

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

**September 23, 2011**

180-Day Exp. Date: November 19, 2011

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

**REGARDING:** Conservation District Use Application (CDUA) OA-3593  
for Consolidation and Subdivision of Land

**APPLICANT/  
LANDOWNER:** PP85 McCandless Ranch/PP McCandless Ranch, LLC  
Elizabeth M. Stack

**AGENTS:** Wayne S. Sakamoto, Court Ordered Commissioner  
Scott Ezer of Helber, Hastert & Fee Planners

**LOCATION:** Ohikilolo, Waianae, island of Oahu

**TMK:** (1) 8-3-001:14, 28, 29, 30, 31, 32, and 33

**AREA OF PARCEL:**  $\approx$  17.38 less erosion of  $\approx$  11.642 acres

**AREA OF USE:**  $\approx$  17.38 acres

**SUBZONE:** Limited

**BACKGROUND**

The property owners, PP McCandless Ranch, LLC/PP85 McCandless Ranch, LLC and Elizabeth M. Stack, are owners in fee of seven small irregular parcels. The application seeks to separate the ownership interests of the property owners in compliance with a Settlement Agreement approved and ordered by the First Circuit Court.

**DESCRIPTION OF AREA/CURRENT USE (Exhibits A, B, C, D & E)**

Ohikilolo (*crazy crab*) ahupua'a exists in the moku of Waianae, on the west side of the island of Oahu. The proposed project site is located on the shore at the mouth of Ohikilolo valley. The property runs north south along the coast with the Kaneana Cave near the northern boundary and Keaau Stream Bridge at the southern boundary. The project area is approximately ( $\approx$ ) 17.38 acres and lies within the Limited subzone of the Conservation District. The parcels within the project area are noted as TMKs: (1) 8-3-001: 14, 28, 29, 30, 31, 32, and 33.

According to the application, the property has a rocky shoreline at the northern end, dominated by a fringing reef adjacent to the shoreline, which appears to combine with old volcanic flows to produce the flat tidal shelf most notable at Ohikilolo Point but evident along much of the length of the property. Rocky tidal shelves, rising slightly above sea level and interspersed with sandy beaches dominate most of the coastline. Beach sand is perched behind the raised beach rock and limestone. The sand dunes at the northern boundary are characterized as sand piles over hard compacted coral substrate that creates a 15-foot high cliff with small coastal sea caves. At low tide the exposed shelf with its small tide pools provides foraging habitat for shorebirds and water birds.

The elevation of the property is entirely below the 20-foot contour. Most of the property is flat at an elevation near 15-feet with little or no slope until the edge of the coastal dune where the topography drops quickly to the shoreline. 90% of the area is within a designated flood hazard zone within Zone VE (wave action) and AE (flooding).

The shoreline abutting the property is used for pole and net fishing. Shoreline gathering of resources including salt may take place. North of the project site is Kaneana Cave that has a rich history dating back to pre-historic times. Southeast of the project site is Keaau stream that previously supported a small population and is the site of dryland agricultural stonework and areas of archaeological interest that is now heavily overgrown.

The site has been previously disturbed. In the late 1890's, the entire length of the property was heavily impacted to accommodate the railroad line for the Oahu Railroad & Land Co. that built the rail line along the leeward coast around Kaena Point to Haleiwa that continued to function through the 1940's. In addition, the development of the prior roadway was makai of the existing highway. The railroad, prior roadway and existing highway created remnant parcels basically on the north side of the project area.

A non-conforming structure that was constructed during the 1940's is near the middle of the site. A barbed wire fence separates the properties from the highway. According to the applicant, the structure housed residents that were displaced by the U.S. Army's use of Makua Valley during World War II. It is unoccupied and has no utility service. Three unauthorized structures were recently removed from the property.

Access is from Farrington Highway at two points and electricity is available as there are HECO power lines along the mauka side of the highway. There do exist easement grants to the USA and Hawaiian Telcom. Drainage ditches carry flash flood rainwater onto the site. Very little rubbish dumping was observed in the area.

No rare or endangered flora or fauna was observed or believed to be present on the site. An avifaunal & feral mammal survey and a botanical survey were completed in May 2008. An Indian Mongoose was observed. Feral cats, and mice are likely to occur in this area. A number of alien birds were observed. The Black-crowned Night Heron (Auku'u) was observed foraging on the seaward edge of the rocky shelf. As this is a shoreline, the endangered monk seal, native and migratory avifauna or turtles may visit the area.

The property is dominated by disturbed coastal strand vegetation. The coastal sand dunes have a mix of native littoral plant species and weedy grass and tree species from above the shoreline continuing inland to the Highway. The flora is made up of  $\approx 76\%$  alien species and  $24\%$  native (indigenous and endemic) species. Pohinahina and akiaki grass help to stabilize the sand dunes. Pa'uohikiaka, pohuehue, naupaka, kou, milo and hau are present.

Closer to the highway, Kiawe, Koa haole, Christmas berry, monkey pod were observed along with introduced grasses and weedy species. Interspersed in this area are native species uhaloa, ilie'e and naio.

### **PROPOSED USE (Exhibit F)**

The proposed action is to consolidate the seven parcels and to subdivide the consolidated lots into three parcels. The purpose of the consolidation and subdivision is to satisfy a court ordered partition to separate the ownership interests by amending parcel boundaries. No development is proposed.

### **SUMMARY OF COMMENTS**

The Office of Conservation and Coastal Lands referred the application to the following agencies for review and comment: the Department of Land and Natural Resource's Oahu District Land Office, Historic Preservation, Resource Enforcement and State Parks Divisions; Office of Hawaiian Affairs; the Department of Health and the Office of Environmental Quality Control; the City & County of Honolulu, Dept. of Planning and the Waianae Neighborhood Board. In addition, this application was also sent to the nearest public library, the Waianae State Public Library, to make this information readily available to those who may wish to review it.

Comments were received by the following agencies and summarized by Staff as follows:

#### **THE STATE**

##### **DEPARTMENT OF HEALTH**

We strongly recommend that your review all of the Standard Comments on our website. Any comments specifically applicable to this application should be adhered to.

##### **DEPARTMENT OF LAND AND NATURAL RESOURCES**

###### *Division of Conservation and Resource Enforcement (DOCARE)*

The area is separated from Farrington Hwy with barbwire fencing and the shoreline area has never been accessible. The only means to gain access to this shoreline is to sneak through the barbwire and run the gauntlet of Keawe thorns and security personal that state, "this is private property no trespassing." The other access is by boat or a long walk along the rocky shoreline.

*Applicant's response*

The parties are willing to allow public access to the shoreline from Farrington Highway by providing two six-foot wide public access easements between our proposed lots 1 & 2 and lots 2 & 3. These easements will run from Farrington Highway to the shoreline.

*Oahu District Land Office (ODLO)*

The CDUA incorrectly states that road remnant parcels (1) 8-3-001:32 and 33 are owned by the State. Title to the road remnants is with Elizabeth Marks Stack, Alpha Kai Corporation and PP85 McCandless Ranch.

*Applicant's response*

The ownership of the aforementioned remnant parcels were deeded by the State of Hawaii to the current owners in 1989.

*Office of Conservation and Coastal Lands*

Under Chapter 13-5, HAR, subdivision of property into two or more legal lots of record must serve a public purpose. Please describe the public purpose of this proposal.

The OCCL would like the applicant to define public access to the shoreline in the proposed subdivision map.

*Applicant's response*

The proposed consolidation and resubdivision would "clean up" the configuration of the existing seven irregular TMK lots at Ohikilolo makai as related in the CDUA. This proposed consolidation/subdivision would reduce the number of multiple irregularly shaped remnant parcels and provide the proposed subdivision with three distinct and definable lots. Further, state and county land records are not in agreement which adds to the confusion. Accordingly this is a distinct public purpose that is served by clearly defining the lots as outline in the CDUA.

The CDUA is the result of a court ordered partition between two property owners. As stated in the CDUA, no development is sought. This is just a "paper division" of property between two unrelated, separate and distinct property owners. The public purpose is served by complying with a valid order from a separate branch of the government (i.e. Judiciary).

This partition will allow each party to secure their specific property. Security in this area is a concern. With this proposed partition, each property owner will be responsible for their respective properties that will enable them to provide security to prevent the area from being inundated with homeless squatters, which would essentially overwhelm the property. Unfortunately, experience tells us that if left unchecked, the area could become another coastal property that suffers from the accumulation of trash and other debris in conflict with the goals and objectives of the State Conservation District.

The parties are willing to allow public access to the shoreline from Farrington Highway by providing 2 six-foot wide public access easements between proposed lots 1 & 2 and lots 2 & 3. These easements will run from Farrington Hwy to the shoreline.

The parties are willing to provide these easements on the condition that a government entity and not the parties will maintain these easements. If no governmental entity is willing to assume responsibility for the easements, we believe the Board of Land and Natural Resources should remove any condition requiring the easements. This issue would be resolved at the time of subdivision review and approval through the City.

*State Parks (SP)*  
No objections

## **ANALYSIS**

Following review and acceptance for processing, the court appointed commissioner was notified, by letter dated May 26, 2011 that:

1. The proposed use is an identified land use in the Limited subzone of the Conservation District, pursuant to the Hawaii Administrative Rules (HAR), §13-5-22, P-11, SUBDIVISION OR CONSOLIDATION OF PROPERTY, Consolidation of property into a lesser number of legal lots of record currently existing and approved, which furthers the objectives of the subzone. Consolidation followed by resubdivision shall constitute a subdivision. Subdivision of property into two or more legal lots of record that serves a public purpose and is consistent with the objectives of the subzone. Therefore the proposed action would require a Board permit. Please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to §13-5-40, HAR, a Public Hearing will not be required;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and HAR, Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules, Subchapter 8, §11-200-8(a)(1), the proposed use is exempt.

The subdivision action described is not considered "development" for Special Management Area (SMA) purposes and is therefore exempt from SMA permitting requirements.

Notice of CDUA OA-3593 was published in the June 23, 2011, issue of the Environmental Notice.

## **CONSERVATION CRITERIA**

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

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

Staff believes the proposed consolidation and subdivision, should not conflict with any of the conservation objectives based on the special circumstances of the case (See Discussion). No greater intensity of use of the three parcels should result from this consolidation and subdivision.

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

The objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human activities. The proposed consolidation and subdivision does not conflict with this objective, as it is a reorientation of the boundaries of these parcels on paper. No land uses are proposed under this action. Should the land owners desire to develop the parcels in the future, they will be required to comply with all laws, policies and rules in effect at that time.

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

Staff believes the proposed use is consistent with Chapter 205A, HRS in regards to recreational, historical, scenic and open space resources. HRS, §205A-2 Coastal zone management program's recreational resources policy supports providing adequate accessible and diverse recreational opportunities by encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources and county authorities.

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

The proposed action involves the shifting of boundary lines. Staff is of the opinion that this will not have any adverse impact on existing natural resources.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

No physical structures are proposed. The subject area currently has seven identified tax map key parcels and this application is for reconfiguration of the three tax map key parcels.

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

The action shall have no physical impact on the land. Therefore Staff is of the opinion that the natural beauty and open space characteristics of the Conservation District will be maintained.

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

As will be discussed in the Discussion section, staff is of the opinion that the consolidation and resubdivision action will not increase the intensity of land uses in the Conservation District.

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

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

## **DISCUSSION**

The landowners seek to separate ownership interests in the seven mentioned parcels in compliance with a Settlement Agreement approved and ordered by the First Circuit court that stated among other things that the parties would work together to cause the Department to recognize at least three (namely parcels 14, 28 & 30) and to work together to consolidate and re-subdivide these parcels together with the remaining parcels.

The proposed consolidation of seven parcels and then subdivision into three parcels is an identified land use within the Conservation District pursuant to Hawaii Administrative Rules §13-5-22 (P-11 SUBDIVISION OR CONSOLIDATION OF PROPERTY).

OCCL staff questioned where there are in fact seven legal lots of record as the railway and roadway bisected the land and created the "parcels." There was no evidence of prior subdivision, land grants, or land commission awards. When the railroad ceased operation, ownership interest in the right-of-ways reverted back to the owner of the surrounding lands in the 1940's.

However, as evidenced in the City's real property taxation maps, there appears to be seven lots of records. Nonetheless, a consolidation and resubdivision does not automatically entitle the landowners to up to seven new lots or even to the three lots agreed upon in the parties' settlement agreement. The conservation district rules require that the process not result in an increase of intensity of land use and in the density of the land area. Staff believes that this concludes a reasonable resolution to a long standing conflict and will preserve important coastal views and ecological resources. As no development is proposed, staff believes that the proposed action is consistent with the conservation district rules.

Although a comment for improved access to the shoreline was received and the applicant is willing to allow access easements, this may potentially create significant challenges to the landowners and to the State to manage the land and insure resource protection. The proposed action does not required public access to the shoreline and does not require dedication to the County under §46.6-5, HRS, as the subdivision is not for the creation of

six or more units of land. Existing access to the shoreline shall not be modified should this application be approved.

As stated by the court ordered Commissioner: "This partition will allow each party to secure their specific property. Security in this area is a concern. With this proposed partition, each property owner will be responsible for their respective properties that will enable them to provide security to prevent the area from being inundated with homeless squatters, which would essentially overwhelm the property. Unfortunately, experience tells us that if left unchecked, the area could become another coastal property that suffers from the accumulation of trash and other debris in conflict with the goals and objectives of the State Conservation District. "

The application seeks to separate the ownership interests of the property owners in compliance with a Settlement Agreement approved and ordered by the First Circuit Court. The public purpose is served by complying with a valid order from the Judiciary that identifies who will be responsible for the land and by rectifying the public record.

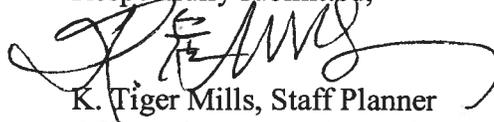
### **RECOMMENDATION**

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this application to consolidate seven existing tax map key parcels: (1) 8-3-001:14, 28, 29, 30, 31, 32 & 33 and reconfigure and subdivide into three proposed tax map key parcels subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall provide documentation (e.g. book and page or document number) that this permit approval has been placed in recordable form as a part of each deed instrument;
- 4) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 5) The applicant understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;

- 6) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 7) The applicant shall obtain the approval of the City and County of Honolulu for the consolidation and subdivision and file the final consolidation and subdivision plan with OCCL;
- 8) Other terms and conditions as may be prescribed by the Chairperson; and
- 9) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

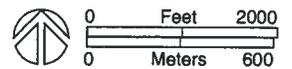
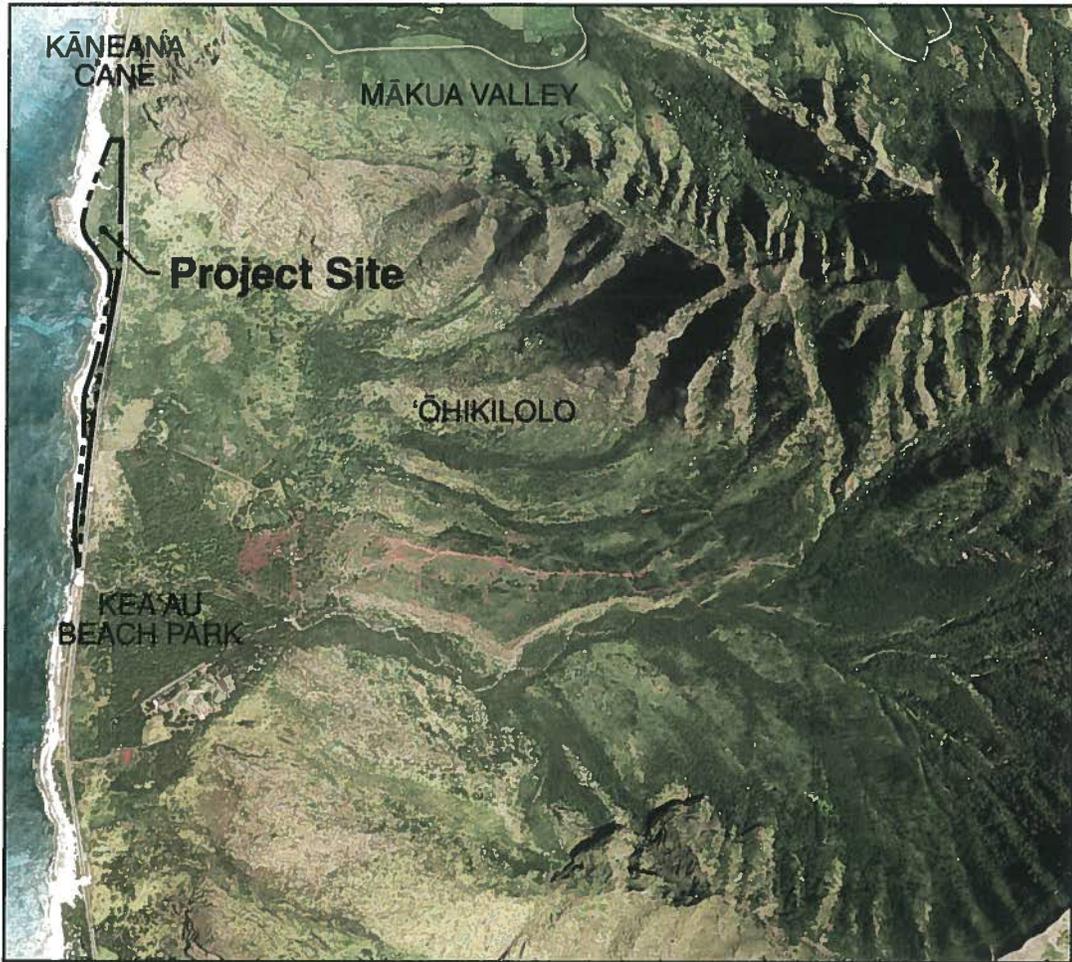
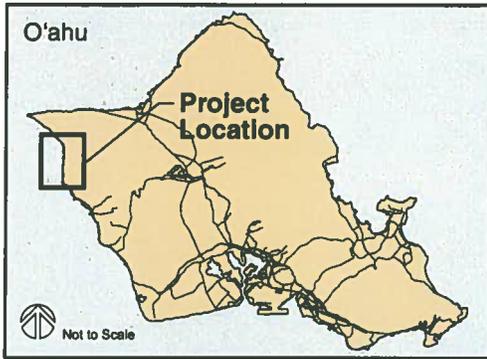
Respectfully submitted,



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



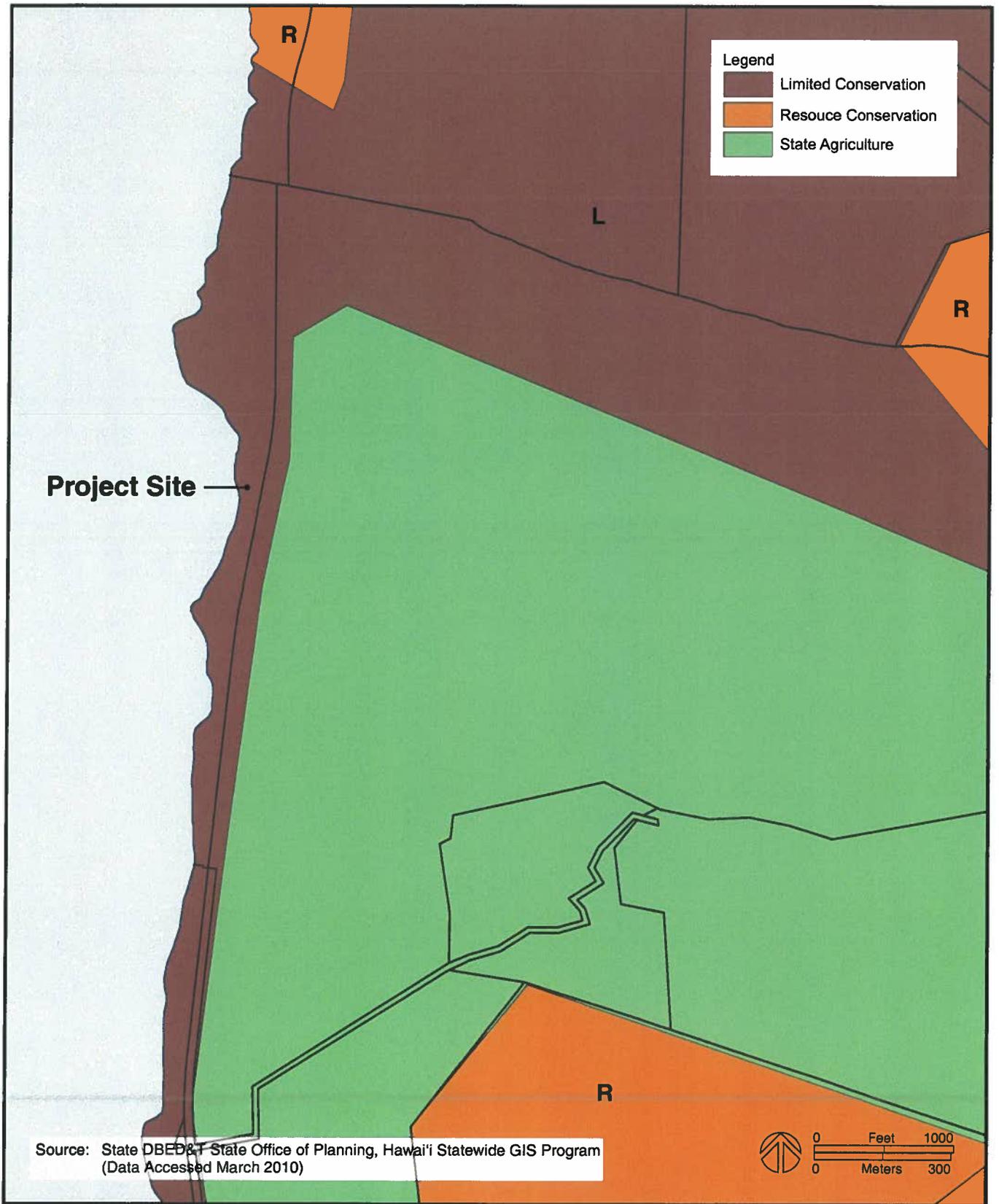
**WILLIAM J. AILA, JR.**, Chairperson  
Board of Land and Natural Resources



**REGIONAL LOCATION**

'Ōhikilolo Makai Consolidation and Resubdivision  
 Conservation District Use Permit Application  
 'Ōhikilolo, Wai'anae, O'ahu

**Exhibit A**



**STATE CONSERVATION DISTRICT SUBZONES**

'Ōhikilolo Makai Consolidation and Resubdivision  
Conservation District Use Permit Application  
'Ōhikilolo, Wai'anae, O'ahu

**Exhibit B**





These images of Structure 1 are taken from different angles. According to records with the City and County of Honolulu Real Property Division, Structure 1 was constructed in 1943. See also Exhibit I.

Photo 1



Photo 2

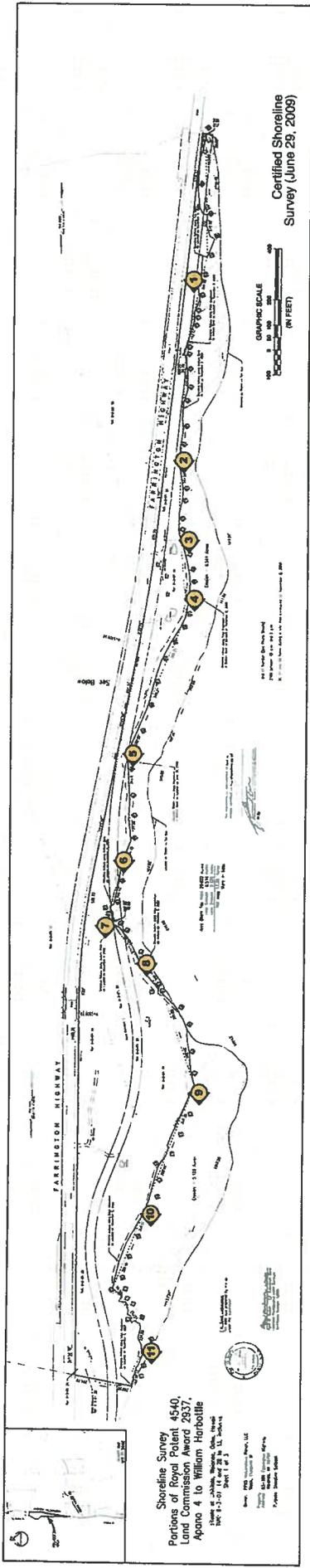


Photo 3



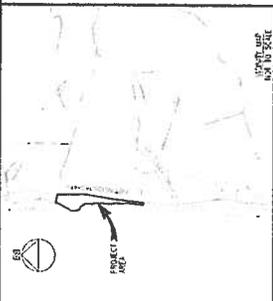
Photo 4

Images illustrate varying conditions of beach profile moving from south to north. Beach is characterized by erosion in the south moving toward a more stable condition in the north. Beach sand is perched behind raised beachrock/limestone.



**SHORELINE SURVEY WITH PHOTOS**  
 Ohikilolo Māka'i Consolidation and Resubdivision  
 Conservation District Use Permit Application  
 Ohikilolo, Waianāna, O'ahu

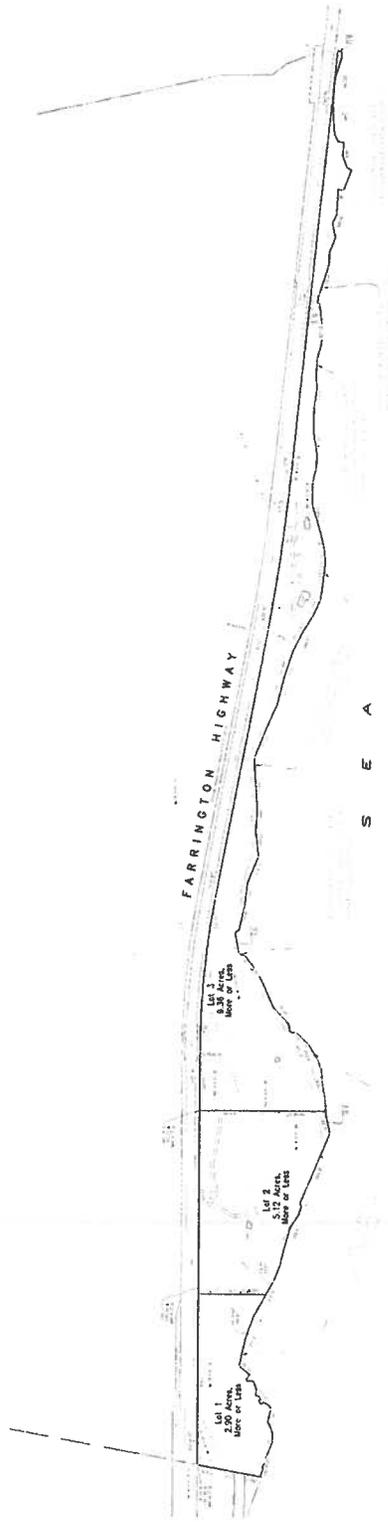
# EXHIBIT E



# Exhibit

## Proposed Subdivision Map

SCALE 1 IN = 200 FT.



Proposed  
 Consolidation of Road Remnant 1 (C.S.F. No. 20,878), Road Remnant 3 (C.S.F. No. 20,879)  
 a Portion of Former Oahu Railroad and Land Company Right-of-Way,  
 and Portions of Royal Patent 4540, Land Commission Award 2937, Apiana 4 to William Horbottle  
 and Resubdivision into Lots 1, 2, and 3

situate at Ohihiolo, Waimanalo, Oahu, Hawaii  
 1892; 8-3-01; 14 and 78 to 83, inclusive

Notes:  
 1. General and descriptive information is contained in the preliminary map filed on 10/12/11.  
 2. Landowners are advised to check the status of their land with the Department of Land and Natural Resources, 2002 Kalia Road, Honolulu, HI 96813.  
 3. This map is a preliminary map and is not to be used for any other purpose.  
 4. This map is a preliminary map and is not to be used for any other purpose.



Prepared by:  
 [Faint text]  
 Date:  
 [Faint text]

# EXHIBIT F