

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
Honolulu, Hawai`i**

180-Day Exp. Date: March 25, 2013  
CDUA HA-3642

February 08, 2013

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawai`i**

**REGARDING:** Multi-Purpose Community Center

**APPLICANT:** Pa`a Pono Miloli`i, P.O. Box 7715, Hilo, HI 96720

**AGENT:** Joe Farber, Farber & Associates

**LANDOWNER:** State

**LOCATION:** Ho`opūloa-Miloli`i, South Kona, Hawai`i

**TMK:** (3) 8-6-014:038, 039, 040, and 041

**AREA OF USE:** 4,800 ft<sup>2</sup>

**ESTIMATED COST:** \$400,000

**SUBZONE:** Miloli`i Village Special Subzone

**DESCRIPTION OF AREA AND CURRENT USE**

Pa`a Pono Moli`i is a 501 (c)(3) (i.e. a non-profit) organization which was founded in 1980. It has recently been awarded Federal Housing and Urban Development Economic Initiative funds to develop a multi-purpose community center to serve the Ho`opūloa-Miloli`i community.

The proposed project site is on four undeveloped parcels in the community, which total 40,000 square feet. The project site was previously developed, and contains the remnants of an abandoned demonstration water desalination facility constructed in 1990. These remnants will be dismantled and removed as part of the site preparation.

Elements of the proposal include:

- An 80-foot by 50-foot (4,000 square feet) community center with a large covered lanai, an enclosed office, a visitor reception center, a library, kitchen, and a classroom.
- Two detached 400 square foot guest quarters, with restrooms.
- An unpaved parking for fifteen vehicles, mauka of the main buildings and accessed from the beach access right-of-way.

The buildings would be constructed on concrete slab foundations surrounded by tile and concrete flooring, with plaster-finished walls and exterior stone veneers. The three structures would total 4800 square feet.

The proposed construction schedule contains two phases. In Phase I the main structure will be built, as well as the parking area. In Phase II the adjoining structures, guest quarters, and restrooms will be built. The project is anticipated to be finished four years after all necessary permits are secured, and to cost \$400,000.

The facilities will be used to conduct community meetings, cultural activities, and educational and recreational programs. Such a facility was called for in the 1984 Miloli'i-Ho'opūloa Community Development Plan; however, the community was unable to secure funds at that time to develop the programs or facilities.

The Center will be operated and maintained by Pa`a Pono Miloli`i. The organization will have the option to collect user fees, maintenance fees, or facility fees, provided that such fees remain consistent with the Pa`a Pono's mission and don't conflict with its non-profit status.

The project is in the Special Management Area, and will need an SMA permit. In addition, as the project is using Federal HUD funds, an Environmental Assessment under NEPA will be required. This will be administered by the County of Hawai'i Department of Housing and Community Development.

The following exhibits are attached:

1. Regional Map
2. Miloli`i TMK Parcels
3. Aerial View
4. Site Photographs
5. Site Plan
6. Community Center Elevation
7. Building Details

#### HISTORY OF MILOLI`I SPECIAL SUBZONE

On June 22, 1984 the Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) HA-1653 for the establishment of the Miloli`i Village Special Subzone, and the subdivision of the land for residential purposes. The Special Subzone was established in order to allow DLNR to meet the intent of Act 62, SLH 1982, which authorized the Department to negotiate and enter into long-term residential leases

with persons who were displaced by, or are descendants of the refugees of, the 1926 Ho`ōpūloa lava flow.

On December 28, 1984 the Division of Land Management presented the *Miloli`i Ho`ōpūloa Community Development Plan* to the Board as part of its report on the disposition of lots. This plan was developed by the *Pa`a Pono Miloli`i* community association, addressed issues of land preparation, development financing, residential construction, infrastructure improvements, emergency services, and the development of economic, recreational, cultural, and historical resources.

The Board took action regarding the direct leases of the parcels for residential purposes, and “accepted in principle” the other elements of the Development Plan. The staff report noted that, *with respect to planned activities in the area of recreation, cultural, historical, and economic activities, it is presumed that improvements corresponding with those activities are allowed in the Miloli`i Village Special Subzone, subject, however, to the review and approval of plans and compliance with applicable governmental requirements.*

#### SUMMARY OF COMMENTS

Copies of the application were submitted to the following agencies for review and comment: DLNR- Land Division, Historic Preservation, Division of Aquatic Resources, Division of Forestry and Wildlife, Division of Resource Conservation and Enforcement; State Department of Health; Office of Hawaiian Affairs; and the County of Hawai`i Planning Department.

In addition, this CDUA was sent to the Hawai`i State and the Kailua-Kona Public Libraries for public review.

Comments were received by the following:

#### DLNR Land Division

No comment.

#### DLNR Division of Boating and Oceanic Resources

No comment

#### DLNR State Historic Preservation Division (SHPD)

SHPD notes that the project was reviewed in 2007 and in 2008; the reviews indicated that there were no known historic properties that would be affected. A field inspection on September 18, 2012 confirmed that the area had been previously impacted by the construction of the desalination facility.

SHPD also notes that this is a federal undertaking, and that this requires review under Section 106 of the National Historic Preservation Act, and recommends that the consultation process be completed prior to the issuance of the permit.

Applicant's Response

*The Section 106 process was carried out as part of the Environmental Assessment prepared in September 2011 in accordance with the National Environmental Policy Act (NEPA). This was initiated by contacting SHPD in writing in August 2007 requesting consultation and comment. SHPD's responded in a letter of October 9, 2007 asking that "an archaeological field inspection should be conducted on the subject area to determine whether significant historic properties are present."*

*As noted, the filed inspection was held on September 18, 2012. The findings of no impact were supported by previous studies done in support of the 1984 Master Plan and Conservation District Use Permit (CDUP) HA-1653 for the Desalination Plant.*

*Section 106 consultations were also held with Native Hawaiian organizations and community members.*

County of Hawai'i Department of Public Works

The project is located in Flood Zone 'X,' which is not a designated Special Flood Hazard Area.

**ANALYSIS**

OCCL notified the applicant on October 19, 2012 that:

1. The proposal appeared to be a conditional land use pursuant to Hawai'i Administrative Rules (HAR) §13-5 Exhibit 2, SPECIAL SUBZONES (1) *Miloli'i-Ho'ōpūloa special subzone. Subzone designation for Miloli'i-Ho'ōpūloa fishing village purposes including fishing activities, residential, educational, cultural and recreational uses pursuant to Act 86, SLH 1991.* The proposal would require a Conservation District Use Permit (CDUP) from the Board of Land and Natural Resources, who have the final authority to grant, modify, or deny any permit.
2. Pursuant to §13-5-40 *Hearings*, no public hearing would be required.
3. Pursuant to Hawai'i Revised Statutes (HRS) Chapter 343, and HAR §13-5-31 *Permit applications*, the permit required that an environmental assessment be carried out.

An environmental assessment (EA) was developed under NEPA and administered by the County of Hawai'i Department of Housing and Community Development. The Final EA and a FONSI were published in the July 23, 2012 edition of the Department of Health's *Environmental Quarterly*. OCCL considers that this satisfies the requirements of HRS 343.

4. It is the applicant's responsibility to comply with the provisions of Hawaii's Coastal Zone Management law (HRS Chapter 205A) pertaining to the Special Management Area (SMA) requirements.

The County of Hawai'i Planning Department signed Special Management Area Permit No. 12-000242 on October 23, 2012.

A shoreline survey was not required of the applicant pursuant to §13-2-5-31 PERMIT APPLICATIONS. The applicant demonstrated that the project is not normally subject to coastal hazards such as shoreline erosion or wave inundation as 1) the project area is in Flood Zone 'X,' 2) the shoreline is composed of rough 'a' a lava, and 3) the parcel boundaries are approximately seventy feet from the shoreline, and the structures 130 feet.

Notice of CDUA HA-3642 was published in the October 23, 2012 issue of the *Environmental Notice*.

### CONSERVATION CRITERIA

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

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

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

Staff is of the opinion that such recreation and cultural centers are consistent with the purposes of the Conservation District as they have a minimal impact on natural resources, and can provide a venue for programs that strengthen the ties between the residents of Hawai'i and the 'aina.

We also appreciate that the proposal allows Pa'a Pono Miloli'i to collect user fees to help operate and maintain the facility, thus ensuring it's long-term sustainability and viability once the current grant cycle ends. Pa'a Pono Miloli'i is registered as a non-profit 501(c)(3) organization; maintaining that status will ensure that the project does not become a commercial or for-profit enterprise.

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

Pursuant to HAR §13-5 Exhibit 2, SPECIAL SUBZONES, the purpose of the Miloli'i-Ho'ōpūloa special subzone is for *fishing village purposes including fishing activities, residential, educational, cultural and recreational uses pursuant to Act 86, SLH 1991*

The project is intended to support the residents of Miloli'i-Ho-ōpūloa village by providing a venue for educational, cultural, and recreational uses. It is also a significant component of the village's 1984 Community Development Plan.

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

The State Office of Planning issued a letter on October 23, 2012 stating that the project had been reviewed in accordance with the CZM objectives and policies, HRS

§205A-2, and HAR §15-510-6. A Special Management Area (SMA) Use Permit was issued.

OCCL concurs with this decision, and finds that the project is consistent with the following §205A objectives:

**Recreational resources:** The project will provide the community with a base for recreational opportunities.

**Scenic and open space resources:** The project will have a minimal impact on open space, will not impact any important view planes, and will clean a parcel that currently has derelict material from a defunct desalination plant.

**Public participation:** This is a project that was conceived of and developed by the community.

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

The facility will rest one-hundred thirty feet from the shoreline, on a bed of permeable `a`a lava. The site has been previously cleared and graded to host a now defunct desalination facility. There are no known sensitive biological, cultural, or historical resources on the project site.

OCCL does not foresee any substantial adverse impacts from redeveloping the site as a Community Center.

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

The project will be located in a rural, sparsely-populated residential area of South Kona. The single-story buildings are an appropriate scale for the area. The concrete slab foundations, plaster finish walls with exterior stone veneers, gable roofs, and enclosed lanai are similar in design to other buildings in rural Hawai`i.

The buildings will be designed and constructed to meet the Americans with Disabilities Act Accessibility Guidelines (ADAAG), ensuring that they are accessible to all members of the community.

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

As noted before, the parcel currently contains remnants of a desalination plant. The parcel will be cleaned and maintained. It will not block any significant view plains, nor damage any sensitive environmental areas.

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

No subdivision of land is being proposed.

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

The facility is intended to meet the recreational, cultural, and social demands of an isolated community. The Center will be a hub for youth programs, team sports, canoe paddling and racing, Hawaiian language classes, and micro-enterprise development and training. As such, OCCL feels that it will be beneficial to the public health and welfare.

### **DISCUSSION**

The proposed use is an identified use within the Conservation District according to the HAR, §13-5 Exhibit 2, SPECIAL SUBZONES (1) *Miloli`i-Ho`ōpūloa special subzone*.

The community center was discussed in the *Miloli`i Ho`ōpūloa Community Development Plan* in 1984. At the time the Board took action regarding the direct leases of the parcels for residential purposes, and “accepted in principle” the other elements of the Development Plan.

OCCL received no negative comments regarding the proposal.

OCCL would like to call the Board’s attention to the part of the proposal that would allow Pa`a Pono Miloli`i to collect user fees to help operate and maintain the facility. We believe that this will help ensure the center’s long-term sustainability and viability once the current grant cycle ends. In order to keep the Community Center a non-profit and not a commercial for-profit venture, OCCL will recommend that the Board make add a condition to the permit that allows the permittee to collect user fees provided that such fees do not jeopardize the permittee’s status as a non-profit 501(c)(3) organization.

### **WAIVER OF FEES**

The applicant has requested a waiver of the CDUA processing fee based upon the project’s non-profit role to improve the quality of life of the people in the community. They note that the project will occur on State Land, and that the State and DLNR will both enjoy positive outcomes from the project. In addition, the applicant will be clearing remnant structures from the defunct desalination plant.

Pursuant to HRS §183C-3 POWERS AND DUTIES OF THE BOARD AND DEPARTMENT, *The board and department shall (4) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of processing applications for zoning, use, and subdivision of conservation lands.*

Pursuant to §13-5-32 FEES, *Each application shall be accompanied by the filing fees specified in this chapter. All fees shall be in the form of certified or cashier's check, and payable to the State of Hawaii. The application fee for state projects shall be waived.*

OCCL notes that the filing fee for this project would be \$2500.

OCCL supports the applicant's request for a waiver in this case as 1) the Miloli'i Village Special Subzone was established by the State to provide leases to the refugees and their descendants of the Ho'ōpūloa lava flow; 2) the community center is a public purpose use that was called for in the 1984 *Miloli'i-Ho'ōpūloa Community Development Plan*; 3) the community center is federally-funded and will be built on State land; and 4) the community center will be built and operated by a registered non-profit entity.

For these reasons OCCL concurs with the applicant that the project can be considered a "state project," and recommends that the Board waive the processing fees for this permit.

#### RECOMMENDATION

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE Conservation District Use Permit (CDUP) HA-3642 for the Multi-Purpose Community Center at Ho'ōpūloa-Miloli'i, South Kona, Hawai'i, TMKs (3) 8-6-014:038, 039, 040, and 041, subject to the following conditions:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
2. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
3. The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;
4. The permittee shall comply with all applicable department of health administrative rules;
5. Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;
6. Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within fifteen years of the approval of such use. The permittee shall notify the

- department in writing when construction activity is initiated and when it is completed;
7. All representations relative to mitigation set forth in the accepted environmental assessment for the proposed use are incorporated as conditions of the permit;
  8. The conditions of the project's Special Management Area Use Permit are incorporated as conditions of the permit;
  9. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
  10. In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the 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 the department may, in addition, institute appropriate legal proceedings;
  11. When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the county department of water supply;
  12. Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
  13. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
  14. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
  15. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
  16. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
  17. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawai`i, and by Hawai`i statutory and case law;
  18. The permittee shall be allowed to collect user fees provided that such fees do not jeopardize the permittee's status as a non-profit 501(c)(3) organization;
  19. The guest quarters shall not be used as rental properties; and

20. Other terms and conditions as prescribed by the chairperson.
21. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,



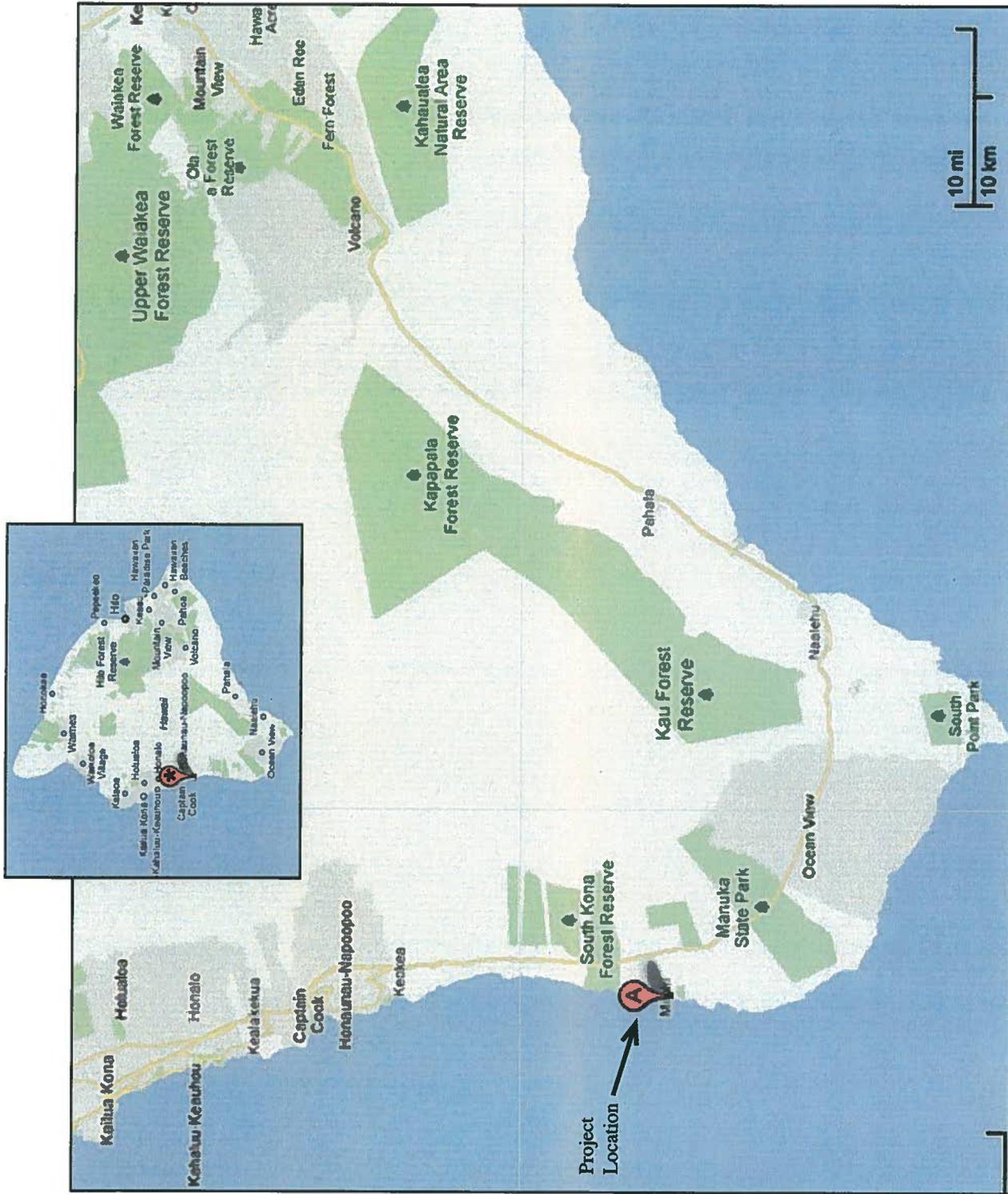
Michael Cain, Staff Planner  
Office of Conservation and Coastal Lands

**Approved for submittal:**

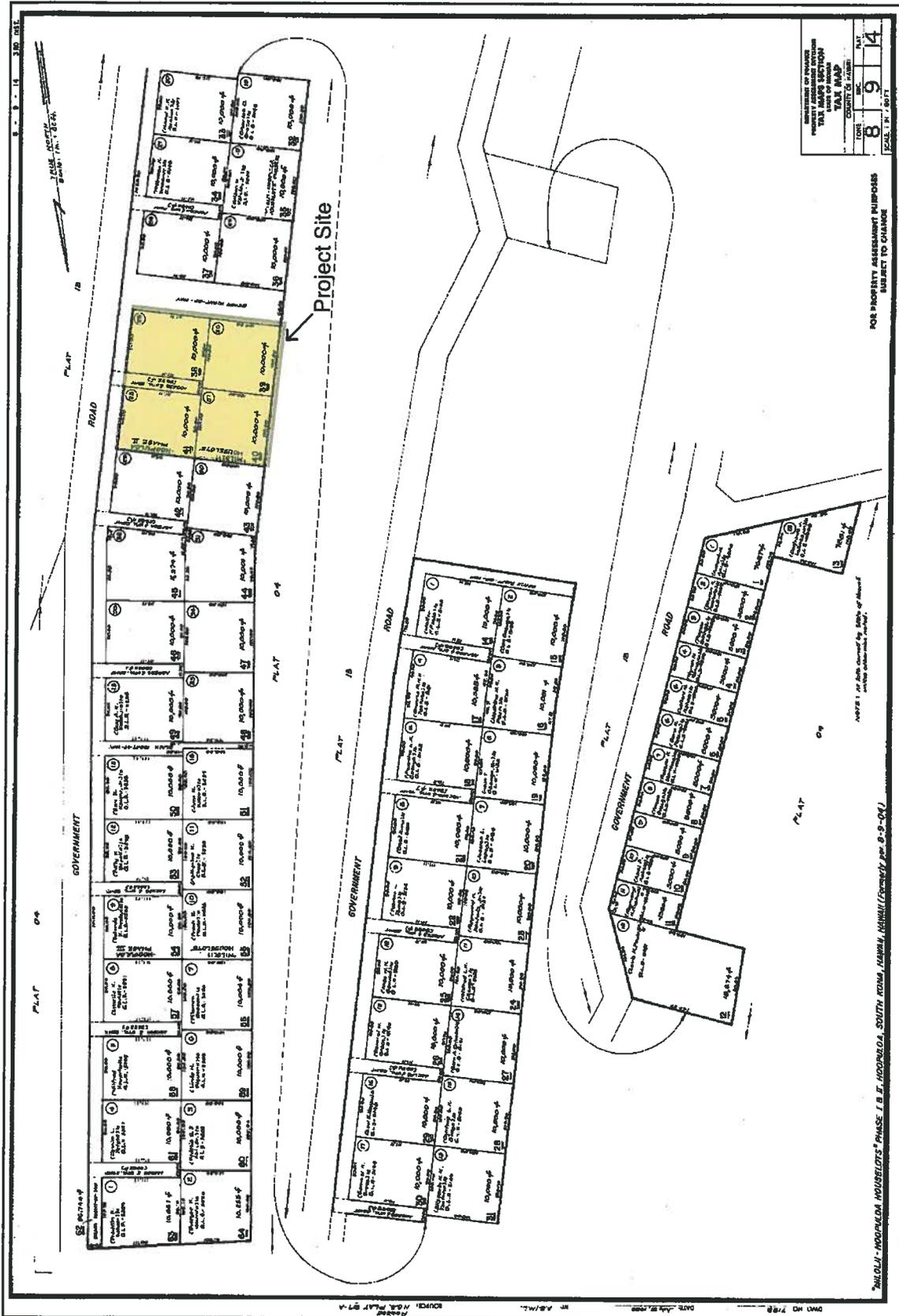


---

**William J. Aila, Chairperson**  
**Board of Land and Natural Resources**



**Figure 1**  
Vicinity Map  
Miloli'i Community Center  
Miloli'i, Ho'opuloa, South Kona, Hawai'i  
(Google Earth 2010).



**Figure 3**  
**Tax Map Key (TMK) No. (3) 8-9-014: 038, 039, 040, and 041.**  
**Miloli'i Community Center**  
**Miloli'i, Ho'opūloa, South Kona, Hawaii'**



**Figure 4**  
**Project Site - Existing Conditions**  
**Tax Map Key (TMK) No. (3) 8-9-014: 038, 039, 040, and 041**  
**Miloli'i Community Center**  
**Miloli'i, Ho'opuloa, South Kona, Hawai'i**  
**(Google 2011),**



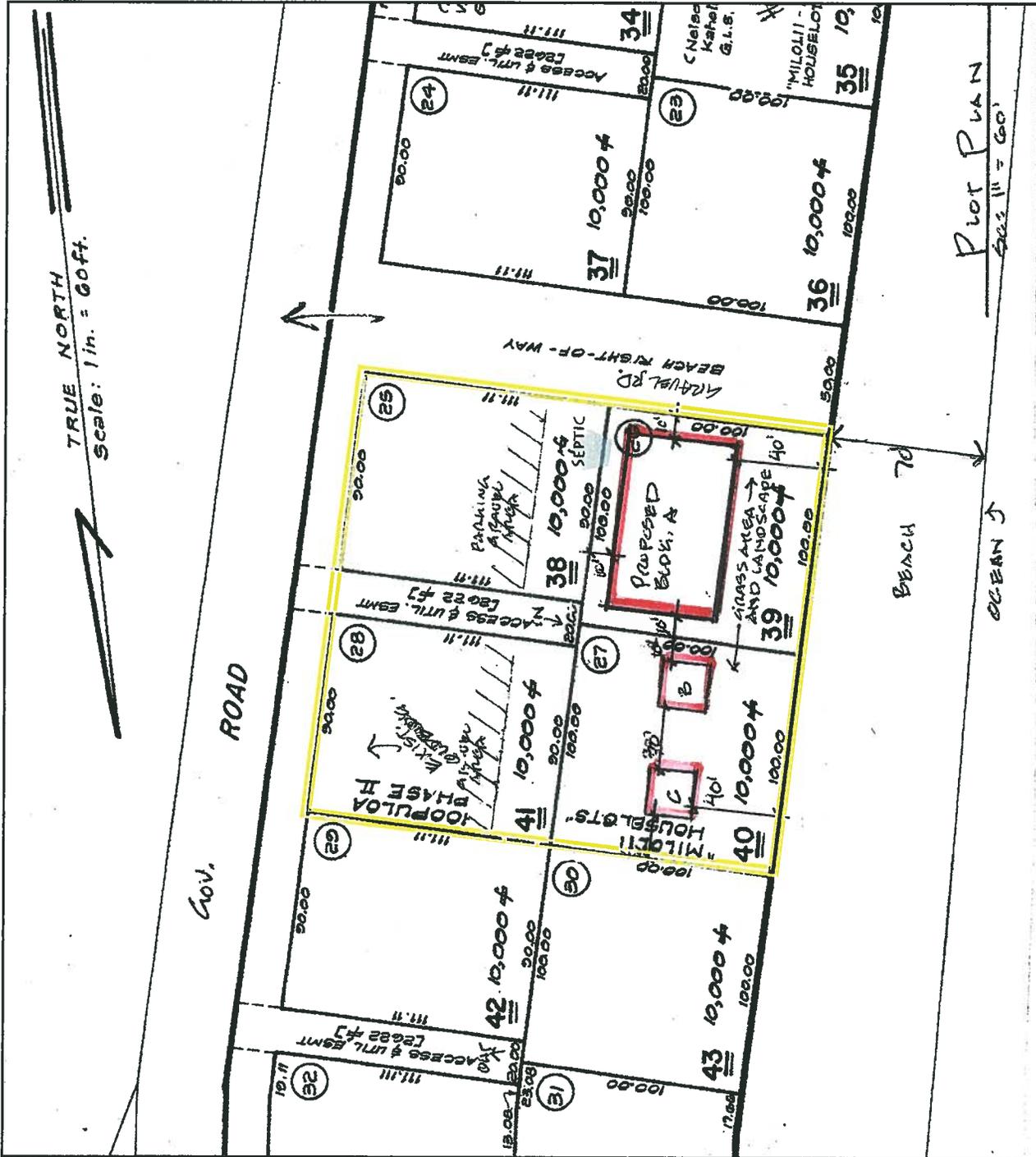
Figure 6.1. Beach Right-of-Way Access Road looking makai. Project site is on the right.



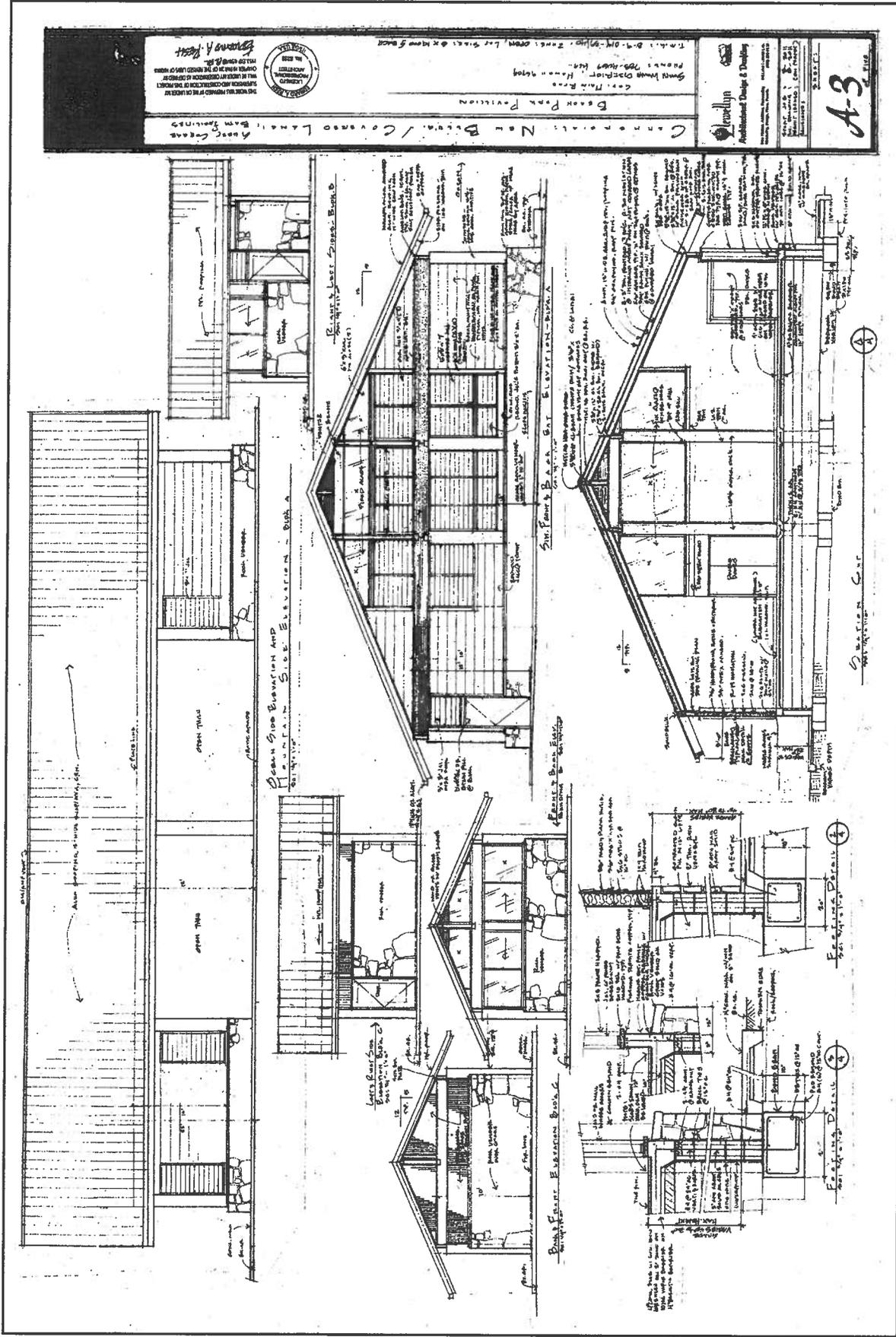
Figure 6.2. Shoreline adjacent to project site.



Figure 6.3. Mauka view of project site from makai end of Beach Right-of-Way Access Road.



**Figure 7**  
**Plan Map - Tax Map Key (TMK) No. (3) 8-9-014: 038, 039, 040, and 041**  
**Miloli'i Community Center**  
**Miloli'i, Ho'opūloa, South Kona, Hawaii'i**



**Figure 8**  
**Elevation Views**  
**Miloli'i Community Center**  
**Miloli'i, Ho'opuloa, South Kona, Hawaii**  
**(William Llewellyn Design 2011).**

