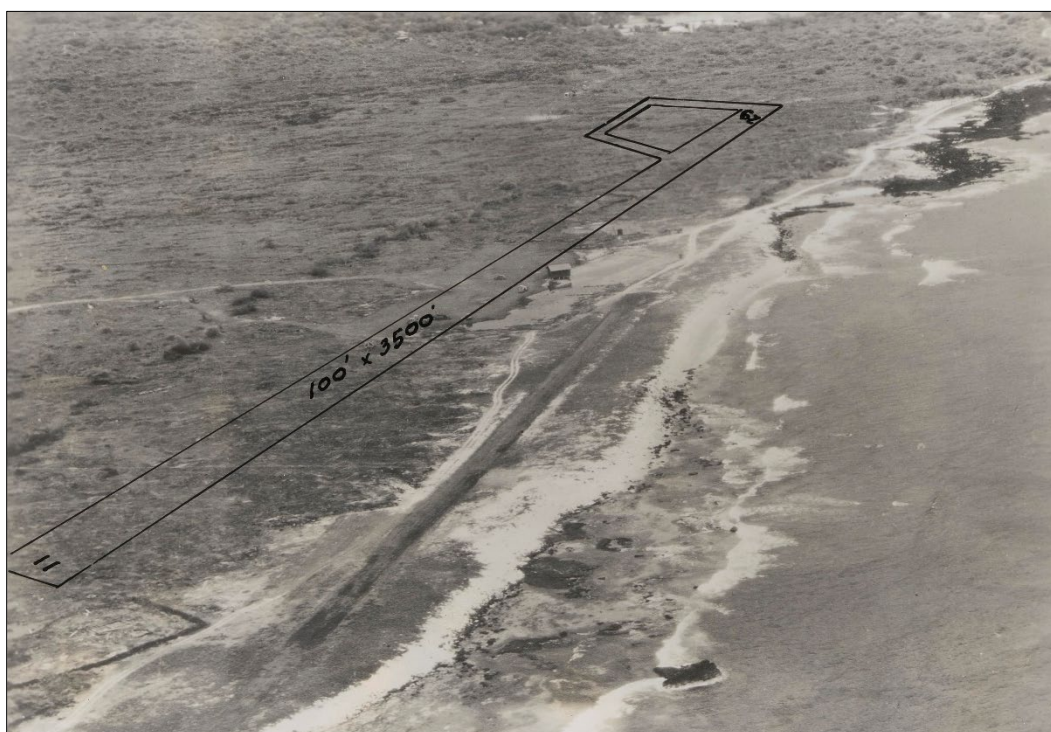


Figure 15. View of old landing strip and proposed Kona Airport runway with view of the project area in background, Hawai'i State Archives PP-2-1-005.



Figure 16. Kona Airport with view of the project area in background, Hawai'i State Archives PP-1-2-023.

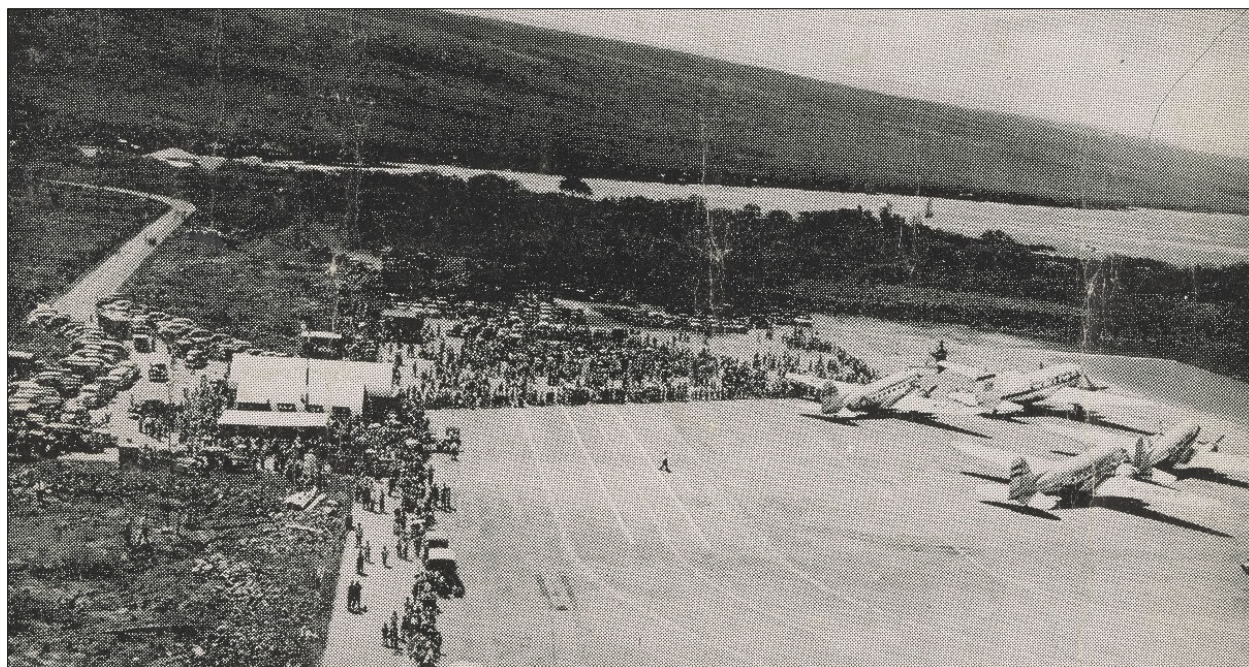


Figure 17. Grand opening of the Kona Airport, 1949 with view of the project area vicinity in background, Hawai'i State Archives PPWD1-2-004.



Figure 18. Aerial photo from 1954 showing the project area in relation to the Kona Airport.

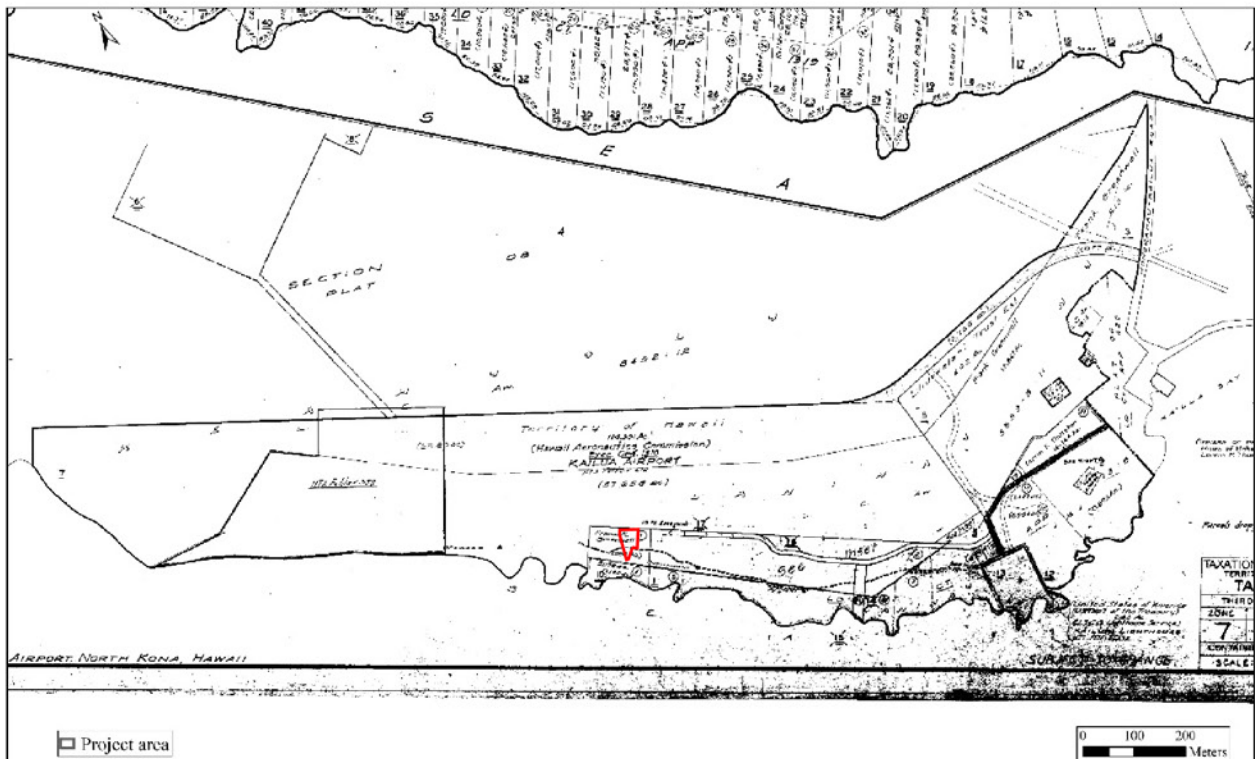


Figure 19. Tax Map (3) 7-5-04 from 1952 showing project area within an undeveloped portion of the newly established Kona Bay Estates subdivision.



Figure 20. Aerial photo from 1976 showing the project area.

Following the closure of the Kona Airport, the land was turned over to the Department of Land and Natural Resources (DLNR) and the County of Hawai'i to establish the Old Kona Airport State Recreation Area and later the Kekuaoakalani Gym-Park Complex. To protect the marine resources in the project area vicinity, in 1992, the DLNR established the coastline fronting the project area and extending north along the Old Kona Airport State Park and south towards Kūkā'ilimoku Point as a Marine Life Conservation District (MLCD). MLCD's are designed to conserve and replenish marine resources by allowing and prohibiting certain marine activities. As listed on the Division of Aquatic Resources website, the permitted activities within this MLCD include:

- To fish for, take, possess or remove akule by handline at night, and 'ōpelu by lift or 'ōpelu net method using bait or chum for commercial or home consumption.
- To fish for, take, possess or remove any finfish for home consumption by throw net or pole-and-line (without reel) with bait from shore.
- To collect wana, wana halula, and hā'uke'uke with hand tool, and without use of scuba gear, from June 1 to October 1.
- To use the state mooring not longer than three hours per boat each day on a first come, first served basis for non-commercial use.
- Commercial dive/tour operations may be conducted at the mooring and from shore with a permit. (Resources 2022)

The prohibited activities include the following

- To fish for, take, injure, kill, possess or remove any marine life, including live sea shell and `opihi, live coral, algae or limu, or other marine life, or their eggs, except as indicated in permitted activities above.
- To take or alter any sand, shell, coral, rock or other geological feature or specimen, or to possess in the water any device that may be used for the taking or altering of marine life, geological feature or specimen.
- To feed or introduce any food material, substance or device as an attractant, directly to or in the vicinity of any aquatic organism except for the purpose of catching and removing that organism as permitted.
- To anchor a water craft in the MLCD, or operate a motorboat or other motor powered water craft within the “No Boating Zone” except for emergency or enforcement purposes.
- To conduct commercial dive/tour activities except as indicated in permitted activities above. (Resources 2022)

Although the Kona Bay Estates subdivision was created in 1951, it wasn’t until the late 1990s and throughout the 21st century that residential construction began to take shape. The current project area and the adjacent lots were the final set of lots to be subdivided (see Figure 19). A review of Google Earth aerial imagery spanning between 1985 through 2002 shows that the initial clearing of the project area began in the early 2000s. By 2014, a residential structure was constructed on the adjacent lot (parcel 096).

Archaeological Sites Identified in the Immediate Vicinity of the Project Area

In January of 1980, Earl Neller (1980) of the DLNR-Division of State Parks responded to reports of exposed human remains following a destructive storm that caused severe disturbance within the Old Kona Airport property. Upon his arrival on January 29th, Neller found that most of the larger bones had already been reburied by the park grounds crew and by squatters living in a settlement at Kūkā‘ilimoku Point. Neller collected any remaining bone fragments, reburied them in a small pit, and conducted a quick reconnaissance of the area where he identified various archaeological features. On June 3, 1980, Neller returned to the area to complete a more detailed investigation, the findings of which he appended in a revised version of his original report. The site types identified by Neller included burials, exposed skeletal fragments most of which were found along the coast, eroding subsurface cultural deposits, petroglyphs, *papamū*, a modified brackish water pool, walls, habitation sites, salt pans, and bait mortars. None of the features were found in or fronting the current project area, however, Neller did identify bait mortars (Site 31) pecked into the *pāhoehoe* at the coast near the northwestern boundary of the adjacent lot 096. Since Neller’s investigation, several more archaeological studies have been conducted on the Old Kona Airport property (see summary of prior studies included in McCurdy et al. 2014).

The features of Site 31 were originally recorded by Paul H. Rosendahl, Ph.D. Inc. (PHRI) while conducting several phases of archaeological study at Kona Bay Estates (Rosendahl 1979). PHRI recorded a total of thirty-nine archaeological features within the subdivision, the findings of which were summarized by (Jensen and Rosendahl 1983). The recorded features included an isolated and clusters of petroglyphs and *papamū*, bait mortars, surface artifact scatters, a modified outcrop, a brackish water pool, a wall, two platforms, a cultural deposit remnant, two areas containing multiple burials, and seven isolated burial features. Unfortunately, a final report for this work was never completed, and more detailed feature records are not available.

In April of 2022, ASM conducted a field inspection of the subject parcel and found that the entire parcel had been mechanically cleared and a stone wall constructed along the boundaries of the property. The ground surface consisted of thin soil accumulations, sand, coral, marine shell, small to medium-sized cobbles, and exposed bedrock in the undisturbed areas. (Figure 21). A paved public shoreline sidewalk was also observed along the western edge of the property’s *makai* boundary (Figure 22). No cultural material or archaeological features were identified within the project area. Persons were, however, observed fishing from the coastline (outside of the project area).



Figure 21. Project area, view to the south (*makai*).



Figure 22. Paved public shoreline sidewalk located along the boundary of the subject parcel.

III. IDENTIFICATION OF VALUED CULTURAL, HISTORICAL, OR NATURAL AND TRADITIONAL AND CUSTOMARY PRACTICES

A review of the cultural-historical background information specific to the project area identified a portion of the *ala loa*, a historic coastal trail that once traversed through the project area. This trail meandered along the coastal portion of Lanihau and the neighboring *ahupua'a* and connected to the royal settlement at Kamakahonu. That portion of the trail that once extended through the Kona Bay Estates subdivision has been destroyed as a result of ongoing residential development.

From the archaeological studies conducted for the Old Kona Airport property as well as Kūkālimoku Point, it is evident that certain coastal sections of Lanihau served as a settlement and some areas were used as burial grounds. The past archaeological studies suggest that burials may be found in subsurface deposits located within the sandy shoreline areas and constructed burial features may be found in the rockier areas. Although no burials or skeletal remains have been identified in the project area or the shoreline fronting the project area, during periods of high surf or storms, skeletal remains are known to erode from this shoreline fronting the Old Kona Airport and Kūkālimoku Point. The landowner must be made aware of the past occurrences and have an understanding of the protocol to report such issues.

Archaeological resources including the presence of bait mortars found along the coast (outside of the project area) and the observations made during ASM's April 2022 field inspection indicate that subsistence fishing and marine resource collection along the shoreline fronting the project area is an ongoing cultural practice.

The following section provides feasible action to be taken to ensure the protection of the above identified cultural, historical, and natural resources and traditional and customary practices.

Feasible Actions to Reasonably Protect Native Hawaiian Rights

Concerning that portion of the ancient *ala loa* trail identified within the project area, the *Ala Kahakai National Historic Trail Draft Comprehensive Management Plan & Environmental Impact Statement* resolved that "In Kona Bay Estates and Lanihau subdivisions traditional access rights were asserted via a law suit. As a result, the *ala loa* was restored by relocating it on a low rock wall fronting both subdivisions' lots" (National Park Service 2007:233). It is the findings of this study that the assertion of traditional access rights and the subsequent relocation of the trail route to the *makai* side of the Kona Bay Estates lots have mitigated the impacts on the *ala loa*. As such, there are no anticipated impacts to the *ala loa* trail from the proposed project, and it is concluded that no additional actions on behalf of the landowner or the approving agencies are recommended.

Regarding the potential for the inadvertent discovery of human skeletal remains along the shoreline following periods of large surf or storm, it is recommended that in the event that skeletal remains wash up along the shoreline, the landowner may assist in resolving this matter by contacting the appropriate agencies including DLNR- State Historic Preservation and Division (SHPD) and Division of Conservation and Resources Enforcement (DOCARE). The most up-to-date contact information for these agencies can be found on their websites.

To prevent impacts on the nearshore fisheries, which are a valued cultural resource and are associated with customary subsistence practices, it is recommended that all residential waste that may be generated from sewage, landscaping runoff, pool, and other household waste is disposed of properly to prevent runoff from entering into the nearshore fisheries. Taking actions to prevent runoff will help to protect the resources within the nearshore fishery and its associated subsistence practices.

In summary, adherence to the above-described recommendations will help ensure that the above-identified valued cultural, historical, or natural resources and traditional customary practices are not adversely impacted by the proposed project.

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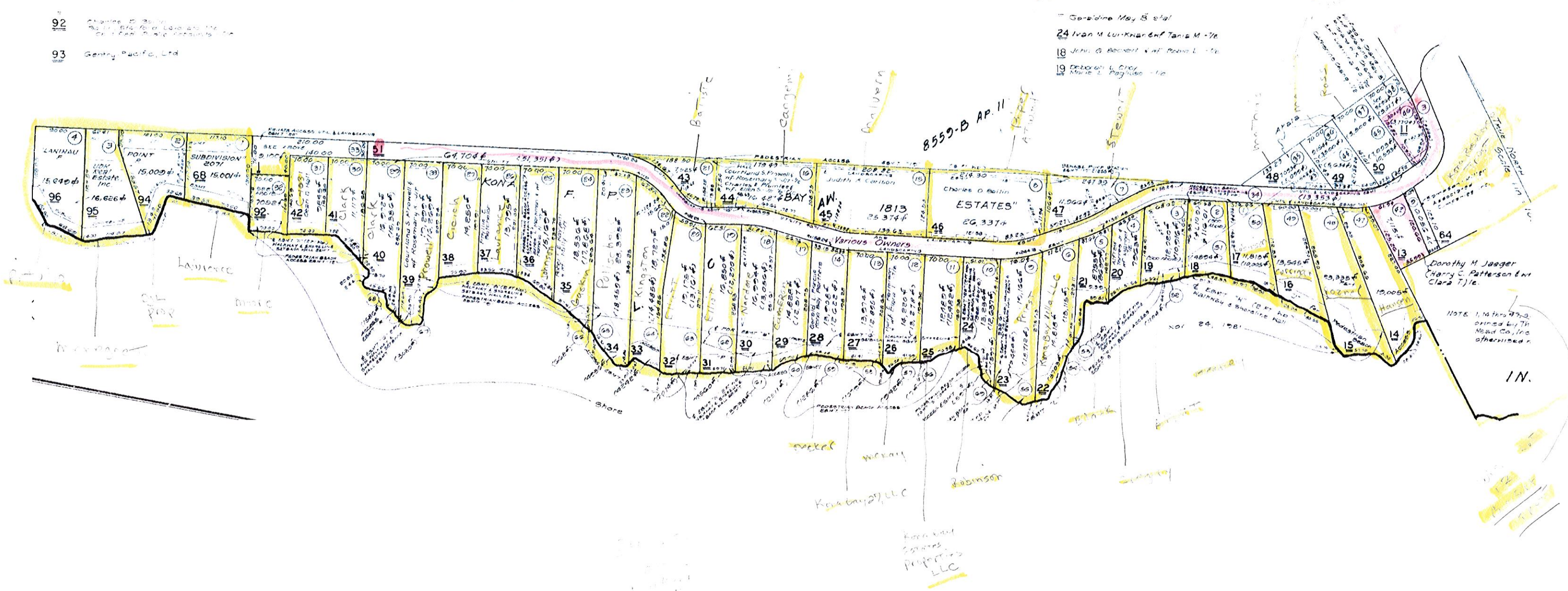
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PATDI INC.
KONA BAY ESTATES TRUST ACCOUNT
75-5706 KUAKINI HWY., STE. 106 PH. 808-326-6022
KAILUA-KONA, HI 96740

DATE June 15, 1998

PAY TO THE ORDER OF Lanikai Partners L.P.

\$ 50.00

*** Fifty and no/100 ***

DOLLARS

Bank of Hawaii
LANIKAI BRANCH
75-5595 PALANI ROAD
KAILUA-KONA, HAWAII 96740

FOR License Fee

[Signature]

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BANK OF HAWAII
CENTRAL HAWAII
HONOLULU, HI 96813
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01-150677

LANIKAI PARTNERS L.P.
3465 Waiolae Ave., Suite 260
Honolulu, Hawaii 96816

06/29/98

0000005000

LICENSE AGREEMENT

This License Agreement made this 17th day of May, 1984, by and between Lanihau Corporation, a Hawaii corporation, whose place of business and post office address is 2828 Paa Street, Suite 3170, Honolulu, Hawaii, 96819, (herein "Licensor"), and Oxford Communities, Inc., a South Carolina corporation, whose place of business and post office address in the State of Hawaii is 225 Queen Street, Honolulu, Hawaii 96813 (herein "Licensee");

W I T N E S S E T H T H A T:

Licensor, in consideration of the fee to be paid by Licensee and the covenants to be observed and performed by Licensee, all as hereinafter set forth, does hereby give and grant to Licensee a license to build upon and use, in such manner and for such purposes as hereinafter set forth, that certain premises described as follows:

That certain ground space containing approximately 5,400 square feet delineated on the map attached hereto as Exhibit A and made a part hereof, and being a portion of Lot 3, as shown on the map entitle "Lanihau Subdivision-Phase I" filed in the Bureau of Conveyances of the State of Hawaii as File Plan 1616 (herein called the "licensed premises").

Subject, however, to easements for access and utility purposes in favor of others entitled thereto over, under and across the licensed premises.

Notwithstanding anything contained herein to the contrary this License Agreement shall not be construed to transfer or convey to Licensee any interest or estate in and to the land described above. This is a license and not a lease.

Upon the observance and performance by the Licensee of all of the covenants of the Licensee herein contained, the Licensor or anyone claiming under the Licensor shall not hinder or interrupt the Licensee's use and enjoyment of the licensed

premises for the term and purposes hereinafter set forth, except as herein provided.

This license shall commence as of the date hereof and continue for a term of fifty years unless extended or sooner terminated as hereinafter provided.

The fee payable for this license shall be ONE DOLLAR per annum for the entire term and any extended term hereof.

Licensee, in consideration of the foregoing grant of license, hereby covenants and agrees with Licensors as follows:

1. Fee. Licensee will pay the fee in lawful money of the United States of America to Licensors at the address set forth above or at such other address as Licensors may from time to time designate in writing to Licensee on the 1st day of June, 1984, and on the 1st day of June of each and every year thereafter.

2. Taxes and Assessments. Licensee will also pay or cause to be paid to Licensors all real property taxes and assessments of every description to which the licensed premises or any part thereof or improvements thereon, or Licensors or Licensee in respect thereof are now or during said term may be assessed or become liable, whether assessed to or payable by Licensors or Licensee, provided however, that all such taxes shall be prorated between Licensors and Licensee as of the commencement and expiration, respectively, of said term and provided further, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Licensee shall be required to pay only such installments of principal together with interest on the unpaid balances as shall become due and payable during said term. Licensee will also pay to Licensors at the time and together with each payment to Licensors

of fee, or other charge which is subject to the State of Hawaii general excise tax on gross income or any successor or similar tax, an amount which, when added to said fee, or other charge (whether actually or constructively received by Licensor), shall yield to Licensor, after deduction of all such taxes payable by Licensor with respect thereto, a net amount equal to that which Licensor would have realized therefrom had no such taxes been imposed.

3. Rates and other charges. Licensee will also pay directly all charges, duties, rates and other outgoings of every description for electricity, gas, telephone, refuse collections, sewage disposal, water or any other utilities or services to which the licensed premises, or any part thereof or improvements thereon or Licensor or Licensee in respect thereof may during the term be assessed or become liable.

4. Observance of laws; waste. Licensee will at all times (a) observe and perform all laws, ordinances, rules and regulations now or hereafter imposed by any governmental authority which are applicable to the licensed premises or any improvement thereon or use thereof, and all recorded protective covenants and restrictions affecting the licensed premises, (b) keep the licensed premises in a strictly clean, orderly and sanitary condition, and (c) not at any time make or suffer any strip or waste or unlawful, improper, or offensive use of the licensed premises. Licensee will indemnify Licensor against all claims and demands for loss or damage and all actions or proceedings by whomsoever brought or made by reason of the nonobservance or nonperformance of the covenants of this paragraph by Licensee or any person claiming by, through or under Licensee.

5. Repair and Maintenance. Licensee will at its own expense at all times during the term cause the licensed premises

and all improvements thereon to be well and substantially repaired, maintained, amended and kept in good and sound condition with all necessary reparations and amendments, excepting reasonable wear and tear and destruction by unavoidable casualty, and will maintain and keep the licensed premises and all improvements thereon in a neat and attractive condition.

6. Inspection. The Licensee will permit the Licensor and its agents to enter the licensed premises and examine the state of repair and condition at all reasonable times during the term and will correct and repair at its expense those defects required by this License Agreement to be repaired, of which notice shall be given by the Licensor or its agents, within 30 days after the giving of such notice, or such additional time as may be reasonably necessary to complete the work in the exercise of due diligence.

7. Permitted uses. The Licensee shall use and allow the use of the licensed premises primarily for the construction, reconstruction, operation, maintenance and repair of a security station and entry gate. The licensed premises shall be continued to be used for its stated purpose during the entire term hereof.

8. Construction of Security Station and Bond. The Licensee may construct a security station and entry gate and related improvements on the licensed premises. The construction of any such security stations, entry gate and related improvements shall be in full compliance with all applicable laws, ordinances and regulations. Prior to the commencement of construction of any of the aforesaid improvements on the licensed premises, the Licensee shall furnish to the Licensor a certificate or other satisfactory evidence of 100% performance and

payment bonds in form and surety satisfactory to the Licensor naming Licensor as co-obligee, for the full and faithful performance of the contract for the aforesaid improvements and for the payment of all labor and materialmen. Any reconstruction, alteration or modification of the aforesaid improvements shall be in compliance with all applicable laws, ordinances and regulations and if such reconstruction, alteration or modification shall cost in excess of \$5,000 Licensee shall furnish to Licensor evidence of 100% performance and payment bonds as aforesaid prior to commencement of such reconstruction, alteration or modification. No construction, reconstruction, alteration or modification of the aforesaid improvements shall be made unless and until the plans for such work shall have been first approved in writing by the Licensor.

9. Liens. The Licensee will not commit or suffer any act or neglect by which the licensed premises or any improvements or the estate of the Licensor shall at any time and during the term become subject to any attachment or any judgment, lien, charge or encumbrance and will indemnify the Licensor from all loss, cost or expense with respect thereto.

10. Indemnity. Licensee will indemnify and hold Licensor harmless from and against all claims and demands for loss or damage including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of the licensed premises by Licensee or any other person claiming by, through, or under Licensee, or any accident, fire, nuisance, or unsafe condition made or suffered on the licensed premises, and will reimburse Licensor for all its costs and expenses, including reasonable attorney's fees incurred in the defense of any such claims. Licensee will hold all goods,

material fixtures, equipment, machinery and other tangible property on the licensed premises at its risk and hold Licensor harmless from any loss or damage thereto from any cause.

11. Assignment. Except as otherwise expressly set forth herein, Licensee will not assign this License Agreement. Licensor understands and agrees that the security station and entry gate which Licensee proposes to construct on the licensed premises will be used as a security station and entry gate for the Licensee's residential subdivision project designated as Kona Bay Estates (Tax Map Key 7-5-05:1, 14 to 23, inclusive, and 25 to 47, inclusive) and for Licensee's contemplated resort/condominium development on Tax Map Key 7-5-05:63 and 12 or any portion thereof (sometimes called "Kona Bay Club"), and that Licensee may, without the prior consent of Licensor, assign this License Agreement to the unit owners' association of said Kona Bay Estates and/or said Kona Bay Club. Licensor further agrees that if Licensee shall sell all of the aforesaid Kona Bay Estates lots to a single buyer (herein called "bulk buyer") and/or if Licensee shall sell said Tax Map Key 7-5-05:portion of parcel 63 (such portion being Lot 10, Map 3 of Application 1319 and being owned by Licensee) or said Tax Map Key 7-5-05:63 and 12, Licensee may, without the prior consent of Licensor, assign this License Agreement to such bulk buyer and/or such buyer of Tax Map Key 7-5-05:portion of parcel 63 or Tax Map Key 7-5-05:63 and 12. In any such assignment the assignee named therein shall covenant in writing to perform all of the obligations of Licensee hereunder.

12. Liability Insurance. Licensee will, at its expense, during the entire term maintain with a responsible insurance company authorized to do business in Hawaii, comprehensive general liability insurance with respect to the licensed

premises. The insurance shall be noncancellable without 30 days written notice to Licensor, name Licensor as additional assured, and have minimal limits of not less than \$1,000,000 for injury to more than one person in any one accident or occurrence and \$100,000 for property damage. Licensee shall deposit current certificates of such insurance with Licensor. The adequacy of the coverage afforded by the liability insurance shall be subject to review by Licensor and Licensee from time to time, and if it appears in such a review that a prudent businessman in Hawaii under similar circumstances would increase the limits of his liability insurance, Licensee shall forthwith increase such limits to that extent.

13. Expenses of Licensor. Licensee will pay to the Licensor on demand all costs and expenses, including reasonable attorney's fees, incurred by Licensor in enforcing any covenants or conditions contained in this License Agreement, in remedying any breach by Licensee, in collecting any delinquent fee, taxes or other charges hereunder payable by Licensee, or in connection with any litigation (other than condemnation proceedings) commenced by or against Licensee to which Licensor shall without fault on its part be made a party.

14. Surrender. At the end of the term or upon sooner termination of this License Agreement, Licensee will peaceably vacate the licensed premises and deliver to Licensor all improvements on the licensed premises in good condition and repair, reasonable wear and tear accepted; provided, that if Licensor shall require by notice to Licensee, Licensee at its expense shall demolish all buildings on the licensed premises and restore the licensed premises to good orderly condition and even grade.

15. Default. This license is given upon the express condition that if Licensee shall (i) fail to pay the fee within 30 days after the same shall become due, regardless of whether legal demand shall have been made; or (ii) fail to observe or perform any other covenant or condition to be observed and performed by Licensee and any such default shall continue for 30 days after written notice to correct has been given to the Licensee; or (iii) abandon the licensed premises; Licensor may in any such event, at once re-enter the licensed premises, and upon or without physical entry at its option terminate this license by giving notice to Licensee, and thereupon take possession of the licensed premises and expel and remove from the licensed premises Licensee or those claiming under Licensee and their effects, and without prejudice to any other remedy or right of action which Licensor may have for collection of arrears of rent or for any preceding or other breach of covenants by Licensee.

16. Notices. Any notice required or permitted by this licensed agreement shall be in writing, and shall either be personally delivered or sent by registered mail to Licensor or Licensee, as the case may be. Personal delivery shall be made by handing the notice to the other party. Registered mail may be sent to the address of the other party hereinbefore stated, or to any new address of which the sender has, in writing, been notified by the other party, such notice being deemed given when mailed. If "Licensor" or "Licensee" refers to more than one person or entity, notice to any one person shall be sufficient.

17. Consents and approvals. All consents and approvals required herein of Licensor or Licensee shall not be arbitrarily or unreasonably withheld and no charge shall be made

therefore, except reasonable expenses incurred by the party whose consent or approval is required in reviewing or processing the request for any such consent or approval.

18. Condition of premises. Licensee has examined and hereby accepts the licensed premises in the existing condition and shall be solely responsible for the construction and repair of all improvements now or hereafter made thereon. Licensee shall be solely responsible for obtaining at its expense (a) all utility services and connections and any other services or facilities required for or in connection with the use of the license premises, and (b) any governmental zoning, classification, approval, or consent required by law for or in connection with the licensed premises or any improvement thereon or use thereof.

19. Dedication of Lot 3 as Public Roadway. Licensee will at its sole cost and expense, prepare or cause to be prepared a subdivision map showing the subdivision of said Lot 3 of File Plan 1616 into two (2) lots, one of such lots being the area whereon the security station and entry gate described in paragraph 8 above shall be situated (herein the "security station lot") and the second lot being the remainder of said roadway Lot 3 (herein the "roadway lot"), and will use its best efforts to obtain the necessary subdivision approvals from the appropriate State and County agencies; provided, that such subdivision map shall be first approved by Licensor which approval shall not be unreasonably withheld. In the event that Licensor shall decide to dedicate the roadway lot to the County of Hawaii, Licensee agrees to an amendment of this License Agreement to the intent and purpose that if the security station lot shall not coincide with the licensed premises as described in

this License Agreement in size and configuration, the security station lot will be substituted for the licensed premises in this License Agreement. Licensee shall commence the preparation of such subdivision map within a reasonable time after the date hereof and pursue the obtaining of the necessary approvals as aforesaid with reasonable diligence.

20. Extensions. This License Agreement shall automatically be extended for additional terms of one year, unless Licensee is in default hereunder or either Licensor or Licensee elects to terminate by giving notice to the other not less than twelve months prior to the expiration of the term or any extended term.

21. Inurement. This License Agreement shall be binding upon and shall inure to the benefit of the Licensor and the Licensee and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first above written.

LANIHAW CORPORATION

By James M. Freymuth - Pres
Its Vice-President
Licensor

OXFORD COMMUNITIES, INC.

By James A. Dool
Its Vice-President
Licensee

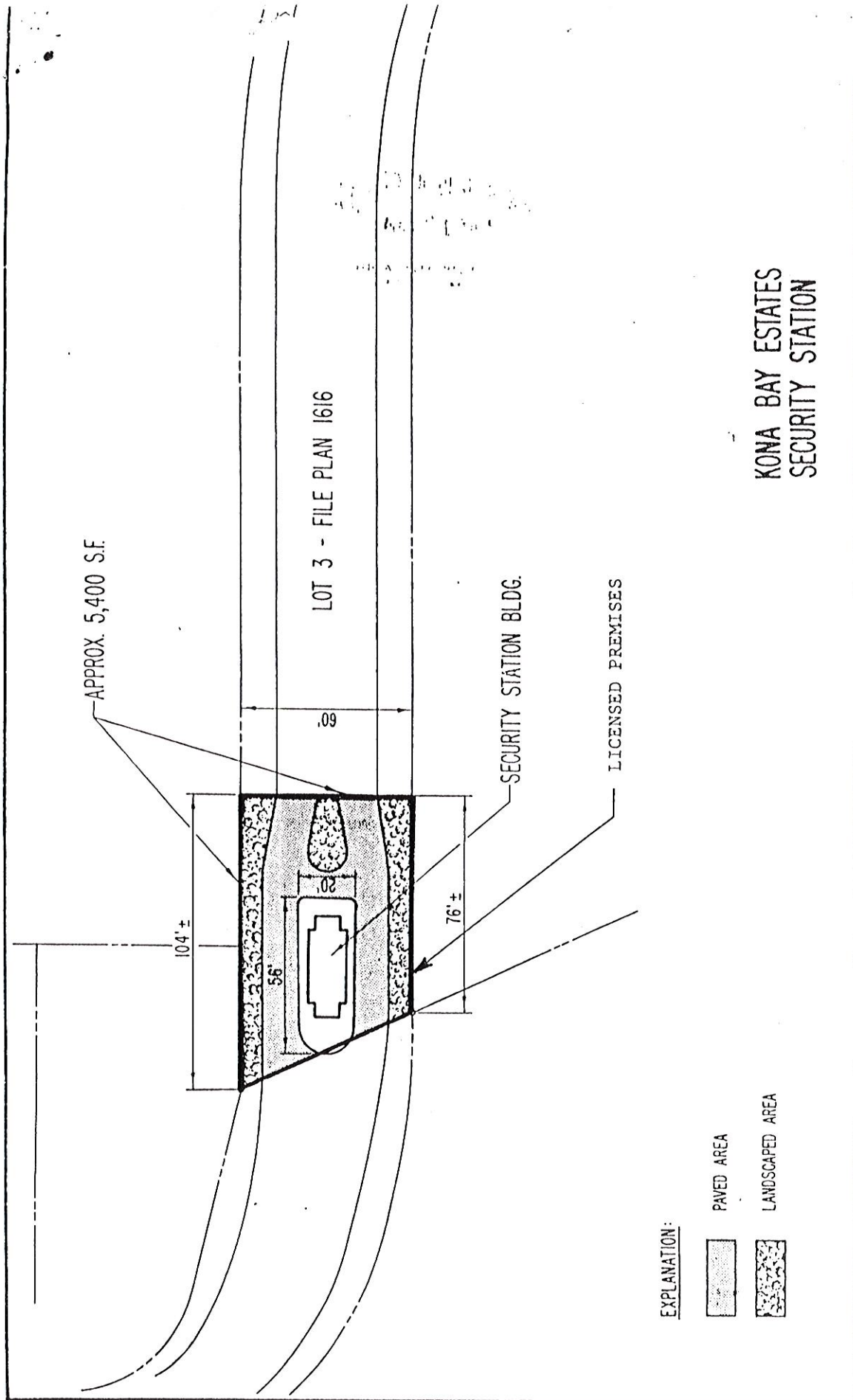
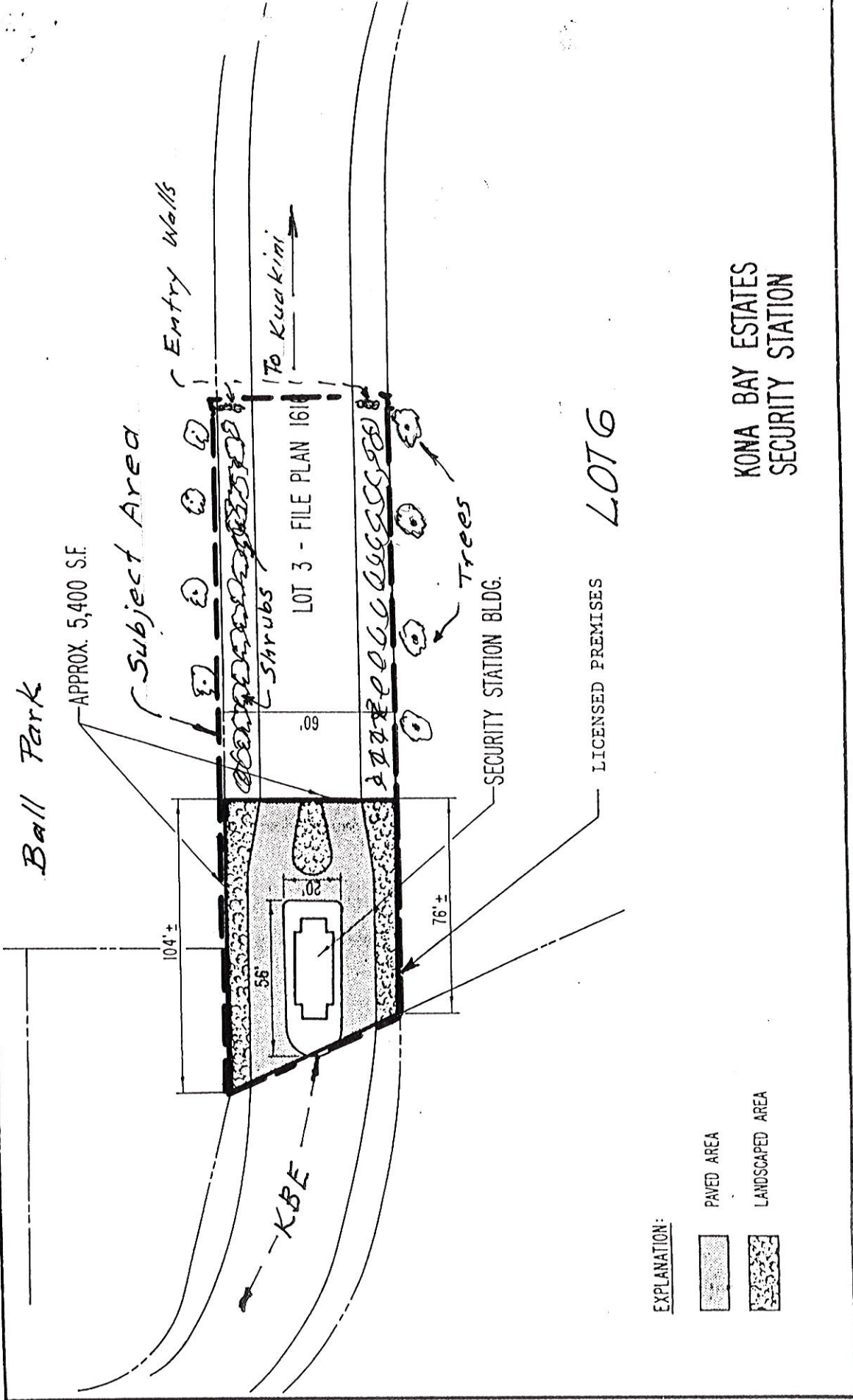


EXHIBIT A



EXPLANATION:

- PAVED AREA
- LANDSCAPED AREA

KONA BAY ESTATES
SECURITY STATION

LOT 6

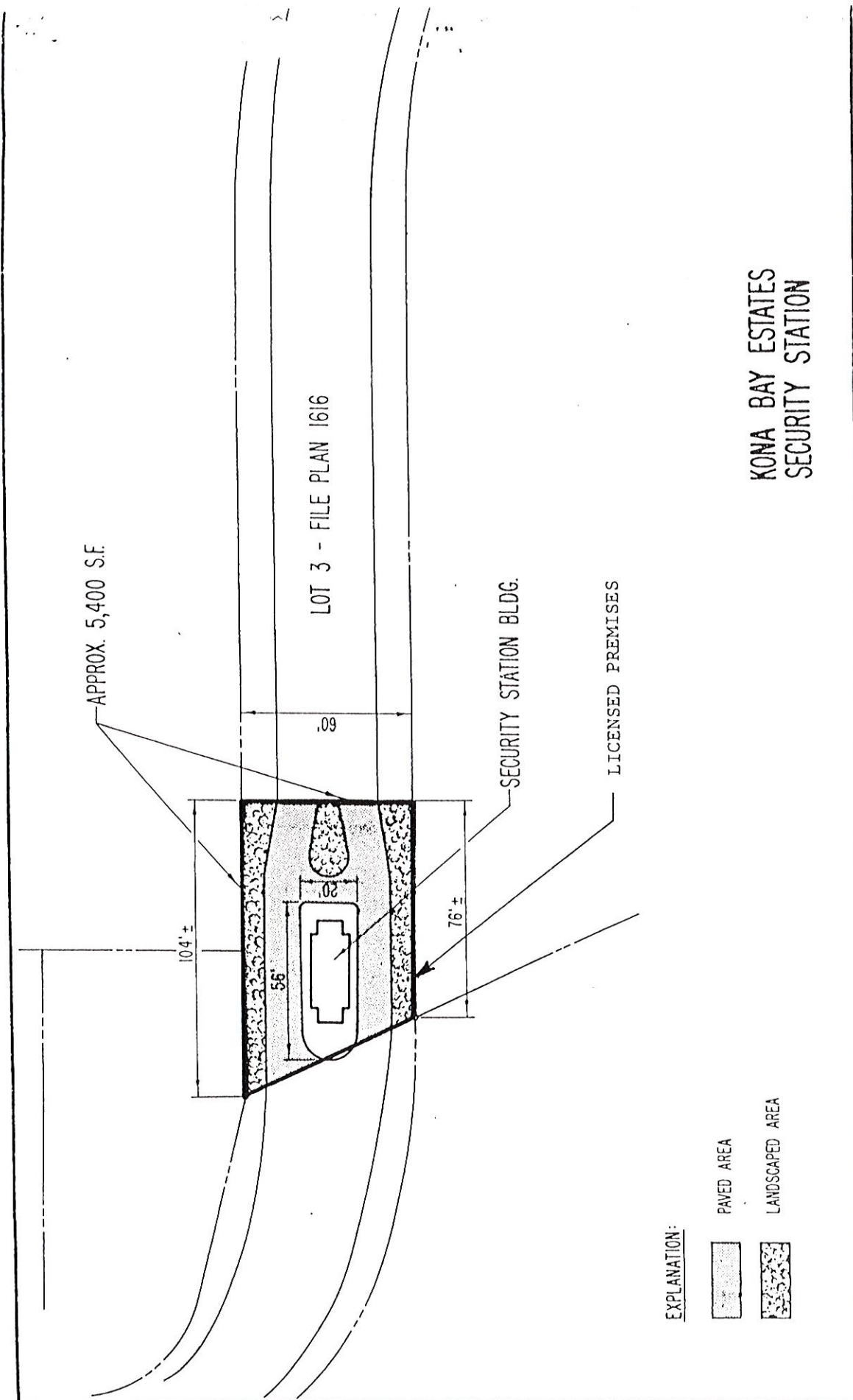
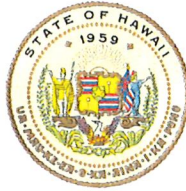


EXHIBIT A

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

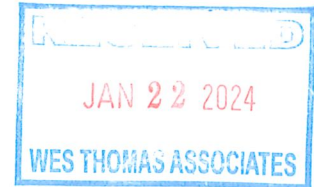
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
LAND DIVISION

P.O. BOX 621
HONOLULU, HAWAII 96809



January 17, 2024

Wes Thomas Associates
75-5749 Kalawa Street
Kailua-Kona, Hawaii 96740

File No.: HA-637

Dear Applicant:

Subject: Transmittal of Signed Shoreline Certification Maps
Owner(s): DJL Properties LLC c/o Suzanne Patterson
Tax Map Key: (3) 7-5-005:094

Enclosed please find copies of the certified shoreline survey maps for the subject property.

If you have any questions, please feel free to call us at (808) 587-0447. Thank you.

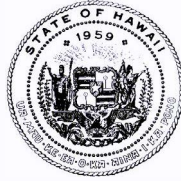
Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca L. Anderson".

Rebecca L. Anderson
Shoreline Specialist

Enclosures

c: DAGS
District Office, if applicable



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: April 1, 2025

TO: Mr. Jeffrey W. Darrow
Planning Director, County of Hawaii

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Special Management Area Use Permit Application (PL-SMA-2025-000076)
Applicant: David Ebenal
Request: To Allow the Construction of a Two (2) Story, Single-Family
Residence and Related Improvements
Tax Map Key: (3) 7-5-005:094, Kailua-Kona, North Kona, Hawai'i

In most cases, the District Health Office will no longer provide individual comments to agencies or project owners to expedite the land use review and process.

Agencies, project owners, and their agents should apply Department of Health "Standard Comments" regarding land use to their standard project comments in their submittal. Standard comments can be found on the Land Use Planning Review section of the Department of Health website: <https://health.hawaii.gov/epo/landuse/>. Contact information for each Branch/Office is available on that website.

Note: Agencies and project owners are responsible for adhering to all applicable standard comments and obtaining proper and necessary permits before the commencement of any work.

General summary comments have been included for your convenience. However, these comments are not all-inclusive and do not substitute for review of and compliance with all applicable standard comments for the various DOH individual programs.

Clean Air Branch

1. All project activities shall comply with the Hawaii Administrative Rules (HAR)

Chapters 11-59 and 11-60.1.

2. Control of Fugitive Dust: You must reasonably control the generation of all airborne, visible fugitive dust and comply with the fugitive dust provisions of HAR §11-60.1-33. Note that activities that occur near existing residences, businesses, public areas, and major thoroughfares exacerbate potential dust concerns. It is recommended that a dust control management plan be developed which identifies and mitigates all activities that may generate airborne and visible fugitive dust and that buffer zones be established wherever possible.
3. Standard comments for the Clean Air Branch are at: <https://health.hawaii.gov/epo/landuse/>

Clean Water Branch

1. All project activities shall comply with the HAR, Chapters 11-53, 11-54, and 11-55.
 1. The following Clean Water Branch website contains information for agencies and/or project owners who are seeking comments regarding environmental compliance for their projects with HAR, Chapters 11-53, 11-54, and 11-55: <https://health.hawaii.gov/cwb/clean-water-branch-home-page/cwb-standard-comments/>.

Hazard Evaluation & Emergency Response Office

1. A Phase I Environmental Site Assessment (ESA) and Phase II Site Investigation should be conducted for projects wherever current or former activities on site may have resulted in releases of hazardous substances, including oil or chemicals. Areas of concern include current and former industrial areas, harbors, airports, and formerly and currently zoned agricultural lands used for growing sugar, pineapple or other agricultural products.
2. Standard comments for the Hazard Evaluation & Emergency Response Office are at: <https://health.hawaii.gov/epo/landuse/>.

Indoor and Radiological Health Branch

1. Project activities shall comply with HAR Chapters 11-39, 11-45, 11-46, 11-501, 11-502, 11-503, and 11-504.
2. Noise may be generated during demolition and/or construction. The applicable maximum permissible sound levels, as stated in Title 11, HAR, Chapter 11-46, "Community Noise Control," shall not be exceeded unless a noise permit is obtained from the Department of Health.
3. Construction/Demolition Involving Asbestos: If the proposed project includes renovation/demolition activities that may involve asbestos, the applicant should contact the Asbestos and Lead Section of the Branch at <https://health.hawaii.gov/irhb/asbestos/>.

Safe Drinking Water Branch

1. Agencies and/or project owners are responsible for ensuring environmental compliance for their projects in the areas of 1) Public Water Systems; 2) Underground Injection Control; and 3) Groundwater and Source Water Protection in accordance with HAR Chapters 11-19, 11-20, 11-21, 11-23, 11-23A, and 11-25. They may be responsible for fulfilling additional requirements related to the Safe Drinking Water program: <https://health.hawaii.gov/sdwb/>.
2. Standard comments for the Safe Drinking Water Branch can be found at: <https://health.hawaii.gov/epo/landuse/>.

Solid & Hazardous Waste Branch

1. Hazardous Waste Program - The state regulations for hazardous waste and used oil are in HAR Chapters 11-260.1 to 11-279.1. These rules apply to the identification, handling, transportation, storage, and disposal of regulated hazardous waste and used oil.
2. Solid Waste Programs - The laws and regulations are contained in HRS Chapters 339D, 342G, 342H, and 342I, and HAR Chapters 11-58.1 and 11-282. Generators and handlers of solid waste shall ensure proper recycling or disposal at DOH-permitted solid waste management facilities. If possible, waste prevention, reuse, and recycling are preferred options over disposal. The Office of Solid Waste Management also oversees the electronic device recycling and recovery law, the glass advanced disposal fee program, and the deposit beverage container program.
3. Underground Storage Tank Program – The state regulations for underground storage tanks are in HAR Chapter 11-280.1. These rules apply to the design, operation, closure, and release response requirements for underground storage tank systems, including unknown underground tanks identified during construction.
4. Standard comments for the Solid & Hazardous Waste Branch can be found at: <https://health.hawaii.gov/epo/landuse/>.

Wastewater Branch

For comments, please email the Wastewater Branch at doh.wwb@doh.hawaii.gov.

Sanitation / Local DOH Comments:

1. According to HAR §11-26-35, No person, firm, or corporation shall demolish or clear any structure without first ascertaining the presence or absence of rodents that may endanger public health by dispersal from such premises. Should any such inspection reveal the presence of rodents, the rodents shall be eradicated before demolishing or clearing the structure. A demolition permit is required prior to demolition.

Other

1. [CDC - Healthy Places - Healthy Community Design Checklist Toolkit](#) recommends that state and county planning departments, developers, planners, engineers, and other interested parties apply these principles when planning or reviewing new developments or redevelopment projects.
2. If new information is found or changes are made to your submittal, DOH reserves the right to implement appropriate environmental health restrictions as required. Should there be any questions on this matter, please contact the Department of Health, Hawaii District Health Office, at (808) 933-0917.

C. Kimo Alameda, Ph.D.
Mayor



Benjamin T. Moszkowicz
Police Chief

William V. Brilhante Jr.
Managing Director

Reed K. Mahuna
Deputy Police Chief

County of Hawai`i

POLICE DEPARTMENT

349 Kapi`olani Street • Hilo, Hawai`i 96720-3998
(808) 935-3311 • Fax (808) 961-2389

APRIL 9, 2025

REC'D HAND DELIVERED

**COH PLANNING DEPT
APR 11 2025 AM 10:58**

TO : JEFFREY W. DARROW, PLANNING DIRECTOR

FROM : CHAD BASQUE, ASSISTANT CHIEF, AREA II OPERATIONS

SUBJECT : SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION (PL-SMA-2025-000076)
APPLICANT: DAVID EBENAL
REQUEST: TO ALLOW THE CONSTRUCTION OF A TWO (2) STORY, SINGLE-FAMILY RESIDENCE AND RELATED IMPROVEMENTS
TAX MAP KEY: (3) 7-5-005:094, KAILUA-KONA, NORTH KONA HAWAII

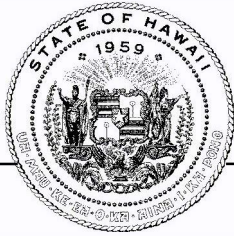
This is in response to your memorandum dated March 27, 2025 regarding the above-referenced Special Permit Application.

Staff has reviewed the application and has no comments or objections to offer at this time.

Should you have any questions or concerns, please contact Captain Calvin Delaries, Jr., Commander of the Kona District, at (808) 326-4646, ext. 299.

CD/jaj
25HQ0302

Planning Dept.
Exhibit <u>3</u>



STATE OF HAWAII OFFICE OF PLANNING & SUSTAINABLE DEVELOPMENT

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

MARY ALICE EVANS
DIRECTOR

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <https://planning.hawaii.gov/>

DTS202503271632HE

Coastal Zone
Management
Program

April 15, 2025

Environmental Review
Program

Mr. Jeffrey W. Darrow, Planning Director
County of Hawaii, Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

Land Use Commission

Land Use Division

Attn: Alex Roy

Special Plans Branch

Dear Mr. Darrow:

State Transit-Oriented
Development

Subject: Special Management Area Major Permit Application (PL-SMA-2025-000076) To Construct a Two (2) Story, Single-Family Residence and Related Improvements, Kailua, Kona, North Kona, Hawaii; Tax Map Key: (3) 7-5-005:094

Statewide Geographic
Information System

Statewide
Sustainability Branch

Thank you for the opportunity to provide comments on the Special Management Area (SMA) Major Permit Application (PL-SMA-2025-000076), transmitted via email dated March 27, 2025, to construct a two-story single-family residence (SFR) and related improvements located at 75-118 Lunapule Road in Kailua-Kona, Hawaii.

According to the subject SMA Major Permit application for the proposed development, the applicant is proposing to construct a two-story SFR with four bedrooms, four-and-a-half bathrooms, two single-car garages, a lanai, and a spa. The subject parcel is in the Lanihau Point Subdivision of Kona Bay Estates. The total development area is 4,942 square feet. The proposed SFR will be connected to existing utility lines.

The parcel is in Flood Zone D and AE. All development and habitable structures are proposed in Flood Zone D. This is a coastal parcel and there is a four-foot-wide easement for public shoreline access at the makai side of this parcel. The estimated project cost is approximately \$2.9 million.

The Office of Planning and Sustainable Development (OPSD) has reviewed the subject SMA Use Permit Application and has the following comments to offer:

1. The applicant should consult with the County of Hawaii Planning Department for the determination of the shoreline setback for the

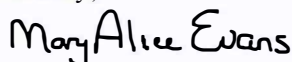
Planning Dept.
Exhibit 4

proposed SFR development and provide mitigation measures to reduce the potential risk of coastal flooding. No construction including staging areas or new structures shall be located within the shoreline setback area as established by the County of Hawaii.

2. The applicant acknowledges the public right to traverse and utilize the lateral shoreline area. The OPSD concurs that the proposed residential development shall allow lateral shoreline public access across the existing 4-foot-wide easement at the makai side of the parcel. The application shall provide the construction schedule with site-specific mitigation measures to minimize the potential impacts on the existing public shoreline access.
3. Site-specific erosion control measures shall be prepared and implemented to prevent any runoff, sediment, soil and debris potentially resulting from the proposed construction activities, including grading, filling and staging, from adversely impacting the coastal ecosystem and the State waters as specified in Hawaii Administrative Rules Chapter 11-54. In addition, Low Impact Development best practices, including rain gardens, vegetated filter strips, and permeable pavements, shall be considered to minimize runoff from the residential development, which is adjacent to the shoreline area.
4. The OPSD recommends that the applicant provide site-specific mitigation measures, including building height and design, building color and landscaping, to minimize the alteration of natural landforms and existing public views to and along the coast, and ensure the proposed residential building is compatible with the existing visual environment.
5. All exterior lighting and lamp posts associated with the proposed residential development shall be cut-off luminaries to provide the necessary shielding to mitigate potential light pollution in the coastal areas and lessen possible seabird strikes. No artificial light, except as provided in HRS §§ 205A-30.5(b) and 205A-71(b), shall be directed to travel across the property boundaries toward the shoreline and ocean.
6. Should any archaeological or cultural resources, or burials be discovered during ground excavation, all construction work shall be ceased immediately. Subsequent work shall proceed only upon an archaeological clearance and written guidance from the State Historic Preservation Division, Department of Land and Natural Resources.

If you respond to this comment letter, please include DTS202503271632HE in the subject line. For any questions regarding this letter, please contact Rachel Beasley of our office at (808) 587-2831 or by email at rachel.e.beasley@hawaii.gov.

Sincerely,



Mary Alice Evans
Director

From: [Nicole Therolf](#)
To: [LPCtestimony](#)
Subject: Opposition to these projects
Date: Sunday, April 20, 2025 8:46:35 AM

We are Nicole and Frank Tobias and we adamantly oppose the following projects:

PL-SMA-2025-000072: Boaz LLC – New Condominium Project

SMA 437: Boaz LLC (Formerly Koa Ventures LLC) – Revocation Request

•PL-SMA-2025-000076: David Ebenal – Single-Family Residence

We moved here, but my brother has lived in Kona for 36 years. His children are born and raised here and are Hawaiian and Samoan. My nieces are proud graduates of Kamehameha schools. The ethnic culture and heritage of these islands must be honored and most importantly preserved! Regardless of fact or opinion these islands were taken and now sadly so many local kanaka and kanaka maoli are priced out of paradise! Hawai'i can not continue to become a millionaire and billionaires playground. You as a County Council must look in the mirror and ask yourself are you for the preservation of the aina or will you allow the precious and sacred land to be desecrated? You have the power to win for local and native Hawaiian people who have had so much taken away! We are not against growth, but we oppose when it only benefits a few and blatantly overlooks the plight of so many. Please vote against these proposals and work with the people to maintain the integrity of Kailua-Kona village. This is not progress it is a land grab and shows no spirit of aloha.

**Mahalo,
Nicole and Frank**

[Yahoo Mail: Search, Organize, Conquer](#)

Planning Dept. Exhibit <u>5</u>
