STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 8, 2008

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

Hawaii

Amend Prior Board Action of October 26, 2007, Agenda Item D-1, Encroachment on State Unencumbered Public Land by Robert C. McKnight; Accreted Lands of Kapaahu, Puna, Hawaii, TMK: Unassigned Lands, Makai of 3rd/1-2-01.

BACKGROUND:

At its meeting of October 26, 2007, Agenda Item D-1 as amended (Exhibit A), the Land Board approved the staff recommendation requiring Mr. McKnight to remove the encroaching structure, all debris and restore the land within sixty (60) days from the date of the Board's action. In addition, Mr. McKnight was to pay fines in the amount of $2,500.00 (amended) as well as administrative costs of $2,100.00. The Board also authorized a fine of $2,000.00 per day in the event of failure to comply with the removal of the structure within the time frame allotted. The sixty-day cure period expired on December 24, 2007.

In a letter dated December 14, 2007 (Exhibit B), Mr. McKnight indicated that he was injured and as a result, unable to meet the deadline for the removal of the structure. He has requested an extension of six months without the $2,000.00 per day penalty. Mr. McKnight has also proposed an exchange of land he owns in the adjacent subdivision as a means of allowing him to keep the structure in its current location.

Staff conducted an inspection of the site on December 28, 2007. The inspection revealed that no effort was, or had been made by Mr. McKnight to begin the removal of the structure (Exhibit C). Staff interviewed Mr. McKnight and he explained that he was reluctant to remove the structure and indicated the State was being unfair in its demand for removal and remediation of the area.

ANALYSIS:

In his letter, Mr. McKnight is proposing to exchange his residential properties for the State land where he illegally erected his structures (Exhibit D, map). Mr. McKnight's property along with others in this subdivision was inundated by lava flow from the Kilauea eruption in 1983. Volcanic activity continues to this day. The illegal structures were built on newly created lava extensions

(accretion). No one is certain of the integrity of this lava extension that extends over the ocean shelf. It is a natural hazard. Adjacent to Mr. McKnight's property is Parcel 45 which the State received land as a donation from the Cottington Trust in July 1998. Parcel 45 provides sufficient access to the lava extension and the sea. To enter into a land exchange with Mr. McKnight would not be in the best interest of the public trust. The lava extension area is still hazardous and susceptible to volcanic activities. Staff is recommending the Board deny Mr. McKnight's proposal for a land exchange.

Due to Mr. McKnight's injury and the accompanying note from Dr. Irvine indicating his inability to work until February 15, 2008, staff is recommending the Board extend the deadline for the removal of the illegal structures to March 31, 2008 without penalty. All fines shall remain the same and penalties shall be assessed should Mr. McKnight fail to comply with the extended terms.

CONCLUSION:

Staff is therefore recommending that the Board amend its prior action of October 26, 2007, agenda item D-1 by extending the deadline for compliance with the conditions for the removal of the encroaching structure to March 31, 2008. Staff is also recommending the Board deny Mr. McKnight's proposal for a land exchange.

RECOMMENDATION: That the Board:

1. Deny Mr. Robert C. McKnight's proposal to enter into a land exchange.

2. Amend its prior board action taken at its meetings of October 26, 2007, Agenda Item D-1 by extending the deadline to remove the unauthorized structures and restoring the area from December 26, 2007 to March 31, 2008.

3. Affirm the $2,500 fine for three offenses, $2,100 for administrative costs and failure to comply after March 31, 2008 additional $2,000 per day fines.

4. After March 31, 2008, if Mr. Robert C. McKnight does not remove the unauthorized structures and does not restore the area, authorize Land Division to hire a contractor or contractors to remove the unauthorized structures and restore the area. Assess Mr. Robert C. McKnight all costs related to the removal of the unauthorized structures and the restoration of the area.

5. In the event, Mr. McKnight fails to reimburse Land Division for its clean-up expenses or fails to pay the $2,500 fine, $2,100 administrative costs, and any additional $2,000 per day fines, authorize Land Division to file a lien on Mr. Robert C. McKnight properties.

6. Review and approval by the Department of the Attorney General; and

7. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,

for Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:

Laura H. Thielen, Chairperson

EXHIBIT A

AMENDED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
Honolulu, Hawaii

October 26, 2007

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

REGARDING: Encroachment on State Unencumbered Public Land

BY: Robert C. McKnight

TMK's: Unassigned-Makai of Plat (3) 1-2-001:

LOCATION: Kapaahu, Puna, Island of Hawaii

BACKGROUND:

This matter was deferred from the July 27, 2007 Board of Land and Natural Resources (Board) meeting on the advice of the Attorney General to allow Staff to research or obtain a determination regarding the State Land Use designation for newly created lands defined as lava extensions. Although the Office of Conservation and Coastal Land (OCCL) Staff believes the subject area in question lies in the Conservation District, discussions with the Attorney General indicated that further clarity was necessary.

OCCL Staff believes this is an urgent matter as the subject area is hazardous and susceptible to volcanic activities. The alleged has chosen to ignore State issued notice and orders to cease and desist and continues to occupy and construct upon State unencumbered public land. Rather then delaying the matter as we await a determination regarding the State Land Use District, Staff wishes to bring this matter before the Board as an alleged encroachment upon State unencumbered public lands.

DESCRIPTION OF AREA:

The subject area is an extension of land created by the inundation of lava during the Pu'u O'o- Kupaianaha lava flow events that commenced in 1983. Volcanic activity continues in this region. The area lies within seismic Zone 2 on a scale of 1 to 9 with Zone 1 as an area of greatest hazard from lava flows. The subject area is raw land amidst pahoehoe lava with little to no vegetation with the Pacific Ocean to the south. **(Exhibits 1, 2 & 3).**

ALLEGED UNAUTHORIZED LAND USES:

Mr. McKnight has encroached upon and constructed a structure on State unencumbered land.

as Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES as
AT ITS MEETING HELD ON
October 26, 2007

Chronology

April 1, 2006-McKnight sends a correspondence to the Office of Conservation and Coastal Lands (OCCL) stating that he would like to build a house and lists 4 lots of record that were part of the Pacific Paradise Ocean Front Estates subdivision. This subdivision has been covered by lava **(Exhibit 4, 5 & 6)**.

April 17, 2006-A cursory site inspection reveals construction of posts and a cement pool on what appears to be newly created land seaward of the subdivision **(Exhibit 7)**.

May 1, 2006-OCCL responds to McKnight via certified mail with a Notice and Order to cease any further activity. It is suggested that the unauthorized land use be removed and the site restored **(Exhibit 8)**.

May 12, 2006-McKnight sends a correspondence to the Department's Land Division in Hilo explaining how he surveyed the area and how he determined the unauthorized construction site that McKnight believes to be within his parcel(s) boundaries. **(Exhibit 9)**.

May 22, 2006-Correspondence from McKnight stating, "the building site maybe on or partially encroaching State accreted land." **(Exhibit 10)**

May 25, 2006-Site inspection conducted by DLNR OCCL and DAGS Survey Staff. Global Positioning System (GPS) measurements were taken during the site inspection to determine the location of the unauthorized construction site **(Exhibit 11)**.

November 28, 2006-Correspondence received from McKnight with sketches of the proposed structure **(Exhibit 12)**.

December 1, 2006-Second Notice and Order issued to McKnight to cease any further activity on State land and within the Conservation District. It is suggested that a Surveyor be obtained to help define the metes and bounds of McKnight's lots **(Exhibit 13)**.

May 4, 2007-Site inspection conducted. Additional work was noted **(Exhibit 14)**.

May 23, 2007-Third Notice and Order issued to McKnight noting that unauthorized land uses initiated by McKnight continues and has expanded **(Exhibit 15)**.

September 5, 10, 11, 17, 18, 21 2007-Mr. McKnight continues to send proposed construction plans to the OCCL.

RESOLUTION OF UNAUTHORIZED LAND USES:

State Land Encroachment

Lava extensions are public domain and belong to the State of Hawaii pursuant to the Admissions Act [State of Hawaii v. Zimring, 58 Haw. 106 at 121, 566 P.2n 725 (1977)]. The Hawaii Revised Statutes (HRS), §171-6 (12) allows the Board to bring such actions

as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall be subject to a fine of not more than $500 a day for the first offense and shall be liable for administrative costs incurred by the department and for payment of damages. Upon the second offense and thereafter, the violator shall (A) be fined not less than $500 nor more than $2000 per day; (B) if required by the board, restore the land to its original condition if altered and assume the costs thereof; and (C) assume such costs as may result from adverse effects from such restoration.

DISCUSSION

Staff notes, based upon the site inspection of May 25, 2006 of which GPS measurements were taken, it was deduced by DAGS Survey Staff that the unauthorized construction site was located approximately 200 feet seaward of the former shoreline **(Exhibit 16).** Furthermore it was admitted by Mr. McKnight that the construction may be encroaching on State land. Upon discussion with the alleged, it was clear to Staff that no professional survey or any type of precise measurement of the metes and bounds of Mr. McKnight's lots were conducted.

With each Notice and Order issued, Staff has consistently suggested that the structure be removed and to restore the site. Staff also suggested to Mr. McKnight that a Surveyor be obtained to help define the metes and bounds of his lots. Staff believes that Mr. McKnight was given amply time to remove the encroachment and restore the land. Instead additional work was conducted. Mr. McKnight continues to send construction plans and designs to the OCCL. OCCL instigated the investigation regarding the encroachment, as it was believed that the subject area (lava extension) is within the Conservation District as the lands mauka of the former shoreline lies within the Conservation District and the lands makai of the former shoreline also lies within the Conservation District. However no determination was forthcoming to substantiate that the lava extension was indeed in the Conservation District.

The Notice and Orders issued should have a deterrent effect on alleged violators to prevent them from doing or allowing malfeasance on State land. The Department cannot ignore blatant displays of disregard for our laws. Staff believes that the alleged should be fined one time for the encroachment, and two times for continuing to work despite being served with two Notice and Orders to cease any further activities. In addition, Staff recommends administrative penalties, removal of the encroaching structure and restoration of the land. This submittal and notice of the Board's meeting shall be sent to the alleged by certified mail to the address on record in Hawaii.

FINDINGS

1. That Mr. Robert C. McKnight did in fact, authorize and cause the encroachment on State land;

2. That Mr. Robert C. McKnight willfully disregarded two Notice and Orders to cease any further activities.

Board of Land and Natural Resources

ENF: HA 06-61/Encroachment

AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to Chapter 171, Hawaii Revised Statutes (HRS), the Board finds Mr. Robert C. McKnight in violation of Chapter 171-6(12), HRS, and is subject to the following:

1. Mr. Robert C. McKnight violated the provisions of Chapter 171, HRS, in three instances by conducting the unauthorized construction of a structure on State land, and failing to cease and desist after written notification on at least two occasions. Mr. McKnight is fined a total of $4,500.00 for three offenses;

2. Mr. Robert C. McKnight is fined an additional $2,100.00 for administrative costs associated with the subject violations;

3. Mr. Robert C. McKnight shall pay all fines (total $6,600.00) within sixty (60) days of the date of the Board's action;

4. Mr. Robert C. McKnight shall at his own expense remove the encroaching structure, all debris and restore the land within sixty (60) days of the date of the Board's action;

5. That in the event of failure of Mr. Robert C. McKnight to comply with any order herein, Mr. McKnight shall be fined an additional $2,000.00 per day until the order is complied with; and

6. That in the event of failure of Mr. Robert C. McKnight to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,

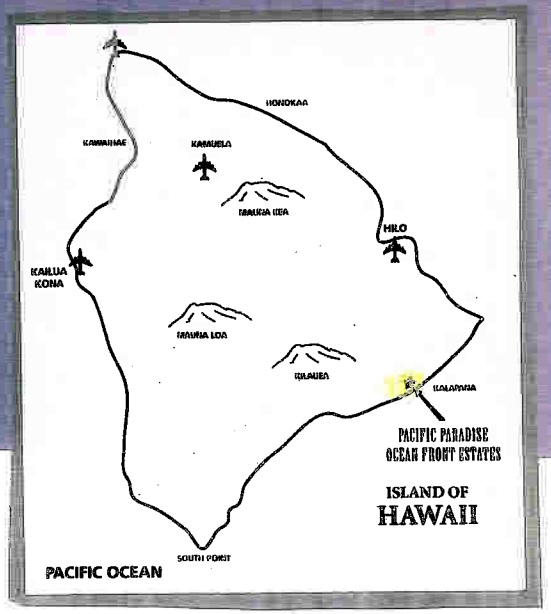
K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

for Laura H. Thielen, Chairperson
Board of Land and Natural Resources

Approved As Amended. The Board amended Recommendation No. 1 by reducing the fine from $4,500.00 to $2,500.00. The Board affirmed the assessment of administrative costs of $2,100.00.

EXHIBIT 1



www.hawaiianimages.net by Brian Powers

9/28/2003

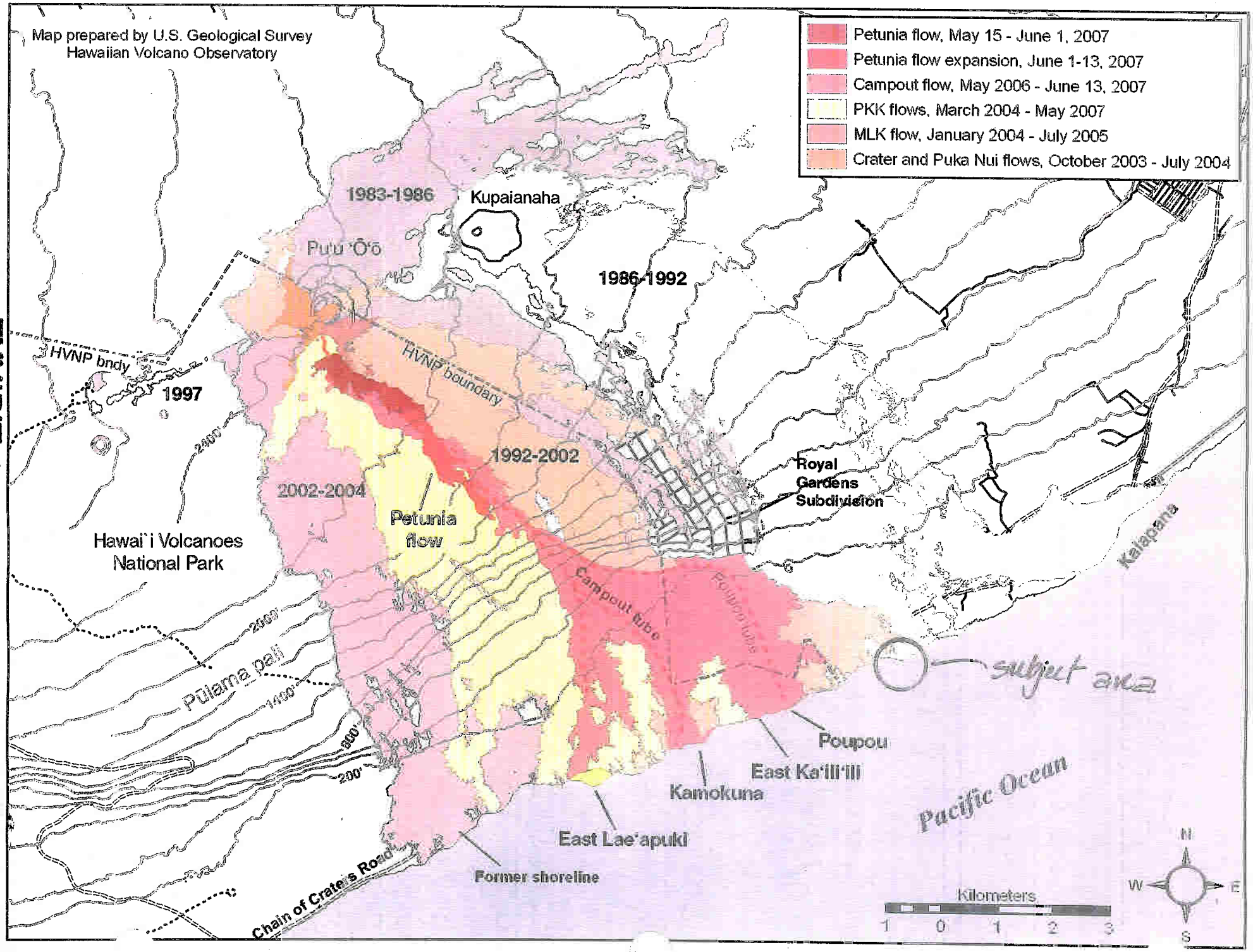
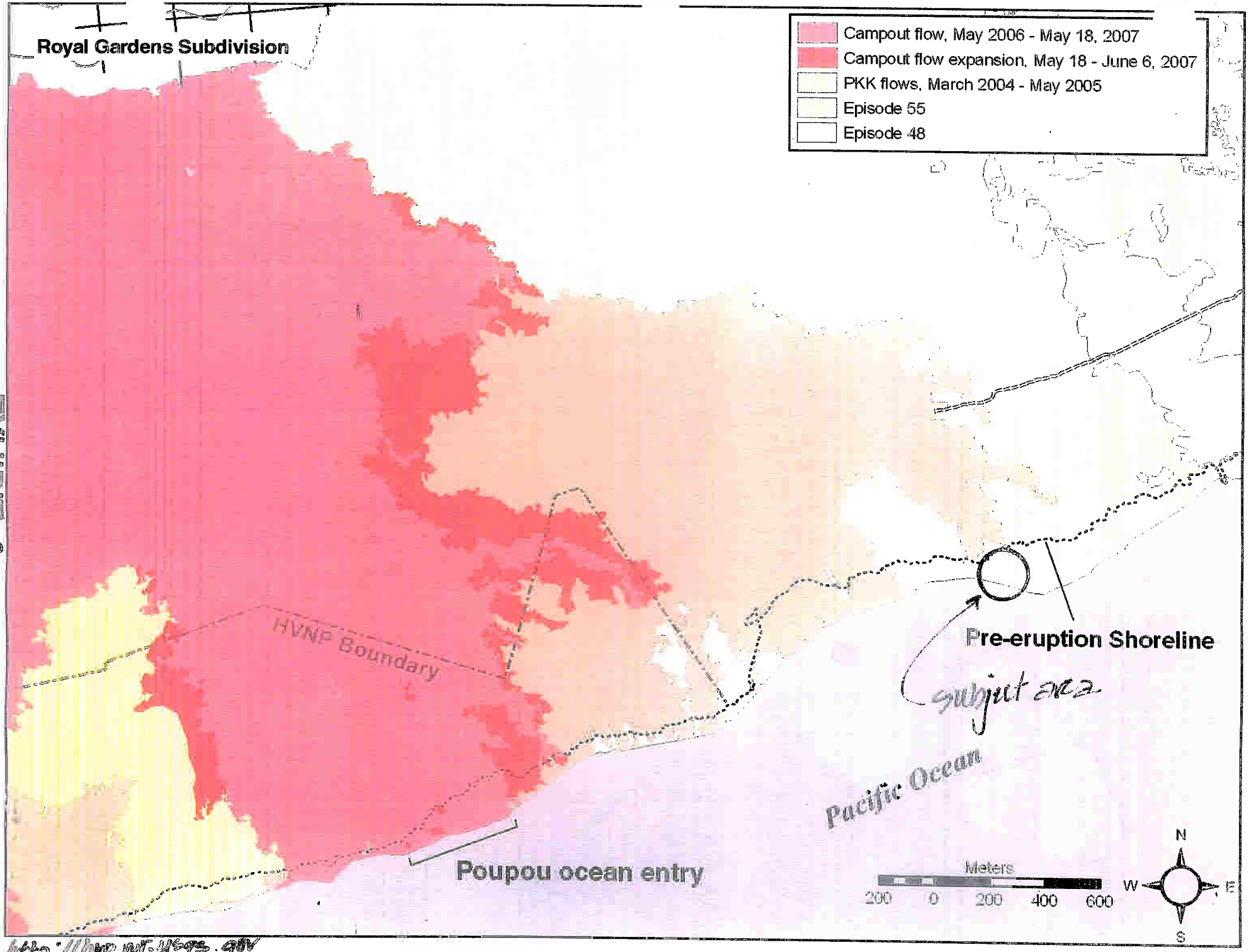
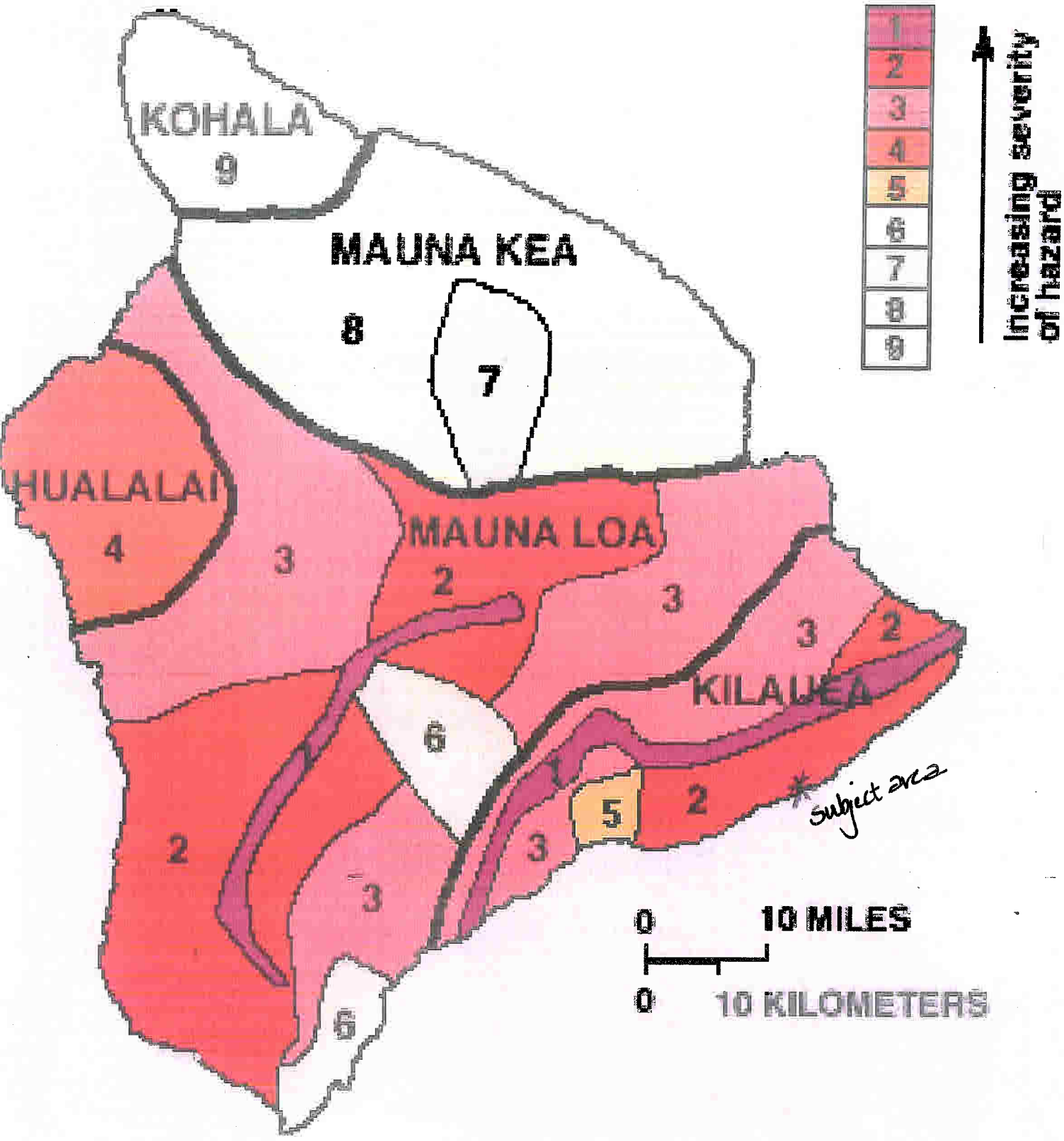

Map prepared by U.S. Geological Survey
Hawaiian Volcano Observatory
Petunia flow, May 15 - June 1, 2007
Petunia flow expansion, June 1-13, 2007
Campout flow, May 2006 - June 13, 2007
PKK flows, March 2004 - May 2007
MLK flow, January 2004 - July 2005
Crater and Puka Nui flows, October 2003 - July 2004
1983-1986
Kupaianaha
Puu 'O'o
1986-1992
HVNP bndy
1997
HVNP boundary
1992-2002
2002-2004
Petunia flow
Hawai'i Volcanoes National Park
Royal Gardens Subdivision
Kalapana
Campout flow
Poupou flows
subject area
Pulama pali
Poupou
East Ka'ili'ili
Kamokuna
Pacific Ocean
East Lae'apuki
Former shoreline
Chain of Craters Road
Kilometers
1 0 1 2 3
N
W
E
S

EXHIBIT 2



http://hvo.wr.usgs.gov



USGS Hawaiian Volcano Observatory http://hvo.wr.usgs.gov

EXHIBIT 3

O.C.C.O.
Post Office Box 621,
Honolulu, HI 96509

April 1, 2006

To whom it may concern,

I would like to build a house that is modern, low cost and energy efficient with intergraded ecological systems. The structure will utilize existing technology such as photovoltaic film, standard building materials and liquid storage systems. A progressive above ground, water catchments-storage, and gray water system interfaced with a hot saltwater pond, waste treatment storage system is planned for beneath the floor. The system allows for emergency water storage and waste removal periodically. I plan to integrate the solar system for heating water, into the walkway surrounding the house and modest decks. The photovoltaic film for producing electricity is to be adhered onto the corrugated roofing sheets to cover the entire visual surface of the roof. The design of the entire project has been well thought out with respect to the safety, efficiency, functionally and practicality. A natural looking saltwater pond is planned for adjacent to the house.

Building site

TMK's: 1-2-29-46, 1-2-29-47, 1-2-29-49 and 1-2-29-50. Total land area: 57,090 sq. ft.

Thank you for your time in this matter.

Sincerely,

Robert C. McKnight

[redacted]
Pahoa, HI 96778

Telephone: [redacted]

EXHIBIT 4

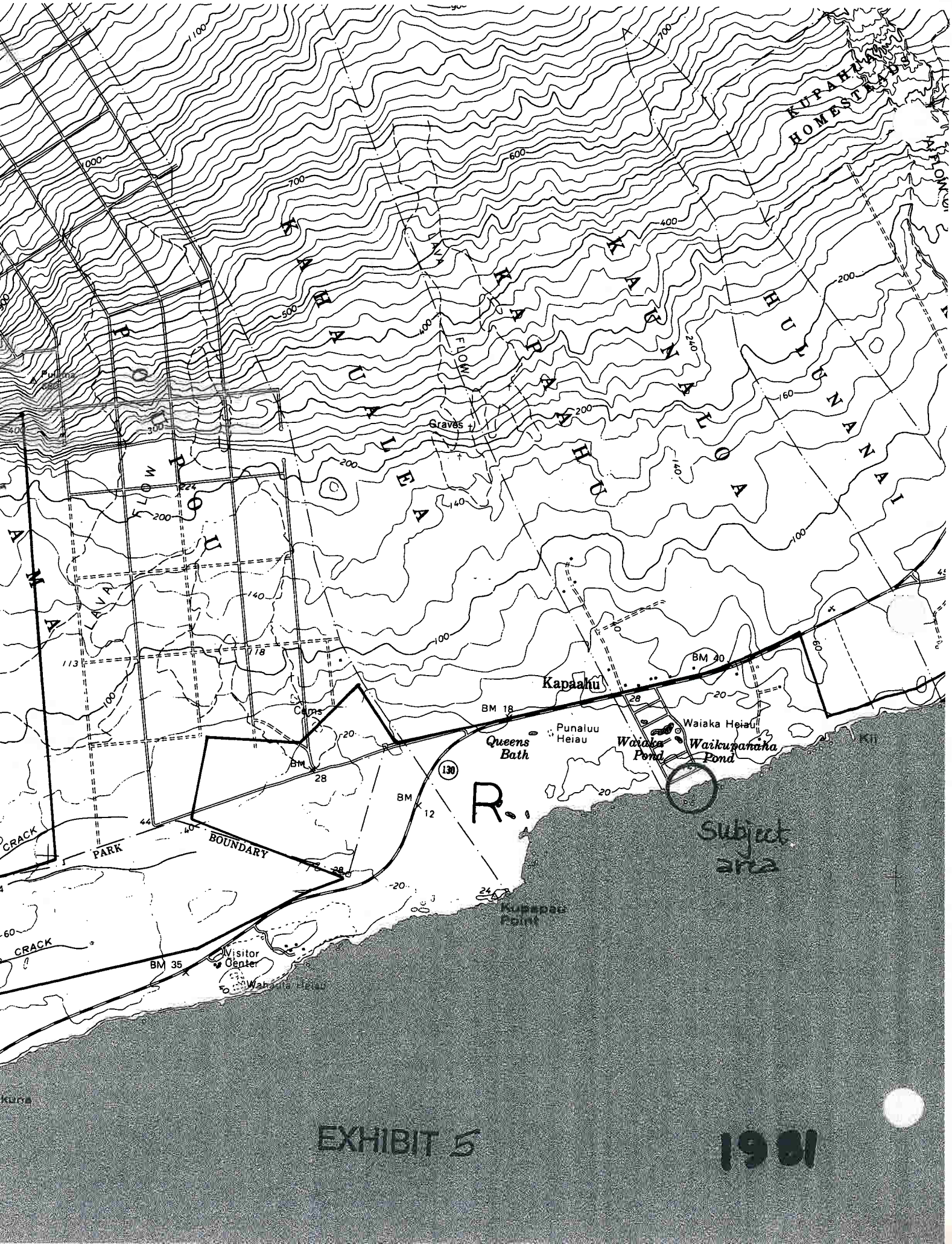
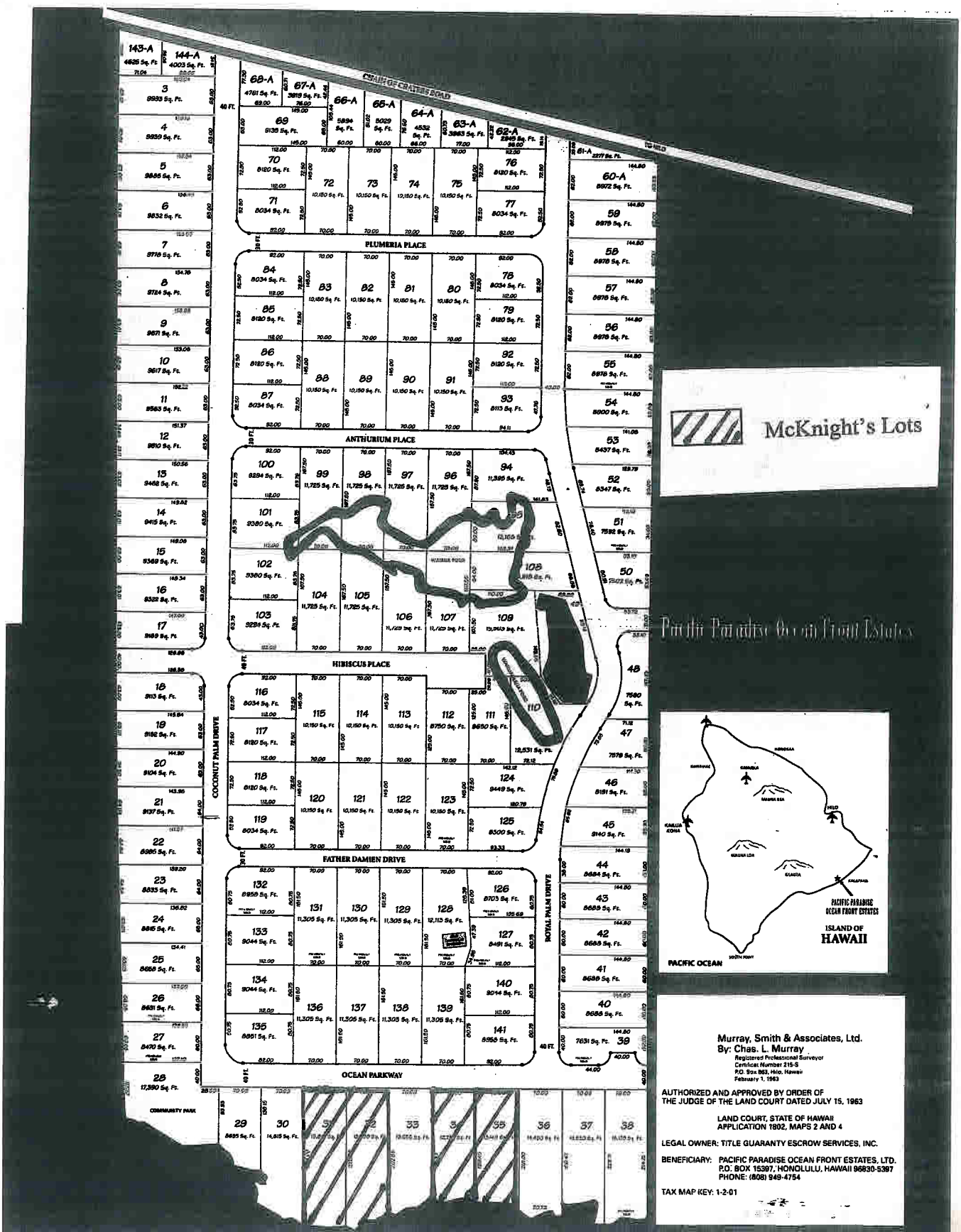


EXHIBIT 5

1981

EXHIBIT 6


McKnight's Lots
Pacific Paradise Ocean Front Estates
PLUMERIA PLACE
ANTHURIUM PLACE
HIBISCUS PLACE
FATHER DAMIEN DRIVE
OCEAN PARKWAY
COCONUT PALM DRIVE
ROYAL PALM DRIVE
COMMUNITY PARK
PACIFIC PARADISE OCEAN FRONT ESTATES
ISLAND OF HAWAII
PACIFIC OCEAN
Murray, Smith & Associates, Ltd.
By: Chas. L. Murray
Registered Professional Surveyor
Certificat Number 215-S
P.O. Box 863, Hilo, Hawaii
February 1, 1963
AUTHORIZED AND APPROVED BY ORDER OF
THE JUDGE OF THE LAND COURT DATED JULY 15, 1963
LAND COURT, STATE OF HAWAII
APPLICATION 1802, MAPS 2 AND 4
LEGAL OWNER: TITLE GUARANTY ESCROW SERVICES, INC.
BENEFICIARY: PACIFIC PARADISE OCEAN FRONT ESTATES, LTD.
P.O. BOX 15397, HONOLULU, HAWAII 96830-5397
PHONE: (808) 949-4754
TAX MAP KEY: 1-2-01

April 17, 2006 Site Inspection Kapaahu, Puna, Island of Hawaii

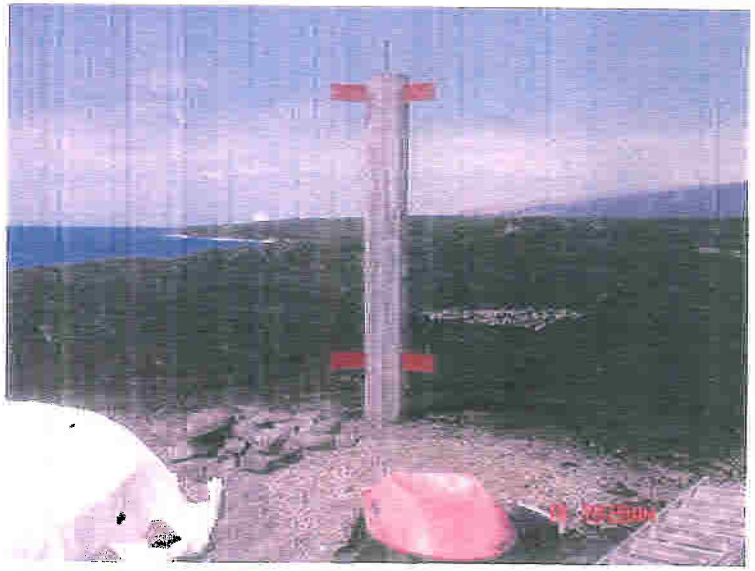


EXHIBIT 7

LINDA LINGLE
GOVERNOR OF HAWAII

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

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

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

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

REF:OCCL:TM

ENF: HA 06-61

7004 0750 0001 1640

NOTICE AND ORDER

MAY - 1 2006

Robert C. McKnight
[redacted]
Pahoa, Hawaii 96778

Dear Mr. McKnight,

SUBJECT: Alleged Unauthorized Land Uses Located on State Unencumbered Lands Located at Kapaahu, Puna, island of Hawaii

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your correspondence dated April 1, 2006 regarding your intentions to build a home at Kapaahu, Puna, island of Hawaii, TMK: (3) 1-2-029:046, 047, 049 &050. A site inspection of the subject area revealed that unauthorized construction has taken place on what appears to be accreted State lands.

According to prior conversations with you, it appears that you have conducted the unauthorized work. The subject area appears to lie within the Resource subzone of the Conservation District. The OCCL does not have on file any correspondence and/or approval for the unauthorized work. Therefore it appears that a Conservation District use violation has occurred. Land uses within the Conservation District must adhere to Chapter 13-5 of the Hawaii Administrative Rules. You will find Chapter 13-5, Hawaii Administrative Rules on the Office of Conservation and Coastal Lands (OCCL) website at www.hawaii.gov/dlnr/occl. The OCCL is also attaching the rules and regulations for your information.

You are hereby ordered to cease any further activity on the subject premises. You may wish to completely remove and restore the site and provide evidence of the restoration to the OCCL within 60 days of the date of this letter. If evidence of full compliance is not received within the allotted time, the matter will be brought before the Board of Land and Natural Resources. Should you have any questions, please contact Tiger Mills of our Office of Conservation and Coastal Lands at (808) 587-0382.

Sincerely,

SAMUEL J. LEMMO, Administrator
Office of Conservation and Coastal Lands

c: Chairperson
HDLO
County of Hawaii, Department of Planning
DOCARE HILO

EXHIBIT 8

D.L.N.R
73 Apuni St.
Hilo HI 96720

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

May 12, 2006

2006 MAY 16 A 9:06

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

RE: Pacific Paradise Oceanfront Estates Subdivision

Robert McKnight
P.O. [redacted]
Pahoa HI 96778
Tel. [redacted]

To whom it may concern,

I purchased four oceanfront lots,(lot #35, 34, 32 and 31) approximately January 2005. I located the four lots to close proximity as best I could with the available information. Using a "pin" (pin #1) as a reference, topography, geology, existing maps, sight and physically walking off distances many times to get a average measurement.

The southeast corner "pin" (pin #2) was not clearly marked as well as the location of pin #1. A pile of large rocks (10-15) was very near to my estimate of where "pin #2" may be. I used the rock pile as a reference for the southeast corner of P.P.O.F.E. subdivision. I made the assumption that the pile of rocks may be the GPS derived location of "pin #2.

I walked off the distance from pin #2 to the east boundary line of lot #35 (210'). I then located the west boundary line of lot #34 by measuring 140' from the east boundary line of lot #35 to the west boundary line of lot #34 as indicated by the subdivision map. Considering a error factor of +/- 30' at the pile of rocks (pin #2), I estimated that the potential building site was theoretically centered within the east and west boundary of the combined width (140') of lots 35 and 34. In view of the present survey, the location of the southeast corner of the subdivision survey pin appears to then place the building site on lot 34.

The length of the east boundary line of PPOFE subdivision was established by averaging multiple measurements obtained by walking off the distance between "pin 1" and "pin 2". The measurement was approximately 2000' from "pin 1" to the pile of rocks ("pin 2"). The distance from "pin 1" to the edge of the pali directly in front of lots 35,34,32 and 31 appeared to be 2000'. Since the subdivision length on the east boundary is 1857', I reasoned that the accretion was 20' to 150' past the previous shoreline particularly in the area of the unique length of the lots 35, 34, 32 and 31 depth. Considering a reasonable error factor in trying to locate the original dimensions and position of the subdivision, either the current survey, or the past survey that indicated the location of "pin 1", or the boundaries I established by sight and walking off distances, all appear to show that the building site is very reasonably within the boundaries of lot #34.

EXHIBIT 9

D.L.N.R.
73 Apuni St.
Hilo HI 96720

May 12, 2006

RE: Pacific Paradise Oceanfront Estates Subdivision

Robert McKnight
[redacted]
Pahoa HI 96778
[redacted]

To whom it may concern,

I contacted the Office of conservation and coastal lands division and inquired about the possibility of building a pavilion style house on lots # 35 and 34. I was told that the rules and regulations for building in conservation lands would be mailed to me. In reviewing the rules and regulations I received approximately a year and a half ago, I could not figure out what the sub-zone was, nor could I decipher what appeared to be confusing information. I made the assumption that in receiving the guidelines regarding building heights, setbacks, permissible square footage of house and lot, landscaping, etc. that a house is permitted in this conservation zone. I also made the assumption that since I didn't get a "no go" during the brief telephone conversation with OCCL, and I felt that my interest to build on lots #35 and 34 was received without objection. An important factor is that I totally missed the notion that I needed to get authorization first from OCCL before I could apply for a building permit.

I did consider applying for a building permit, however I was not prepared to provide written information such as building design plans, architect and engineering plans, etc. Instead, I elected to begin construction confidant I would meet the guidelines outlined in the rules and regulations received, and furthermore try to build a house with limited impact on the environment. I did believe that a building permit could be issued after I began construction (with a "late fee") especially since I documented the various stages of construction for inspection of some of the completed work (e.g. Concrete footings, rebar). The intended structure is very simple and easy to inspect after the fact, and I have gone to great care in a safely designed house. Presently, eight concrete columns 16" in diameter and twelve feet in length are submerged four feet below grade into a three foot wide concrete footing. They are spaced 16 feet apart in a circular pattern. I had planned to place eight curved wood roof beams (6"x 12"x 24 feet) onto the top of each column, and connect the columns with wood beams (6"x 12"x 16 feet) for headers and footers. A floor and roof was planned.

I very much would like to continue construction incrementally, and with prior authorization and design approval before any work is conducted.

Sincerely,

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 MAY 23 A 8:43
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Mr. Samuel Lemmo, Administrator
Office of Conservation and Coastal Lands
Honolulu, Hawaii 96809

May 22, 2006

RE: Ref: OCCL:TM

Dear Mr. Lemmo,

For the past two years, I have planned to build a house in Kapa ahu. Presently I have completed constructing the foundation for my home. The building site may be on or partially encroaching State accreted land. It is possible that the building site is on parcel TMK: 1-2-029:047. Enclosed are copies of four Agreement of Sales for the parcels, 1-2-029: (047), (046), (049), and (050). My intentions have been to build one house on or between the parcels (046) and (047) leaving the remaining area of parcels (046), (047), (049), and (050) vacant.
I have also considered the potential for development of ocean water filled ponds of limited impact visually and environmentally.

I can afford to continue construction to completion the house proposed for parcel 1-2-029:047. The design and methods will be available for review and possible authorization prior to continuing construction and inspections. With assistance from the County and State, I am sure a safe and well-built dwelling can be achievable.

I have enclosed copies of Agreement of Sales for my home-site on or near the parcels 047, 046, 049 and 050. The project has developed into a major undertaking, and as such, I look forward to the continued support and professional assistance given from the State and County authorities.

Thank you very much.

Sincerely,

Robert McKnight

P.O. [redacted],
Pahoa, Hawaii 96778
Tel: 808-[redacted]

EXHIBIT 10

Site Inspection May 25, 2006

EXHIBIT 11

Site Inspection May 25, 2006

November 28, 2006

LAND DIVISION
2006 NOV 29 A 11:42
DEPARTMENT OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Dear Tiger Mills;

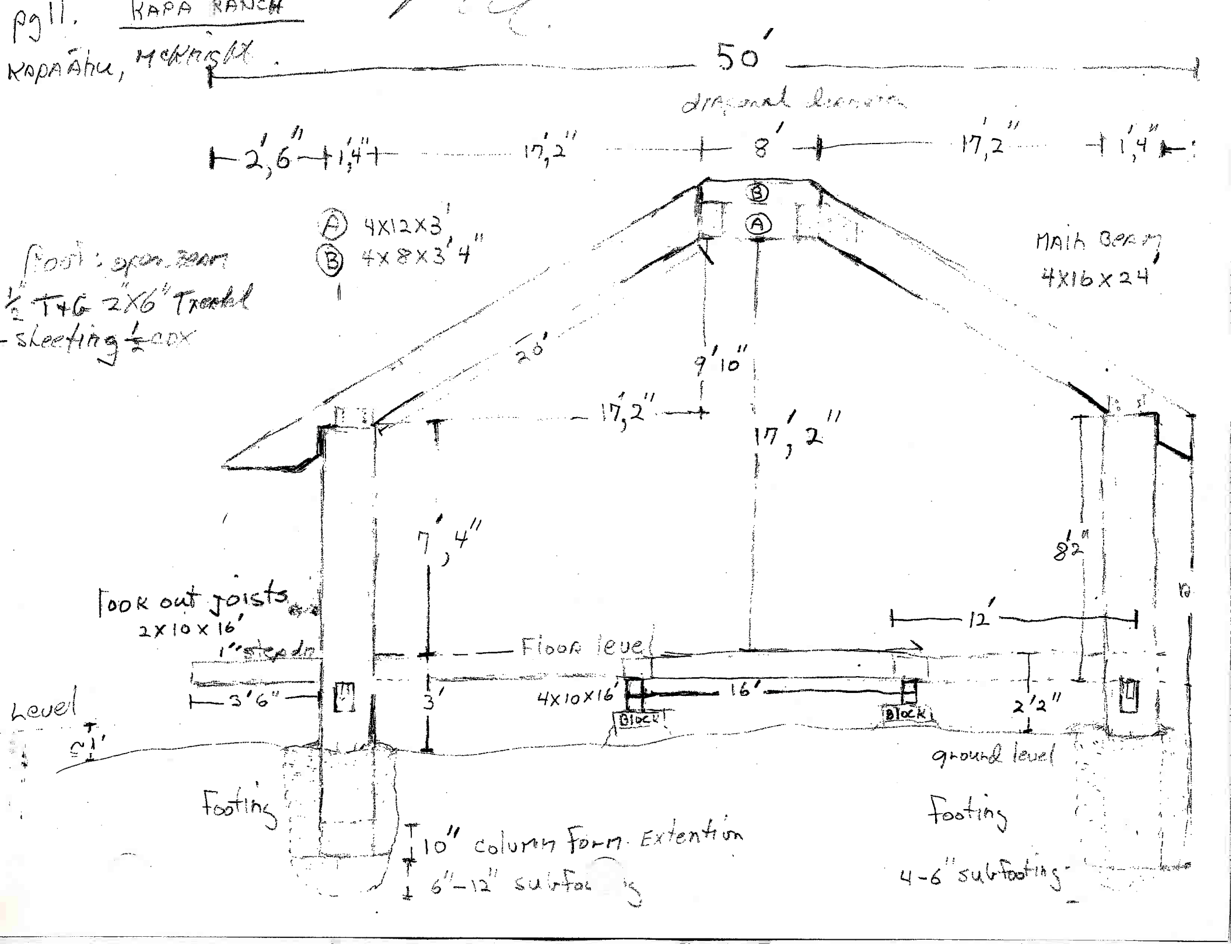
Enclosed, please find sketches of my proposed structure to be developed on lots #31 + #32 in Pacific Paradise Ocean Front Estates, Kapaa, Hawaii. I am in the process of developing more professional plans for my design and engineering efforts with the assistance of Dunham Media Five, Scott Fleming, AIA. As I am in the process of closing escrow for lots #31, #32, #34 + #35, I will continue my diligence to complete all aspects of the design, and engineering. Please bear with me, complete plans should be completed within seven days

Sincerely, Robert McKnight

EXHIBIT 12

pg 11. KAPA RANCH

KAPAʻAHU, MCKNIGHT



LINDA LINGLE
GOVERNOR OF HAWAII

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

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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

REF:OCCL:TM
CERTIFIED RETURN RECEIPT
7006 0100 0002 0489 9396

ENF: HA 06-61

DEC - 1 2006

NOTICE AND ORDER

Robert C. McKnight
[redacted]
Pahoa, Hawaii 96778

Dear Mr. McKnight,

SUBJECT: Unauthorized Land Uses Located on State Unencumbered Land Located at Kapaahu, Puna, island of Hawaii

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your correspondence dated November 28, 2006 regarding your intentions to build a home at Kapaahu, Puna, island of Hawaii on lots 31 and 32 also noted as TMK: (3) 1-2-029:046 and 047. May we remind you that a site inspection of the subject area revealed that unauthorized construction has taken place on what appears to be accreted State land. Furthermore, the subject area appears to lie within the Resource subzone of the Conservation District. The OCCL does not have on file any correspondence and/or approval for the unauthorized work. Therefore it appears that a Conservation District use violation has occurred.

The OCCL issued you a NOTICE and ORDER to cease any further activity on the subject premises and requested that you may wish to completely remove and restore the site and to submit evidence of restoration. However the unauthorized land uses on State accreted land have not been removed nor has the site been restored.

YOU ARE HEREBY ORDERED TO CEASE any further activity on State land and within the Conservation District. Should you fail to cease such illegal activity immediately, you will be subject to fines up to $2,000.00 per day pursuant to Chapter 13-5, HAR, and $500.00 per day pursuant to chapter 13-221, HAR, in addition to administrative costs incurred by the Department.

We strongly suggest you obtain a Surveyor to help you define the metes and bounds of your lots. This matter shall be brought before the Board of Land and Natural Resources. Should you have any questions, please contact Tiger Mills of our Office of Conservation and Coastal Lands at (808) 587-0382.

Sincerely,

SAMUEL J. LEMMO, Administrator
Office of Conservation and Coastal Lands

c: Chairperson
HDLO/DOCARE Hilo
County of Hawaii, Department of Planning

EXHIBIT 13

Site Inspection May 4, 2007 Kapaahu, Puna, island of Hawaii

EXHIBIT 14

LINDA LINGLE
GOVERNOR OF HAWAII

ALLAN A. SMITH
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

PETER T. YOUNG
DEPUTY DIRECTOR - WATER

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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

ENF: HA-06-61

CERTIFIED/RETURN RECEIPT
7004 0750 0001 8229 4290

NOTICE AND ORDER #3

MAY 23 2007

Robert C. McKnight
[redacted]
Pahoa, Hawaii 96778

Dear Mr. McKnight,

SUBJECT: Unauthorized Land Use and Encroachment on State Accreted Unencumbered Land Located at Kapaahu, Puna, island of Hawaii

The Office of Conservation and Coastal Lands (OCCL) conducted a site inspection of State accreted unencumbered land in the subject area on May 4, 2007. The site inspection revealed that unauthorized land uses initiated by you on State accreted land continues and has expanded. The OCCL issued you two NOTICE and ORDERs to cease any further activity on the subject premises and requested that you may wish to completely remove and restore the site and to submit evidence of restoration. We suggested that you obtain a surveyor to help you define the metes and bounds of your lots and that this matter shall be brought before the Board of Land and Natural Resources.

YOU ARE HEREBY ORDERED TO CEASE any further activity on State land and within the Conservation District. Should you continue to fail to cease such illegal activity immediately, you shall be subject to fines up to $2,000.00 per day pursuant to Chapter 13-5, HAR and $500.00 per day pursuant to Chapter 13-221, HAR in addition to administrative costs incurred by the Department.

The Board of Land and Natural Resources (Board) will be asked to consider this encroachment and alleged violation of the Conservation District Rules relating to the unauthorized land use within the Conservation District. Prior to taking action, the Board, pursuant to Chapter 91-90, Hawaii Revised Statutes, informs you, of the following:

1. Date, time, place and nature of meeting.

   This matter will be included on the Land Board's agenda at its regularly scheduled meeting on Friday, July 27, 2007 at 9:00 AM, at the Kalanimoku Building, 1151 Punchbowl Street, Room 132, in Honolulu, Hawaii.

EXHIBIT 15

2. Legal authority under which the hearing is to be held.

The Board derives its authority from Article XI, Section 1 of the Hawaii State Constitution, and in this specific case, Chapters 183C, Hawaii Revised Statutes, and Title 13-5 of the Administrative Rules.

3. The particular sections of the statutes and rules involved.

a. §183C-7, Hawaii Revised Statutes.

b. §13-5-6, Hawaii Administrative Rules.

c. §171-6 (12) & 7, Hawaii Revised Statutes.

d. §13-221-3, Hawaii Administrative Rules.

4. Issues involved.

Unauthorized land use and encroachment on State accreted land within the Conservation District.

5. Counsel.

You are entitled under the law to retain counsel if you so desire in this matter. Further, you or your counsel will be afforded an opportunity to present evidence and argument on all issues involved.

A staff report with recommendations shall be sent to you prior to the Board meeting. Should you completely remove and restore the site, please submit evidence of restoration for further consideration of this matter. Contact Tiger Mills of our Office of Conservation and Coastal Lands at (808) 587-0382, should you have any questions on this matter.

Very truly yours,

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

cc: Hawaii Board Member
HDLO
DOCARE-Hawaii
County of Hawaii-Department of Planning

LINDA LINGLE
GOVERNOR

RUSS K. SAITO
Comptroller

KATHERINE H. THOMASON
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
SURVEY DIVISION
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

Response Refer to:
H-227(06)F

June 22, 2006

MEMORANDUM

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

FROM: Reid K. Siarot, State Land Surveyor
DAGS, Survey Division

SUBJECT: Encroachment on State Accreted Land
Kalapana, Hawaii
TMK: 1-2-29: seaward
ENF: HA 06-61

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
2006 JUN 26 A 9:24
RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

Reference is made to your survey request dated May 9, 2006.

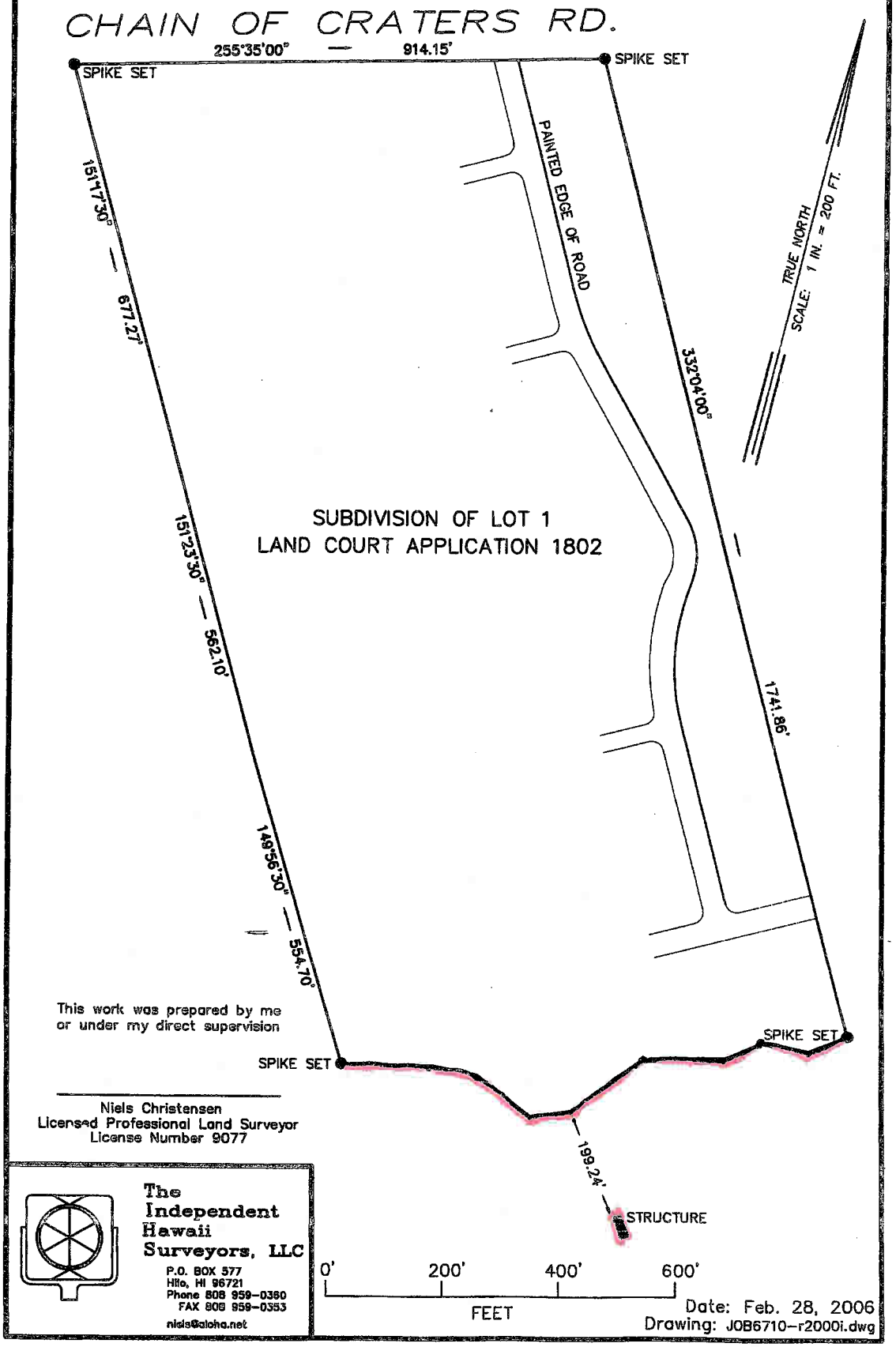
In compliance with your request, enclosed for your further action is a map prepared by The Independent Hawaii Surveyors, LLC showing the structure of interest which sits makai of TMK 1-2-29 on accreted land at Kalapana, Hawaii. The makai boundary of Land Court Application 1802 and the encroaching structure are identified in red on the enclosed map.

Should you have any questions, please contact Gerald Yonashiro at 586-0380.

Enclosure

EXHIBIT 16

SKETCH OF STAKING OF 4 CORNERS OF KALAPANA SUBDIVISION AND COCONUT PALM DRIVE KAPAAHU, PUNA, HAWAII, HAWAII TMK: (3) 1-2-PLATS 28 AND 29



This work was prepared by me or under my direct supervision

Niels Christensen
Licensed Professional Land Surveyor
License Number 9077

The Independent Hawaii Surveyors, LLC
P.O. BOX 577
Hilo, HI 96721
Phone 808 959-0360
FAX 808 959-0353
niels@aloha.net

Date: Feb. 28, 2006
Drawing: JOB6710-r2000i.dwg

EXHIBIT B

December 14, 2007

Department of Land and Natural Resources
99 Apuni Street
Hilo, Hawaii 96720

2007 DEC 24 I A 10: 12

RECEIVED
LAND DIVISION
HILO, HAWAII

Robert McKnight
Post Office Box 270
Pahoa, Hawaii 96778

This letter is to formally request a possible solution to the current situation in which my home, intended to be on my property, occupies state land.
If there is a remedy that can enable my home to remain at the present location rather then removing the pillars and restoring the site to the original condition, I would appreciate the consideration.
The proposals I am willing to act upon are the following.

1. The area that the pillars are upon appears to be within the extended east and west boundaries of parcel 1-2-029-(047). I offer parcel 1-2-029-(046) to the State of Hawaii in exchange for adjusting the south boundary of parcel 1-2-029-(047) to encompass the pillars.
2. A variance in favor of parcels 1-2-029-(046) and (047) enabling the use of the area encompassing the pillars for a single family dwelling as put forth in the finalized design plans.
3. Exchange parcels 1-2-029-(046) and (047) with the State of Hawaii for an area of land that encompasses the pillars, for use as a single-family dwelling.
4. Transact a Option to Purchase, in favor of the State of Hawaii, any and all of the following properties at a substantial discount from the offer for sale market value of the parcels: 1-2-029-(004),(005),(046),(047),(049) and (050), including any exchanged land.
5. If any of the proposals are considered, this would also include permission to apply for a single-family residence permit, and all relative fines dismissed.

Presently I am injured, (Doctors note included) whereas I can not remove the pillars by the time frame of December 26,2007, nor do I have the funds for equipping to do so. Until this issue is resolved I ask for a six month time frame without incurring the $2000.00 per day penalty.

Thank you very much for the considerable amount of time and resources the State of Hawaii has invested thus far.

Sincerely,

Robert McKnight

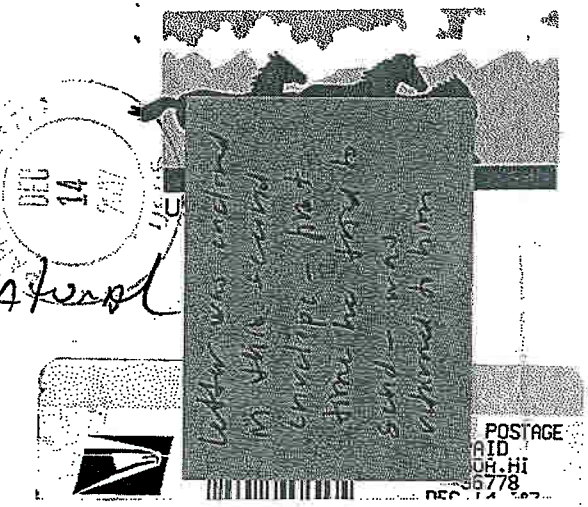
Robert Mcknight
P.O. Box 290
Pahoa, HI 96778

CERTIFIED MAIL™

7007 1490 0003 0862 6139

RETURN RECEIPT REQUESTED

Department of Land And Natural
99 Apuni Street
Hilo, HI 96720



RETURNED TO SENDER

2007 DEC 24 10:37

RECEIVED
LAND DIVISION
HILO, HAWAII
12/21/07

JAN -6

NIXIE 968 4C 1 30 12/19/07
RETURN TO SENDER
INSUFFICIENT ADDRESS
UNABLE TO FORWARD
BC: 96778027070 *2272-05511-19-24

ROBERT D. IRVINE, M.D., INC.
ORTHOPAEDIC SURGERY
OFFICE PHONE: 935-5465
670 PONAHAWAI ST., SUITE 100-102
RES. PHONE: 935-8080
HILO, HAWAII 96720

FOR Robert McKnight
ADDRESS _____ DATE 10/4/07

Pt under care for fracture rib and clavicle.
Unable to work 11/3/07 until 2/15/08.

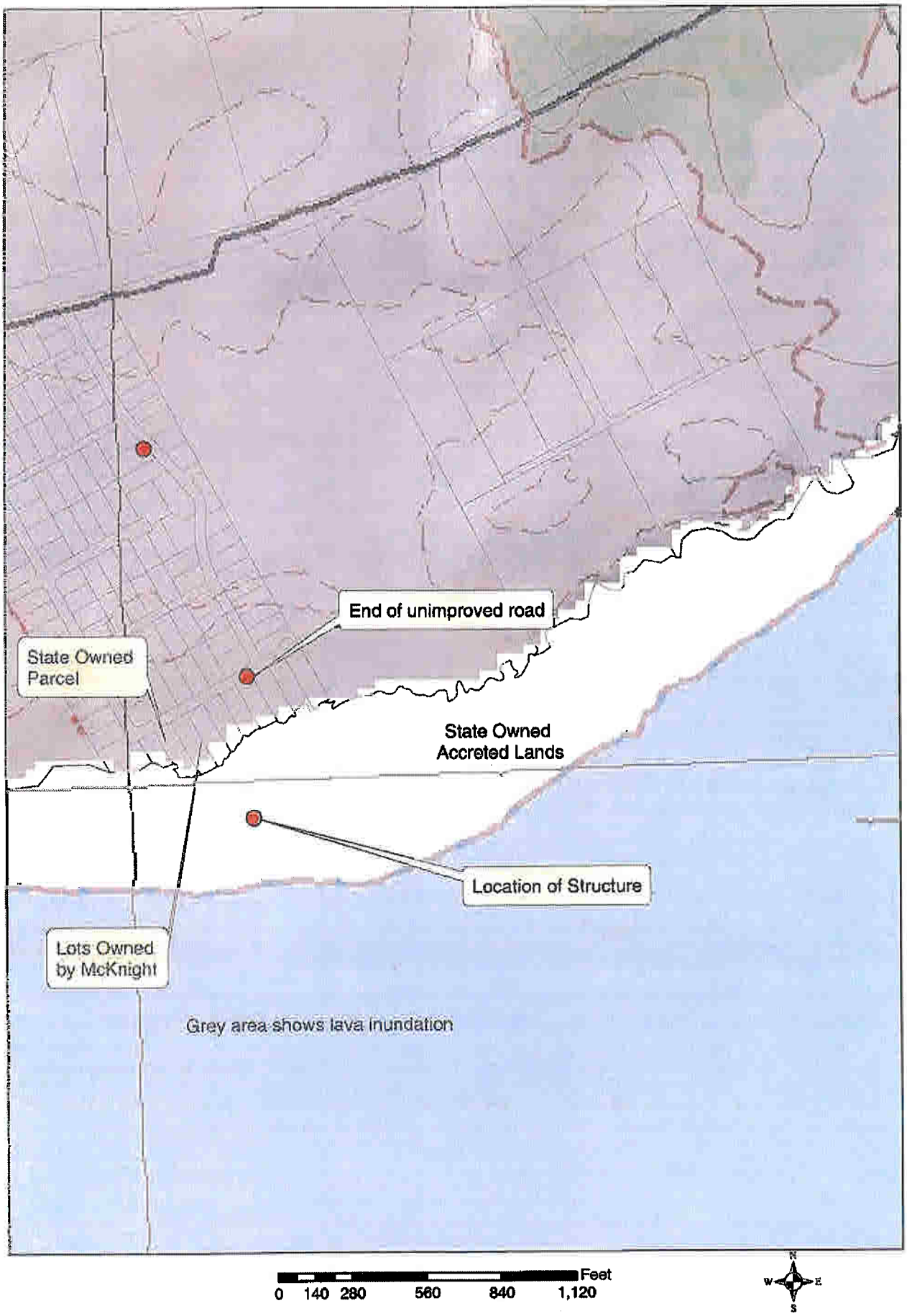
REFILL

M.D.

EXHIBIT C

McKnight Encroachment

EXHIBIT D



DWG. NO. 8468
SOURCE: LAND COURT APPLICATION 1802 MAP 2
BY: JY/JY DATE: AUGUST 8, 1963

Por. KAPAAHU, PUNA, HAWAII. LAND COURT APPLICATION 1802, map 2 (formerly 1-2-01)

FOR REAL PROPERTY TAXATION PURPOSES SUBJECT TO CHANGE

DEPARTMENT OF TAXATION
PROPERTY ASSESSMENT DIVISION
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP
THIRD TAXATION DIVISION

ZONE	SEC.	PLAT
1	2	29

SCALE: 1 IN. = 50 FT.

20F
20G

L-44 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED
JAN 10, 2007 08:01 AM
Doc No(s) 3538367
on Cert(s) 120,241
Issuance of Cert(s) 840,726

/s/ CARL T. WATANABE
ASSISTANT REGISTRAR
CTax (10): $20.00

20 1/1 Z5

KD

LAND COURT SYSTEM | **REGULAR SYSTEM**

Return by: MAIL (X) PICKUP ( ) TO:

TG: 200666238 A
TGE: A6-302-1739
Norma B. Llantero
THIS DOCUMENT CONTAINS 4 PAGES

4C

TITLE OF DOCUMENT:

LIMITED WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: **TITLE GUARANTY ESCROW SERVICES, INC., a Hawaii corporation, as Trustee under the provisions of a certain Trust Agreement dated March 19, 1968,** with its mailing address at **235 Queen Street, Honolulu, Hawaii 96813**

GRANTEE: **ROBERT CHARLES MCKNIGHT, single,** whose mailing address is **P. O. Box 270, Pahoa, Hawaii 96778**

TAX MAP KEY (3) 1-2-029:046 and :047

PKK/TGES.DEED/12-18-06

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That **TITLE GUARANTY ESCROW SERVICES, INC., a Hawaii corporation, as Trustee under the provisions of a certain Trust Agreement dated March 19, 1968,** with its mailing address at **235 Queen Street, Honolulu, Hawaii 96813,** having all powers under said trust agreement to sell, convey, exchange, mortgage, lease or otherwise deal with and dispose of all lands of the trust estate and interests therein, hereinafter called the "Grantor", for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration to the Grantor paid by **ROBERT CHARLES MCKNIGHT, single,** whose mailing address is **P. O. Box 270, Pahoa, Hawaii 96778,** hereinafter called the "Grantee", the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee all of that certain real property designated on the tax maps of the Third Taxation Division, State of Hawaii, as Tax Map Key **1-2-029:046 and :047,** more particularly described in Exhibit A attached hereto and made a part hereof, subject to the encumbrances noted therein.

TOGETHER WITH ALL and singular the buildings, improvements, rights, tenements, hereditaments, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith.

TO HAVE AND TO HOLD the same unto the Grantee, as the Grantee's sole and separate property, and the said Grantee's heirs, personal representatives and assigns, in fee simple forever.

AND THE SAID GRANTOR does hereby covenant with the Grantee that the Grantor is lawfully seised in fee simple of said granted premises and that the said premises are free and clear of all encumbrances made or suffered by the Grantor, except as aforesaid, and except for assessments for real property taxes not yet due. And the said Grantor further covenants and agrees that the Grantor has good right to sell and convey the said premises in the manner aforesaid; that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

AND THE SAID GRANTOR, TITLE GUARANTY ESCROW SERVICES, INC. is executing this document solely in its capacity as Trustee as aforesaid, and is not assuming any

personal liability in its corporate capacity hereunder. Any recovery against Grantor based on this Deed shall be limited to the assets of the Trust referred to above.

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee", as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the Grantor has executed these presents on this 22nd day of December, 2006.

TITLE GUARANTY ESCROW SERVICES, INC., a Hawaii corporation, as Trustee under the provisions of a certain Trust Agreement dated March 19, 1968

By _____
GLEN Y. AJIMINE-SENIOR VICE PRESIDENT
Its

By _____
ANN OGINO - ASST. VICE PRESIDENT
Its

APPROVED AS TO FORM
PETER K. KUBOTA
ATTORNEY AT LAW
By _____
12-18-06

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this _____ day of DEC 22 2006, before me personally appeared GLEN Y. AJIMINE, and ANN OGINO, to me known, who, being by me duly sworn, did say that they are the SENIOR VICE PRESIDENT and ASSISTANT VICE PRESIDENT respectively, of **TITLE GUARANTY ESCROW SERVICES, INC., a Hawaii corporation, as Trustee under the provisions of a certain Trust Agreement dated March 19, 1968**, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and said persons acknowledge said instrument to be the free act and deed of said corporation, as such trustee.

Name: _____
Notary Public, State of Hawaii
ROY J. TATSUNO
My commission expires: Expiration Date: November 2, 2009

LS

EXHIBIT "A"

-FIRST:-

All of that certain parcels of land situate at Kapaahu, District of Puna, Island and County of Hawaii, State of Hawaii, described as follows:

LOT 31, area 15,815 square feet, more or less and LOT 32, area 15,390, square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1802 to Title Guaranty Escrow Services, Inc., Trustee;

-SECOND:-

An undivided 2/140th interest in Lot 28, area 17,390 square feet, more or less, as shown on Map 2, to be used in common with others entitled thereto as a Beach Reserve;

-THIRD:-

An undivided 2/140th interest in Lot 142, area 5.481 acres, more or less, as shown on Map 2, to be used in common with others entitled thereto for roadway and utility purposes;

Being land(s) described in Transfer Certificate of Title No. 120,241 issued to TITLE GUARANTY ESCROW SERVICES, INC., a Hawaii corporation, as Trustee under the provisions of a certain Trust Agreement dated March 19, 1968, with full powers to sell, mortgage, lease or otherwise deal with the land

BEING THE PREMISES ACQUIRED BY LAND COURT DEED

GRANTOR	:	FREDERICK BROWN LIVINGSTON, husband of Charlotte Thorne Livingston
GRANTEE	:	TITLE GUARANTY ESCROW SERVICES, INC., a Hawaii corporation, as Trustee under the provisions of a certain Trust Agreement dated March 19, 1968, with full powers to sell, mortgage, lease or otherwise deal with the land
DATED	:	March 19, 1968
FILED	:	Land Court Document No. 442350

SUJBECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance.

3. The terms and provisions contained in the following:

INSTRUMENT : DEED

DATED : February 28, 1968
FILED : Land Court Document No. 438721

4. -AS TO THIRD:-

(A) STIPULATED JUDGMENT AND FINAL ORDER OF CONDEMNATION, Civil No. 974, in favor of the STATE OF HAWAII, for portions of Lot 142, dated November 17, 1964, filed as Land Court Document No. 348335.

(B) GRANT in favor of COUNTY OF HAWAII dated August 5, 1976, filed as Land Court Document No. 793024; granting an easement for water pipeline purposes over said Lot 142.

(C) GRANT in favor of HAWAII ELECTRIC LIGHT COMPANY, INC. and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, now known as VERIZON HAWAII, INC., dated November 22, 1976, filed as Land Court Document No. 793025; granting an easement for utility purposes over said Lot 142.

(D) GRANT in favor of the WATER COMMISSION OF THE COUNTY OF HAWAII dated April 10, 1980, filed as Land Court Document No. 1065969; granting a perpetual easement for water system over said Lot 142.

5. -AS TO SECOND AND THIRD:-

Rights of others who may have easement or access rights in the land described herein.

END OF EXHIBIT "A"