

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

**April 21, 2011**

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

**REGARDING:** Rule Amendment OA 10-02  
Request to Amend Title 13, Chapter 5, Hawaii  
Administrative Rules (Chap. 13-5, HAR), to Redesignate  
Land that Lies Within the Conservation District Limited  
Subzone into the Resource Subzone

**PETITIONER/  
LANDOWNER:** Mr & Mrs. James Case

**LOCATION:** Makiki, Honolulu, Oahu

**TMK:** (1) 2-5-018:021

**PETITION AREA:** Approximately ( $\approx$ ) 63,219-ft<sup>2</sup>

**SUBZONE:** Limited

**DESCRIPTION OF AREA AND CURRENT USE (Exhibit A, B, & C)**

The subject parcel is located in the neighborhood of Tantalus, Makiki, on the island of Oahu and consists of two lots of record. The parcel is surrounded by private properties and abuts Round Top Drive to the west. A residence, two water tanks and associated residential improvements exist on the property.

**Existing Land Use Classifications**

The majority of the property appears to lie within the Limited subzone of the Conservation District (**Exhibit D**). Pursuant to §13-5-12, Hawaii Administrative rules (HAR), the objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human activities. This subzone shall encompass:

1. Land susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention by the county, state, or federal governments; and
2. Lands necessary for the protection of the health, safety, and welfare of the public by reason of the land's susceptibility to inundation by tsunami, flooding, volcanic activity or landslides, or which have a general slope of forty percent or more.

### **Geographic and Soil Characteristics**

Tantalus is an extinct cinder cone of the southern Koolau Range. According to the petition, the property straddles the Round Top ridgeline and is bounded on the east by a precipitous cliff that forms the western valley wall of Manoa Valley. A steep slope in excess of 40% descends beyond the eastern property boundary to the Manoa valley floor. The western side of the property consists of a steep narrow strip of land between Round Top Drive and a graded plateau that rises  $\approx$ 15-feet from the road. The boundary between the two lots includes portions of the flat plateau and the steeply sloped areas.

Soils present and around the property are mostly shallow, rocky and well drained. No erosion hazards or volcanic hazards are known to exist. According to the petitioner, the property has shown no evidence of erosion or soil instability.

### **Hydrological Characteristics**

Medium annual rainfall ranges between 60-70 inches per year. The property is located in Zone X of the Federal Emergency Management Area (FEMA) Flood Insurance Rate Maps (FIRM), areas to be determined to be outside 0.2% annual chance flood plain. As the majority of the property consists of a graded plateau, it is not susceptible to flooding. No surface water features are situated on the property.

### **Biological Characteristics**

#### ***Flora & Fauna***

The eastern half of the parcel is heavily vegetated with Koa, Kukui, Eucalyptus and Christmas Berry trees. The western half of the property is heavily landscaped with ornamental plants and surrounding yard associated with the existing house. Feral cats, field rats, mongoose and common introduced birds may be found on the property. It is believed that there are no known threatened or endangered flora, fauna or habitats on the property. Within the vicinity, there is critical habitat on the Manoa cliffs for *Lobelia mnostachya* on the neighboring parcel  $\approx$  200-feet northeast from the property boundary.

### **Historical Characteristics**

The property is part of a residential subdivision known as the *Tantalus Lots* or the *Tantalus Summer Lots* that were created in the early 1900's. The residence and an existing water tank are nonconforming as the structures were built on the property in the late 1940's prior to Conservation District laws. A second water tank was constructed in 1971 under Conservation District Use Permit (CDUP) OA-160. Land court records indicate that this parcel was made up of land grants and portions of land grants as recorded in 1960 and then subdivided into the two lots of record in 1961.

According to the petition, based upon anecdotal information and an analysis of historic topographic maps, it appears that the property originally consisted of a small hill, known as Pu'u Makani. The hill was apparently graded flat by a former landowner for the existing home site. The result is a flat plateau about 15-feet higher than Round Top Drive. Noted architect Vladimir Ossipoff designed the residence.

**Surrounding Community**

Much of the mountaintop remains in the State Forest Reserve and is one of Hawaii's first forest management programs, starting in 1882 when the Kingdom of Hawaii was worried that overgrazing of cattle and goats had reduced much of the hillside vegetation. A single, two-lane, 10-mile blacktop road provides access to the community. The 200 or so homes are about 1,300 feet above sea level or just below the clouds on overcast days. Tantalus is an older neighborhood. According to the 2000 Census, 1957 was the median year for home construction on Tantalus.

**Scenic & Visual Resources**

The property is screened from Round Top Drive by an embankment and heavy vegetation that limits views from the street. The existing vegetation generally obscures views of the residence from neighboring properties. The property overlooks much of Downtown Honolulu and out towards east Honolulu with views of the Pacific Ocean and Diamond Head.

The property can be seen from the eastside of Manoa Valley and from atop Waahila Ridge.

**Infrastructure Evaluation**

Round Top Drive provides access to the property. Electricity and phone service are available to the residence. Water is via catchments with primary and secondary filters located at the residence. An individual wastewater system is located underground on Lot 2 as no City sewer system serves Round Top Drive.

**PROPOSED ACTIONS OF THE PETITIONER (Exhibit E)**

The petitioner is requesting that a portion of his property that lies within the Limited subzone be redesignated into the Resource subzone.

**Review of Property Characteristics in Relation to the Proposed Subzone Objectives**

As described in §13-5-13, Hawaii Administrative Rules (HAR), the objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. Specifically, the Resource Subzone shall encompass:

- o Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;
- o Lands suitable for growing and harvesting of commercial timber or other forest products;
- o Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping and picnicking;
- o Lands and state marine waters seaward of the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of the waves on shore to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone.

Much of Tantalus lies within the Resource subzone as the area is part of the Honolulu Watershed with the exception of some lots that are located above the western ridge of Manoa valley.

The petition notes that the adjustment of the Limited/Resource boundary could potentially increase the use/density of the property. However this increase would not be realized unless applied for and granted by the Department and Board.

**Alternative Considered**

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

**STAFF ANALYSIS:**

Pursuant to Chapter 13-5, Hawaii Administrative Rules (HAR), any change to Conservation District subzone boundaries must be made by amending Chapter 13-5, HAR. Statutes and rules that govern the process by which amendments of Chapter 13-5, HAR, may be made include:

- A. §91-2 through 91-7, Hawaii Revised Statutes (HRS);
- B. §2, Act 168, Session Laws of Hawaii 1998;
- C. §183(c)-4, HRS;
- D. §13-1, HAR; and
- E. §13-5-5, HAR.

Requests to amend the administrative rules are reviewed by the Legislative Reference Bureau and the Department of the Attorney General. In general, in order to take effect, proposed rule amendments must obtain departmental and gubernatorial authorizations for both the public hearing and final approval.

Authorization for Public Hearing:

The first major step to amend the administrative rules is to hold a public hearing. Approval from the Board of Land and Natural Resources to hold a public hearing was granted on March 11, 2010. Approval from the Governor was granted on November 20, 2010.

Public Hearing

The Public Hearing regarding this rule amendment was held on January 11, 2010 at the Kalanimoku Board Room. Six members of the general public attended the hearing. A power point presentation by the petitioner described the history of the property and included historic photos and aerial photos of the area. According to the petitioner, two lots were purchased, consolidated and resubdivided in the early 1940's. A residence was constructed. Historic photos illustrate the flat graded area in the 1950's. The petitioner purchased both lots in 1965. Significant changes to the Hawaii Administrative Rules were made in 1978 and 1982. Subzone maps drawn in 1982 appear to have put this

property and 3 other existing residences into the Limited subzone. The petitioner believes that it was wrong to place these lots within a subzone that restricts residential use.

Approval/Disapproval:

Should the Board approve this petition then the proposed rule change will be forwarded to the Governor for approval. Upon receiving the Board's approval, both the Legislative Reference Bureau and the Department of the Attorney General would review. With the Department of the Attorney General approval 'as to form', the proposed rule amendment shall be forwarded to the Governor for the final decision.

State Policies and Procedures:

Staff processed the petition in accordance to the Governors' Administrative Directive # 09-01 to guide policy and procedures for the adoption, amendment or repeal of administrative rules. The Governor directs that petitions for administrative rule changes address certain policy topic areas.

§2 of Act 168, Session Laws of Hawaii 1998, the Hawaii Small Business Regulatory Flexibility Act:

At the March 11, 2010 Land Board meeting, the Board of Land and Natural Resources found that the proposed rule amendment would not impact or affect small business.

Chapter 343, HRS, Requirements:

Staff believes that due to the scope and nature of the proposed amendment, Chapter 343, Hawaii Revised Statutes (HRS), is not applicable at this time as no land use is proposed.

**DISCUSSION**

Staff conducted a site inspection of the subject property on February 10, 2011. Staff did not note any pooling of water, soil erosion or erosion damage. The petitioned area does not appear to be susceptible to inundation by tsunami, flooding, volcanic activities or landslides. Portions of the property that were previously disturbed during the settlement of the Tantalus area in the 1940's were level then and continue to be level now and clearly do not have slopes of 40% or more (**Exhibit F & G**).

As previously noted, prior to 1982, both lots of the property were developable. However with the inclusion of this property into the Limited subzone, the potential to develop upon the second lot ceased. Staff notes that any additional development on the parcel has the potential to affect view planes from Manoa Valley and Waahila Ridge.

It appears that the original subzone boundary line that was drawn does not follow any feature such as the road, land contour or grade. The boundary line that delineates the Resource subzone from the Limited subzone appears to be an arbitrary feature. Therefore Staff believes that this petition for an adjustment is not unreasonable.

Staff is of the opinion that the Resource subzone is an appropriate designation for the petitioned area as this is consistent with the majority of the Tantalus/Round Top area that lies within the Resource subzone. Placing the designated portion of the property into the

Resource subzone to the margin of the steeper lands that comprise the Limited subzone would not be out of character to similar lands in the immediate vicinity and the petitioned area is not inconsistent with the character of land within the nearby Resource subzone.

**RECOMMENDATION**

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

1. Grant petitioner, Mr. and Mrs. James Case request to amend Chapter 13-5, Hawaii Administrative Rules to designate a portion of their private property that lies within the Conservation District Limited subzone into the Resource subzone as illustrated and outlined in red on **Exhibit E** known as TMK: (1) 2-5-018:021 located at Tantalus, Makiki, Oahu; and
2. Authorize the forwarding of the rule amendment to the Governor, State of Hawaii for approval and enactment.

Respectfully submitted,

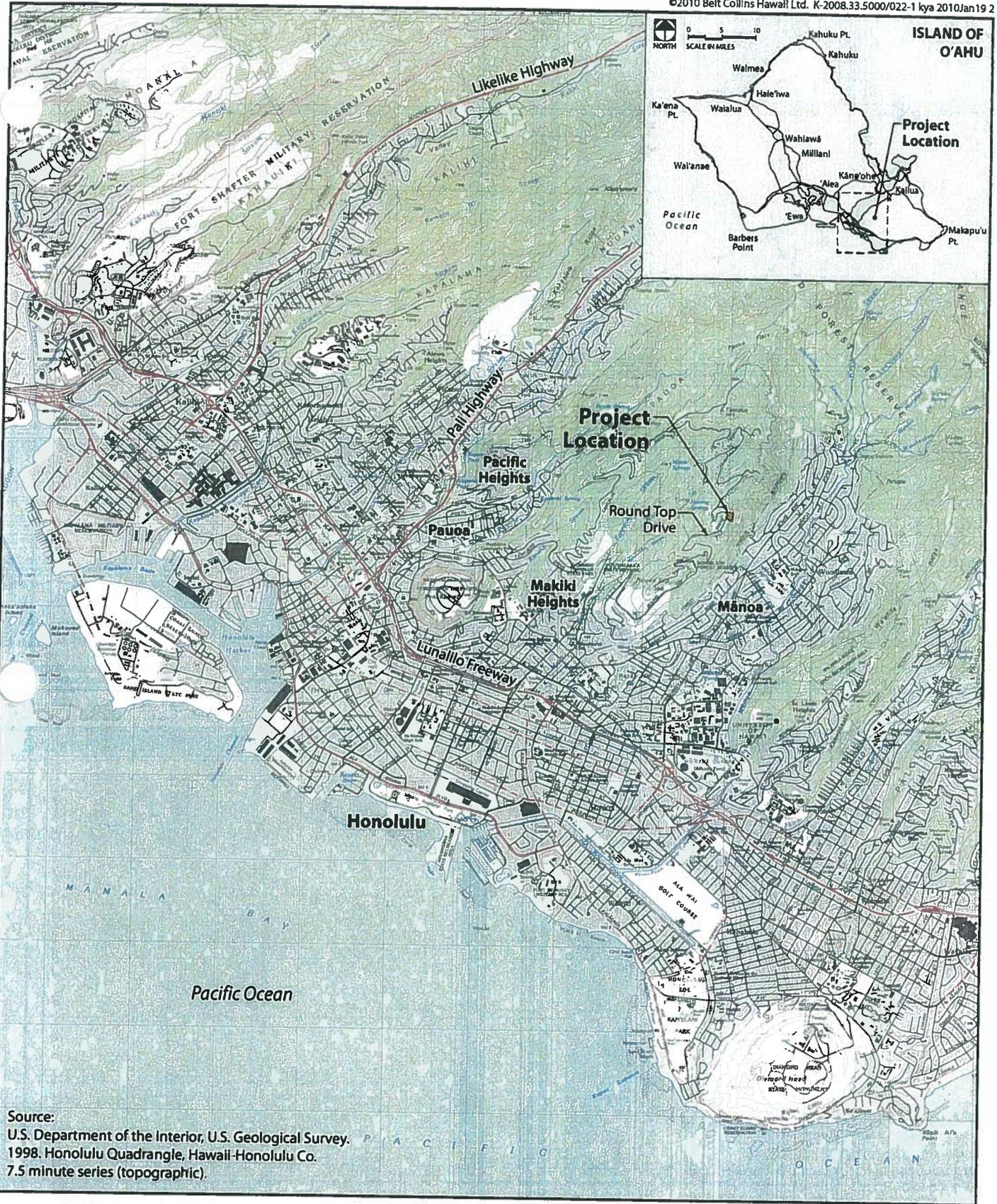


K. Tiger Mills, Staff Planner  
Office of Conservation and Coastal Lands

Approved for Submittal:



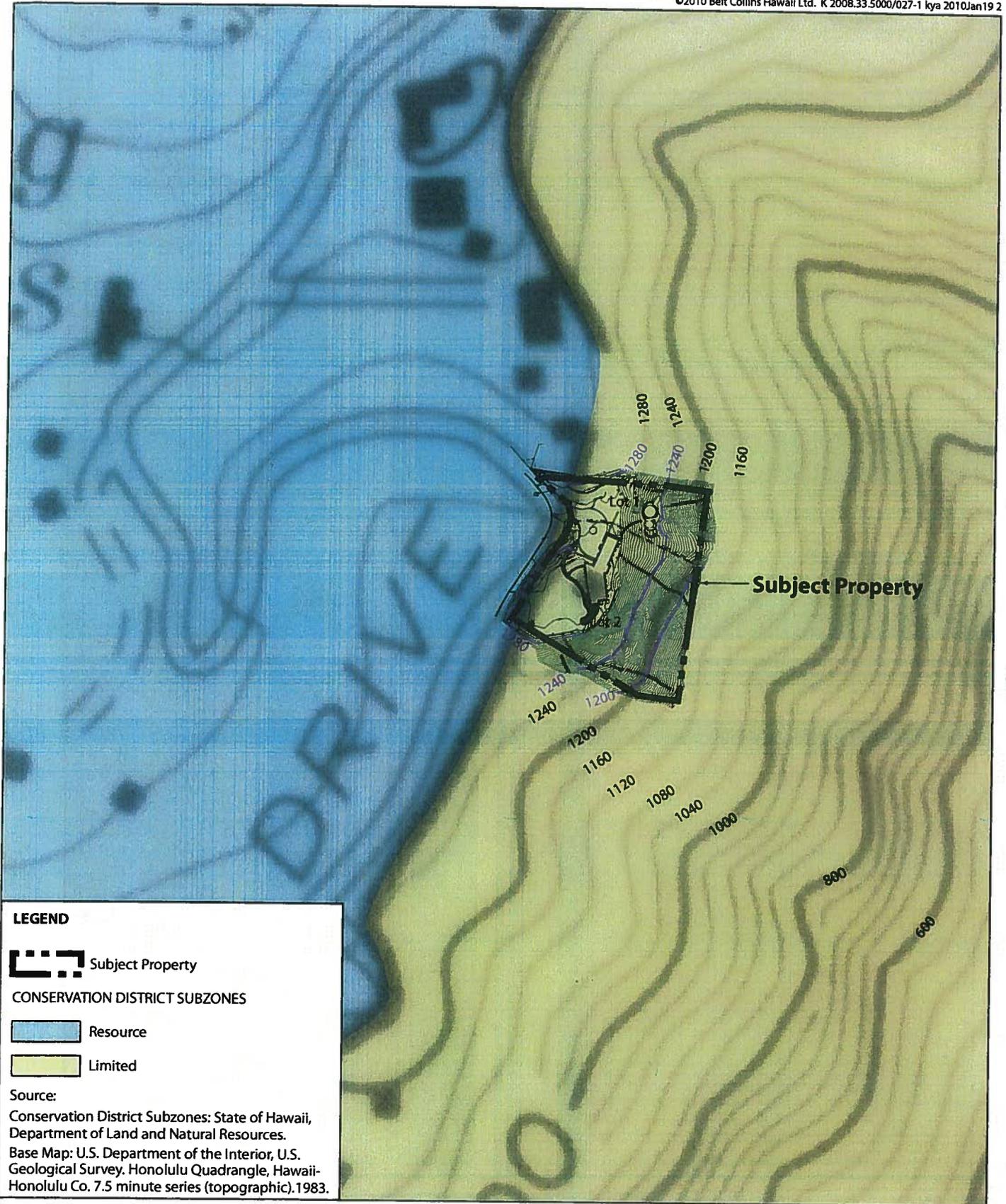
**WILLIAM J. AILA, JR.**, Interim Chairperson  
Board of Land and Natural Resources



**Figure 1**  
**REGIONAL MAP**  
 Conservation Subzone Boundary Amendment  
 January 2010



**EXHIBIT A**



**Figure 8**  
**DLNR CONSERVATION DISTRICT SUBZONES**  
 Conservation Subzone Boundary Amendment  
 January 2010

**EXHIBIT B**





1 Round Top Drive, Lot 1 on the left.



2 Case residence.



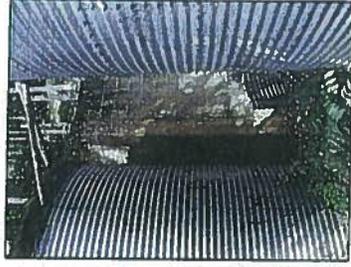
3 Entrance to Case residence, TMK 2-5-018-021.



4 Partial view of lot 1.



5 Lot 1, looking towards Lot 2.



6 TMK 2-5-01821 water tanks.



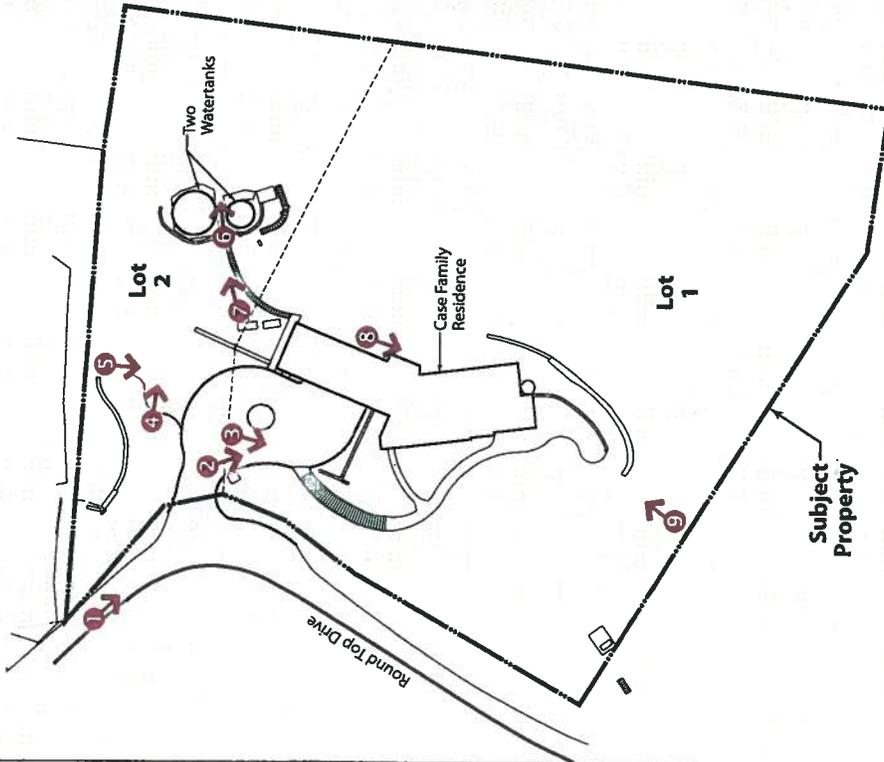
7 Two water tanks.



8 Case family residence facing Mānoa Valley.



9 Case residence, Lot 2.



**Figure 19**  
**PHOTOGRAPHS OF PROJECT SITE**  
 Conservation Subzone Boundary Amendment  
 January 2010

**EXHIBIT C**









1956



Figure 16  
DLNR 2008 CALENDAR  
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EXHIBIT F

Petition of James H. Case and Suzanne E. Case  
1757 Round Drive, Honolulu



1951



2011

EXHIBIT G

