

*Clemens Improvements*

Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director  
Russell Kokubun  
Deputy Director

County of Hawaii RECEIVED

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

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OFFICE OF ENVIRONMENTAL  
QUALITY CONTROL

July 24, 1997

Mr. Gary Gill, Director  
Office of Environmental Quality Control  
235 S. Beretania Street  
State Office Tower Suite 702  
Honolulu, HI 96813

Dear Mr. Gill:

**Subject:** Final Environmental Assessment/Finding of No Significant Impact (FONSI)  
**Applicant:** Dale Lawrence and Veronica Clemens  
**Request:** After-the-Fact Improvements of Existing Seawall, Planter and Boundary Wall,  
and Backfill/Lawn Improvements; and Proposed Lap Pool Improvements  
**Tax Map Key:** 7-8-14:51

Please find enclosed a completed OEQC Bulletin Publication Form, four (4) copies of the Final Environmental Assessment (FONSI) and project summary on disk for the above-referenced project. Please publish notice of this determination in the August 8, 1997, Bulletin.

The subject property with improvements is located within the shoreline setback area, thus triggering Chapter 343, HRS, relating to Environmental Impact Statements. As the issuance of a Shoreline Setback Variance by the County Planning Commission is required in order to legitimize the existing and to allow proposed improvements on the property, the Planning Department is the accepting agency.

As the accepting agency, the Planning Department has reviewed the Final EA for the subject project and find this document to be acceptable as it has been prepared pursuant to Chapter 343, Hawaii Revised Statutes and Chapter 200, Title 11, Administrative Rules, Department of Health, Environmental Impact Statement Rules. We have determined that a FONSI be issued on this request as impacts can be addressed and mitigated through conditions of the applicable SSV Permit, should the request be approved.

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Mr. Gary Gill, Director  
Office of Environmental Quality Control  
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July 24, 1997

In regards to comments provided in your letter dated July 10, 1997, the applicant has expanded the Final EA to address these comments. Moreover, we feel the information which your office seeks as standard information relating to "Shoreline hardening" projects is inapplicable since the shore fronting this property neither is a sand beach or cobble beach but a basalt lava and shelf. We feel that your request for the following information to be unreasonable: (1) a historical shorelines analysis, (2) an analysis of any existing nearby walls or revetments, (3) a wave and storm frequency analysis, and (4) an analysis that predicts of the location of future shorelines with and without the wall. We believe that studies, such as the above, involves detailed research, data gathering and monitoring of the shoreline beyond the applicant's responsibility. Such issues are a part of beach management and this type of information should be available in a database that government agencies provide to the public.

Should you have any questions, please contact Susan Gagorik or Alice Kawaha of the Planning Department at 961-8288.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

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Attachments

cc: Mr. and Mrs. Dale Clemens  
Steven S.C. Lim, Esq.  
West Hawaii Office

1997-08-08 - ~~H~~ HI - FEA - Clemens  
Single Family Dwelling & Seawall  
Improvements

**FILE COPY**

AUG 8 1997

SINGLE FAMILY RESIDENCE  
of  
DALE LAWRENCE CLEMENS and VERONICA CLEMENS

TMK: (3) 7-8-14:51  
Lot 4-B, North Kahaluu Beach Subdivision  
(0.22± acres/9,583± square feet)  
Kahaluu, North Kona, Hawaii

FINAL  
ENVIRONMENTAL ASSESSMENT

Prepared for:

PLANNING DEPARTMENT  
County of Hawaii

July 1997

STEVEN S. C. LIM  
Carlsmith Ball Wichman Case & Ichiki  
121 Waianuenue Avenue  
Hilo, Hawaii 96720  
Telephone: 935-6644

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**FINAL**  
**ENVIRONMENTAL ASSESSMENT**

**I. Identification of Applicant(s).**

The Applicants collectively referred to herein are DALE LAWRENCE CLEMENS and VERONICA CLEMENS, husband and wife, whose residence and mailing address is 100 10th Street, Del Mar, California 92014, telephone number: (619) 755-2559 (hereinafter "Applicants"). Attorney-in-fact for Applicants is Steven S. C. Lim, Esq., whose address is care of Carlsmith Ball Wichman Case & Ichiki, 121 Waianuenue Avenue, Hilo, Hawaii 96720, telephone number: (808) 935-6644.

**II. Identification of Approving Agency.**

The approving agency for this Environmental Assessment is the Planning Department of the County of Hawaii. The shoreline setback variance is subject to the approval of the Planning Commission of the County of Hawaii.

**III. Identification of Agencies, Citizens Groups and Individuals Consulted.**

Agencies:	Hawaii County Planning Department Hawaii County Department of Public Works State Department of Land and Natural Resources Office of Environmental Quality Control
Citizen Groups:	Sierra Club, Hawaii Chapter Environmental Center, University of Hawaii at Manoa
Individuals:	Dr. Elizabeth Marshall (adjacent landowner, south boundary) Mr. Jim Gregory (adjacent landowner, north boundary) Ms. Patricia Tummons

**IV. Project Background.**

Applicants acquired title to the Property by way of a Warranty Deed recorded at the Bureau of Conveyances of the State of Hawaii on February 18, 1994, as Document No. 94-029182. Certain undisclosed encroachments caused by existing improvements on the Property were conveyed to Applicants under said Deed. Applicants had no knowledge of these encroachments prior to closing on the purchase of the Property. As a result, Applicants are currently applying to the County

of Hawaii (hereinafter the "County") for after-the-fact approvals of existing single-family dwelling, seawall, planter and boundary wall, and lawn improvements as well as for pre-construction approval of proposed lap pool improvements, as listed below:

**VARIANCES FROM SHORELINE SETBACK (SSV) REQUIREMENTS**

	<u>Existing/ Proposed</u>	<u>Bldg Permit Obtained</u>	<u>Required Shoreline Setback</u>	<u>Encroachment into Required Shoreline Setback under Planning Commission Rule 8-4</u>
2-story dwelling	existing	no	20.0 feet	1.7 feet
2nd-story lanai	existing	no	20.0 feet	6.1 feet
2nd-story eaves	existing	no	20.0 feet	7.1 feet
seawall	existing	no	20.0 feet	20.0 feet
planter wall				
boundary wall				
backfilled lawn				
lap pool/apron	proposed	after SSV approval	20.0 feet	15.0 feet

**VARIANCES FROM ZONING CODE**

*On June 10, 1996, the Hawaii County Planning Director approved Zoning Code variances for the following improvements:*

	<u>Existing/ Proposed</u>	<u>Bldg Permit Obtained</u>	<u>Required Front Yard</u>	<u>Encroachment into Required Front Yard under Zoning Code Section 25-124(a)(1)(A)</u>
2-story dwelling	existing	no	15.0 feet	0.6 feet
	<u>Existing/ Proposed</u>	<u>Bldg Permit Obtained</u>	<u>Required Yard for Projections</u>	<u>Encroachment into Required Yard for Structures under Zoning Code Section 25-66(a)</u>
2nd-story eaves	existing	no	North: 6.0 feet	0.7 feet

**EXEMPTIONS FROM SPECIAL MANAGEMENT AREA (SMA) REQUIREMENTS**

*On July 18, 1996, the Hawaii County Planning Director exempted existing and proposed improvements from further Special Management Area review.*

	<u>Existing/ Proposed</u>	<u>SMA Exemption or Approval Requested</u>
2-story dwelling	existing	Exemption from Classification as "Development" under Planning Commission Rule 9-4(10)(B)(i)
lap pool/apron	proposed	Issuance of an SMA Minor Permit Requested under Planning Commission Rule 9-4(25)

**VARIANCES FROM HOUSING CODE**

*On August 9, 1996, the Hawaii County Board of Appeals voted to approve Housing Code variances for the following improvements:*

	<u>Existing/ Proposed</u>	<u>Bldg Permit Obtained</u>	<u>Required Side Yard for 2-Story Bldg</u>	<u>Encroachment into Required Side Yard under Housing Code Section 11-18(a)(2)</u>
2-story dwelling	existing	no	North: 10.0 feet	0.5 to 0.9 feet

**V. General Project Characteristics.**

**A. Technical Characteristics.**

**1. Surrounding area and land uses and existing structures.**

The subject property, identified as Lot 4-B of the North Kahaluu Beach Subdivision (hereinafter the "Subdivision"), more particularly described as tax map key parcel (3) 7-8-14:51, situate in the District of North Kona, Island and County of Hawaii, approximately 0.2 miles north of the County-owned Kahaluu Park, is bounded by Alii Drive along its mauka (eastern) boundary and by the shoreline along its makai (western) boundary (hereinafter the "Property"). The rectangular-shaped Property, consisting of approximately 0.22± acres, or 9,583± square feet, of oceanfront land, includes frontage along Alii Drive of approximately 70 feet, and is flanked along its northern and southern boundaries by other privately owned residential lots and single-family dwellings within the Subdivision. *See, Exhibit A, Location Map, and Exhibit B, Area Tax Map.*

The Subdivision is located within the "Urban" State Land Use District and the County's Special Management Area, in an area along the shoreline designated as "Open" and "Low Density Urban" on the County's General Plan Land Use Pattern Allocation Guide (LUPAG) map, with individual lots zoned RS-7.5 (Single Family Residential-minimum 7,500 square feet). Other lots within the surrounding tax map plat are also located within the "Urban" State Land Use District and County's Special Management Area, and are variously zoned Open, RS-7.5 (Single Family Residential-minimum 7,500 square feet), V-1.25 (Resort Hotel-minimum 1,250 square feet) and RM-1 (Multiple Family Residential-minimum 1,000 square feet).

A Shoreline Certification Map certified on April 26, 1995, and reconfirmed on March 13, 1996, by the State Department of Land and Natural Resources, locates the shoreline of the Property along the makai face of its existing seawall. The County's shoreline setback line for the Property is 20 feet inland of the certified shoreline, since 1) the average lot depth measured from its certified shoreline is 79.52 feet, or less than 100 feet, and 2) the buildable lot area would be reduced to 43 per cent, or less than 50 per cent, if a 40-foot shoreline setback from the certified shoreline, together with a 15-foot front yard required under the Zoning Code and 10-foot side yard setbacks required under the Housing Code, were applied to the 9,583± square foot parcel. *See, Exhibit C, Shoreline Certification Map/Site Plan.*

**2. Existing access and utilities.**

Access to the Property is taken off Alii Drive, a County-maintained roadway. Electrical and telephone services as well as County water are also taken off Alii Drive, with the Property currently serviced by an existing on-site cesspool for wastewater disposal.

**B. Economic Characteristics.**

Short-term employment is contemplated for building contractors during the installation of pool improvements.

**C. Social/Cultural Characteristics.**

The North Kona district has witnessed a largest increase in population in the last ten years. The shoreline along the North Kona district are developed with resort centers interspersed with residential and other urban uses. To the best of the Applicants' knowledge, the Property has not been significant for cultural/and or historical purposes, and the shoreline and areas adjacent to the Property have been extensively developed. The many mixed uses along the entire stretch of the North Kona district shoreline attract local residents, as well as tourists, and are a vital part of the Kona way-of-life. The Property is situated within the North Kahaalu Beach Subdivision along Alii Drive in Kailua-Kona, amidst other privately owned residential lots and single-family dwellings and related improvements of comparable character and size.

**D. Environmental Characteristics.**

**1. Fauna and flora.**

There are no known rare or endangered species of plants or animals found within the Property or the surrounding area.

**2. Historical and archaeological resources.**

The Property is not among those listed as historic properties on the Hawaii Register or the National Register of Historic Places. There are also no known historical or archaeological resources remaining on the Property.

The Property was cleared, and the existing non-conforming structure, boundary rock walls, lawn area and seawall were constructed and installed, prior to Applicants' acquisition of the Property.

**VI. Summary Description of Affected Environment.**

*See also Section XIV, "Consistency with SMA guidelines (Chapter 205A, Hawaii Revised Statutes).*

**A. Site characteristics (topography, soils and shoreline.)**

The Property is located on the leeward coast of the Island of Hawaii, which is characterized by a dry and hot climate. Land forms are characterized by a general gradual slope to the coastline. The Property's elevation is approximately 11.9 feet above mean sea level

The Soil Survey of the Island of Hawaii, prepared by the Department of Agriculture, Soil Conservation Service, classifies the soil as "rPYD" or "Punaluu extremely rocky peat", which, in a representative profile, consists of a surface layer of black peat about four inches thick underlain with pahoehoe bedrock. The peat is rapidly permeable; the pahoehoe is very slowly permeable. Runoff is slow; and erosion hazard is slight. The Land Study Bureau classifies soils on the Property as "E", or "Very Poor", in agricultural productivity.

The shoreline characteristics of the Property and adjoining oceanfront properties along the North Kahaluu Beach Subdivision is predominantly historical pahoehoe flows, with mixed coral and rock rubble, and very little sand and organic soil. The shoreline fronting the existing seawall is characterized by a general gradual slope to the sea. The distance from the makai face of the seawall to the shoreline ranges between approximately 10 feet through 20 feet. *See, Exhibit E, Site Photographs.* The White Sands Beach Park is located approximately one mile north

of the Property, and Kahaluu Beach Park is located approximately one-half mile south of the Property.

**B. Flood and tsunami hazards.**

The U.S. Corps of Engineers Flood Insurance Rate Maps (FIRM) designate a portion of the Property closest to the shoreline as "VE (12)", or within an area of coastal floods with a base flood elevation of 12 feet, with the remainder of the Property designated as "AE (10)", or within an area of 100-year floods with a base flood elevation of 10 feet. Other oceanfront lots within the Subdivision are similarly located within the "VE-12 foot" and "AE-10 foot" bands along the shoreline. *See, Exhibit D, Flood Insurance Rate Map (FIRM).*

**VII. Major Impacts and Alternatives Considered.**

**A. Existing Single-Family Dwelling Improvements.** These improvements include a two-story single-family dwelling, more specifically, a three bedroom, three full-bath and two half-bath residence, including living area, decks, external staircases and an open carport. In order to minimize the variances requested, Applicants will voluntarily remove portions of the residence which encroach into the required north side yard of the Property, specifically deleting a stairway and portions of a bath/shower area consisting of approximately 288 square feet. After the deletion of the same, the dwelling will contain approximately 2,948 square feet of living area and 1,280 square feet of other covered area. As a result, Applicants' shoreline setback variance request for the existing single-family dwelling will be limited to: 1) an exterior wall line encroachment of 1.7 feet, 2) a second-story lanai encroachment of 6.1 feet, and 3) an eaves encroachment of approximately 7.1 feet. Planning Department files indicate that expansion of the original 960 square foot permitted structure on the Property was accomplished sometime after 1987. County real property tax records indicate that the original structure was assessed beginning 1970, and that the expanded structure was assessed beginning 1989. As stated earlier, Applicants acquired the Property in 1994, with existing unpermitted improvements already in place and undisclosed to them. However, Applicants respectfully submit that the aforementioned improvements do not significantly impact on area resources, since they are aesthetically compatible with surrounding residential properties and do not curtail the beneficial use of the Property or intensify its existing use. *See, Exhibit E, Site Photographs.*

**B. Existing seawall, planter and boundary wall, and lawn improvements.** These improvements were also installed after 1987, according to Planning Department records, without appropriate grading or building permit, Special Management Area and shoreline setback variance approvals. The State Department of Land and Natural Resources has since certified on April 26, 1995, and reconfirmed on March 13, 1996, that the shoreline of the Property follows the makai face of the existing approximately six to eight-foot high seawall. An existing approximately two to three-foot high planter wall, fronting the dwelling and paralleling the seawall, extends approximately 28 feet from the northern property boundary into the shoreline setback area. Existing northern and

southern property boundary walls approximately two and one-half to three feet high also extend from the existing seawall mauka into the shoreline setback area and continue to Alii Drive. The lawn area fronting the residence was also backfilled and grassed sometime prior to Applicants' acquisition of the Property. Applicants are seeking after-the-fact approval of the aforementioned seawall, rock wall, fill and lawn encroachments into the 20-foot shoreline setback for the Property, and respectfully submit that the existing seawall and related improvements have been in existence for approximately eight to ten years, do not artificially fix the shoreline or restrict public access to the shoreline since the same is certified at its makai face, and that the Property's elevation approximately 11.9 feet above mean sea level precludes the planter and boundary walls and existing lawn area from impacting upon beach processes.

As part of a proposed seawall construction for an oceanfront property on Alii Drive, approximately two miles from the Applicants' Property, a wave study was conducted in 1996 to determine: (1) whether interaction of waves with the seawall would result in any adverse impact on neighboring property or on Alii Drive, and (2) whether base flood levels would increase. The study concluded that the proposed seawall would not cause any increase in base flood elevation and would not cause any adverse impact on adjoining properties or on Alii Drive. The study further concluded that since neighboring properties have seawalls, the proposed seawall would enhance protection of those other properties in the area. Adjoining neighbors to the north and south of the Applicants' Property, and several oceanfront properties within the subdivision have existing seawalls. Based on prior wave study conducted within the area, the existing seawall would enhance the protection of other properties within its immediate area.

**C. Proposed Lap Pool Improvements.** These improvements include a new at-grade lap pool, approximately 10 feet wide and approximately 38 feet long, surrounded by a ground-level concrete/tile apron approximately three (3) feet wide, fronting the existing single-family dwelling and located within the County's 20-foot shoreline setback area for the Property. The distance from the edge of the makai concrete/tile apron of the proposed lap pool to the existing seawall is approximately 3 feet. Applicants do not anticipate any major or significant impacts upon environmental and ecological resources in the area as a result of construction of the proposed lap pool improvements, since they are compatible with those in the Subdivision and other oceanfront communities along Alii Drive. There will also be minimal drainage and overflow from the pool improvements due to the high evaporation rate along the Kona coastline. Semi-monthly backwashing of the pool filter (involving approximately two gallons of water) will be diverted into the existing cesspool on the Property. In the unlikely event that the entire pool must be drained for repair or maintenance, the water will be pumped to a tank truck along Alii Drive. *See, Exhibit F, Site Plan for Proposed Lap Pool.*

**D. Alternatives to the Proposed Action.**

With regard to the existing single-family dwelling, seawall, planter, boundary wall and lawn improvements, any demolition of, or removal of these structures regardless of precautions and due care taken, will cause an intrusion of silt and rubble into the nearshore waters,

causing substantial adverse impacts to the coastal waters, shoreline area and Property. In addition, the Applicants would be caused extreme economic and personal hardship if the same were not approved, and the Applicants were required to comply with current County requirements and forced to remove or substantially modify those improvements which predated their acquisition of the Property.

With regard to the proposed lap pool improvements, Applicants would have no alternative but to abandon the improvement project, if the same were not approved by the County, thereby depriving Applicants of reasonable use of the Property in light of similar residential improvements enjoyed in the area.

Applicants also submit that the County would realize no benefit if the Property were left unused or underutilized, given that real property taxes have been assessed and collected on initial permitted improvements since 1970 and on expanded unpermitted improvements since 1989.

The Applicants should not be penalized for voluntarily seeking to bring the unpermitted uses into compliance with required County variance procedures. To do so would encourage others to avoid the process and hide similar unpermitted improvements.

#### **VIII. Proposed Mitigating Measures.**

Temporary minor impacts caused by pool construction activities are anticipated to last a few weeks, but can be properly mitigated through standard construction practices. No significant long-term impacts on the environment are anticipated from the continuation of existing single-family dwelling, rock wall and lawn improvements, or the construction of proposed pool improvements on the Property, since they do not compromise the residential character of the Subdivision, which was granted final approval by the County in September 1961.

#### **IX. Agency Determination/Anticipated Determination.**

The anticipated negative declaration is subject to the public review provisions of Section 11-200-9.1.

#### **X. Findings and Reasons Supporting the Anticipated Determination.**

Applicants anticipate a negative declaration based on a determination that the cumulative effects of the approval of the existing non-conforming single-family dwelling, seawall, planter and boundary wall, and lawn improvements, and the proposed lap pool improvements will have no significant effect on the environment since:

1. There are no known archaeological/cultural resources in the area that would involve an irrevocable commitment to loss or destruction of any natural or cultural resources. The Property and surrounding area have long been developed for residential purposes.
2. The beneficial uses of the environment for recreational and access purposes will not be curtailed since public shoreline access is secured makai of the existing seawall fronting the Property.
3. The preparation of the environmental assessment is in compliance with Chapter 344, HRS, and the proposed action does not conflict with the short or long term policies, goals and guidelines of Chapter 344, HRS.
4. The economic or social welfare of the community will not be affected as most of the uses have existed for years. The proposed action should not preclude the development of coastal dependent economic uses and/or public and private facilities.
5. Public health will not be affected since temporary construction activities for the proposed pool are anticipated to last a few weeks and can be properly mitigated through standard construction practices. No significant long-term impacts are anticipated from the existing improvements which were constructed eight to ten years ago.
6. The proposed action will not cause substantial secondary impacts, nor adversely affect population changes on public facilities. Access is provided off Alii Drive, a County-maintained roadway, and electrical and telephone utility services, County water and an existing on-site cesspool for wastewater disposal currently service the Property. There are no additional burdens on public facilities anticipated from the proposed uses.
7. The proposed action does not involve a substantial degradation of environmental quality as the existing and proposed improvements do not compromise the character of the Property and surrounding area. The rocky lava shoreline in the area of the Property has remained stable since the construction of the improvements in the late 1980s.
8. The existing and proposed improvements are consistent in character and size with other residential improvements in the area, and will neither conflict with or intensify existing land uses, nor burden existing area resources and available public services, and therefore does not have a cumulative effect upon the environment or involve a commitment for larger action.
9. There are no known rare, threatened, or endangered plant or animal species or habitats on the Property or immediate vicinity.
10. The proposed action will not detrimentally affect air or water quality or ambient noise levels since drainage and overflow from pool improvements, if any are not

dissipated by the high evaporation rate along the leeward coast, will either be diverted to the existing cesspool on the Property (i.e., during semi-monthly backwashing of the pool filter involving approximately two gallons of water), or pumped to a tank truck stationed on Alii Drive in the unlikely event that the entire lap pool needs to be drained for repair or maintenance. In addition, temporary construction activities for the proposed pool are anticipated to last a few weeks and can be properly mitigated through standard construction practices.

11. The existing improvements have remained stable during the coastal storms over the last eight to ten years despite a portion of the Property closest to the shoreline being in an area of coastal floods with a base flood elevation of 12 feet.

12. The existing and proposed improvements are consistent with the character and size of other residences in the area and does not substantially impact upon the scenic vistas and viewplanes of surrounding properties.

13. Substantial energy consumption is not required for the existing and proposed improvements.

**XI. Consulting Agencies for Environmental Impact Statement (EIS) Preparation.**

(Not applicable.)

**XII. List of Applicable Governmental Permits and Approvals Required.**

**A. County Permits and Approvals.**

*See Section IV above for comprehensive list of approvals applied for and obtained.*

**B. State Permits and Approvals.**

*See Section V.A.1 above for discussion of shoreline certification map approval.*

**C. Federal Permits and Approvals.**

*See Section VI.B above for discussion of U.S. Corps of Engineers flood designation for the Property.*

### XIII. Written Comments and Responses on Early Consultation.

A. **Approval of Variance from Hawaii County Zoning Code.** Via letter dated June 3, 1996, Dr. Elizabeth Marshall, owner of property adjacent to the southern boundary of Applicants' property, filed an objection with the Hawaii County Planning Director concerning Applicants' request for a variance from the Zoning Code as discussed in Section IV above. *See, Exhibit G, Objection to Zoning Code Variance.* However, on June 10, 1996, the Hawaii County Planning Director approved Applicants' Application for Variance from Zoning Code and no appeal was filed by Dr. Marshall or any other property. *See, Exhibit H, Approval of Zoning Code Variance by Hawaii County Planning Director dated June 10, 1996.* The Applicants and Dr. Marshall have had discussions on her comments and are finalizing their agreement to address all concerns raised in her June 3, 1996 letter.

B. **Exemption from Special Management Area (SMA) Requirements.** On July 18, 1996, the Hawaii County Planning Director exempted existing and proposed improvements from further Special Management Area review as discussed in Section IV above. *See, Exhibit I, Exemption from SMA Requirements by Hawaii County Planning Director dated July 18, 1996.*

C. **Approval of Variance from Hawaii County Housing Code.** On August 9, 1996, the Hawaii County Board of Appeals voted to approve Applicants' Application for Variance from Housing Code as discussed in Section IV above. *See, Exhibit J, Approval of Housing Code Variance by Hawaii County Board of Appeals on August 9, 1996.*

### XIV. Written Comments and Responses During Public Review Period.

A. **Comments from Sierra Club, Hawai'i Chapter.** *See, Exhibit K, Letter from Sierra Club, Hawai'i Chapter, dated November 12, 1996.* Applicants' responsive letter, *See, Exhibit O, Letter to Katherine E. Walker, Sierra Club, Hawai'i Chapter, dated June 25, 1997.*

B. **Comments from Ms. Patricia Tummons.** *See, Exhibit L, Letter from Patricia Tummons, dated November 17, 1996.* Applicants' responsive letter, *See, Exhibit P, Letter to Ms. Tummons, dated June 25, 1997.*

C. **Comments from the Office of Environmental Quality Control, State of Hawaii (OEQC).** *See, Exhibit M, Letter from OEQC dated November 20, 1996.* Applicants' responsive letter, *See, Exhibit Q, Letter to Gary Gill, Director, Office of Environmental Quality Control, dated June 25, 1997.* *See, Exhibit S, Letter from OEQC dated July 10, 1997.* Applicants' responsive letter, *See, Exhibit T, Letter to Gary Gill, Director, Office of Environmental Quality Control, dated July 17, 1997.*

D. **Comments from Environmental Center, University of Hawai'i at Manoa, State of Hawaii (UHM's Environmental Center).** *See, Exhibit N, Letter from Environmental*

*Center dated November 22, 1996. Applicants' responsive letter, See, Exhibit R, Letter to John T. Harrison, Environmental Coordinator, UHM Environmental Center, dated June 25, 1997.*

**XIV. Consistency with SMA guidelines contained in Chapter 205A, Hawaii Revised Statutes.**

**A. Recreational resources.**

Again, the existing single-family dwelling, seawall, planter and boundary wall, and lawn improvements and the proposed lap pool improvements should not impact upon recreational resources, since public shoreline access is already secured makai of the existing seawall fronting the Property.

**B. Historic resources.**

Since Planning Department records do not disclose any significant historic sites on the Property, no such resources should be impacted by either the existing single-family dwelling, seawall, planter and boundary wall, and lawn improvements, or the proposed pool improvements.

**C. Scenic and open space resources.**

Applicants respectfully submit that given their consistency in character and size with other residences in the area, the existing single-family dwelling, seawall, planter and boundary wall, and lawn improvements have not impacted upon scenic and open space resources to the detriment of surrounding properties. Likewise, the proposed at-grade pool improvements should not impact upon surrounding scenic and open space resources.

**D. Coastal ecosystems.**

As stated above, the existing single-family dwelling, planter and perimeter boundary walls, and makai lawn area as well as the proposed at-grade lap pool should not impact upon coastal ecosystems, since the Property is elevated approximately 11.9 feet above mean sea level, and the existing seawall should not artificially fix the shoreline since the same has been certified along its makai face. As an additional safeguard, drainage and overflow from the proposed lap pool will either be diverted to the existing cesspool on the Property (i.e., during semi-monthly backwashing of the pool filter involving approximately two gallons of water), or pumped into a tank truck should the entire lap pool need to be drained for repair or maintenance.

**E. Economic uses.**

The existing and proposed improvements should not preclude the development of coastal dependent economic uses and/or public and private facilities.

**F. Coastal hazards.**

Applicants have secured the following after-the-fact approvals for the Property as outlined in Section II above: 1) a variance from the Zoning Code for existing single-family dwelling improvements approved by the Planning Director on June 10, 1996; 2) an exemption from further Special Management Area review for existing and proposed improvements approved by the Hawaii County Planning Director on July 18, 1996; and 3) a variance from the Housing Code for existing single-family dwelling improvements approved by the Hawaii County Board of Appeals on August 9, 1996. Furthermore, Applicants will construct proposed lap pool improvements, after securing the shoreline setback variance approval sought herein, in accordance with all applicable federal, State and County building codes and flood hazard and tsunami zone regulations. With the exception of the proposed lap pool, all other existing improvements have remained stable during the coastal storms over the last eight to ten years.

**G. Mitigating measures.**

Temporary minor impacts caused by pool construction activities are anticipated to last a few weeks, but can be properly mitigated through standard construction practices. No significant long-term impacts are anticipated from the continuation of the single-family dwelling, seawall, planter and boundary wall, and lawn improvements or the construction of proposed pool improvements on the Property which were constructed eight to ten years ago, since they do not compromise the residential character of the Subdivision, which was granted final approval by the County in September 1961.

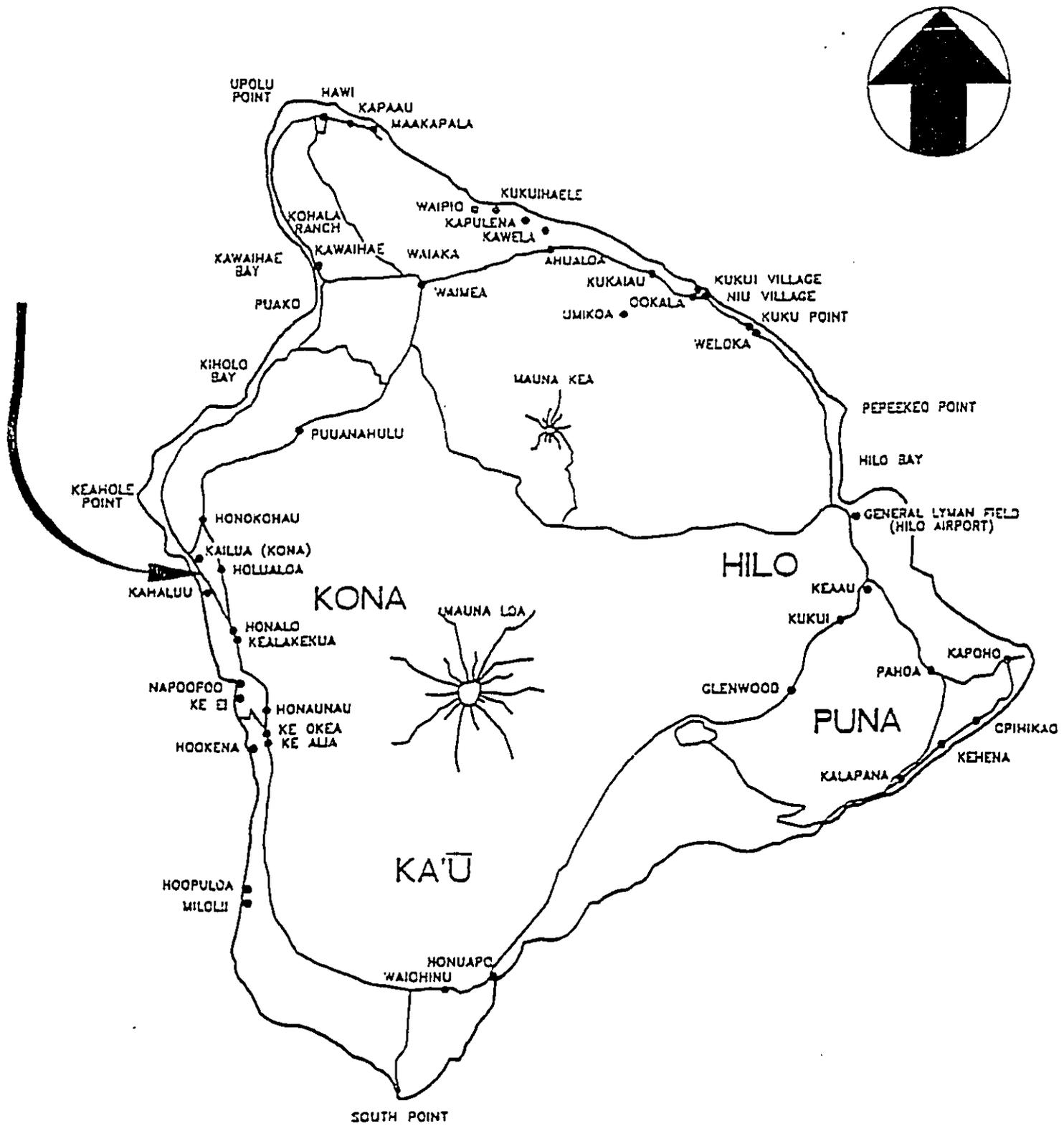
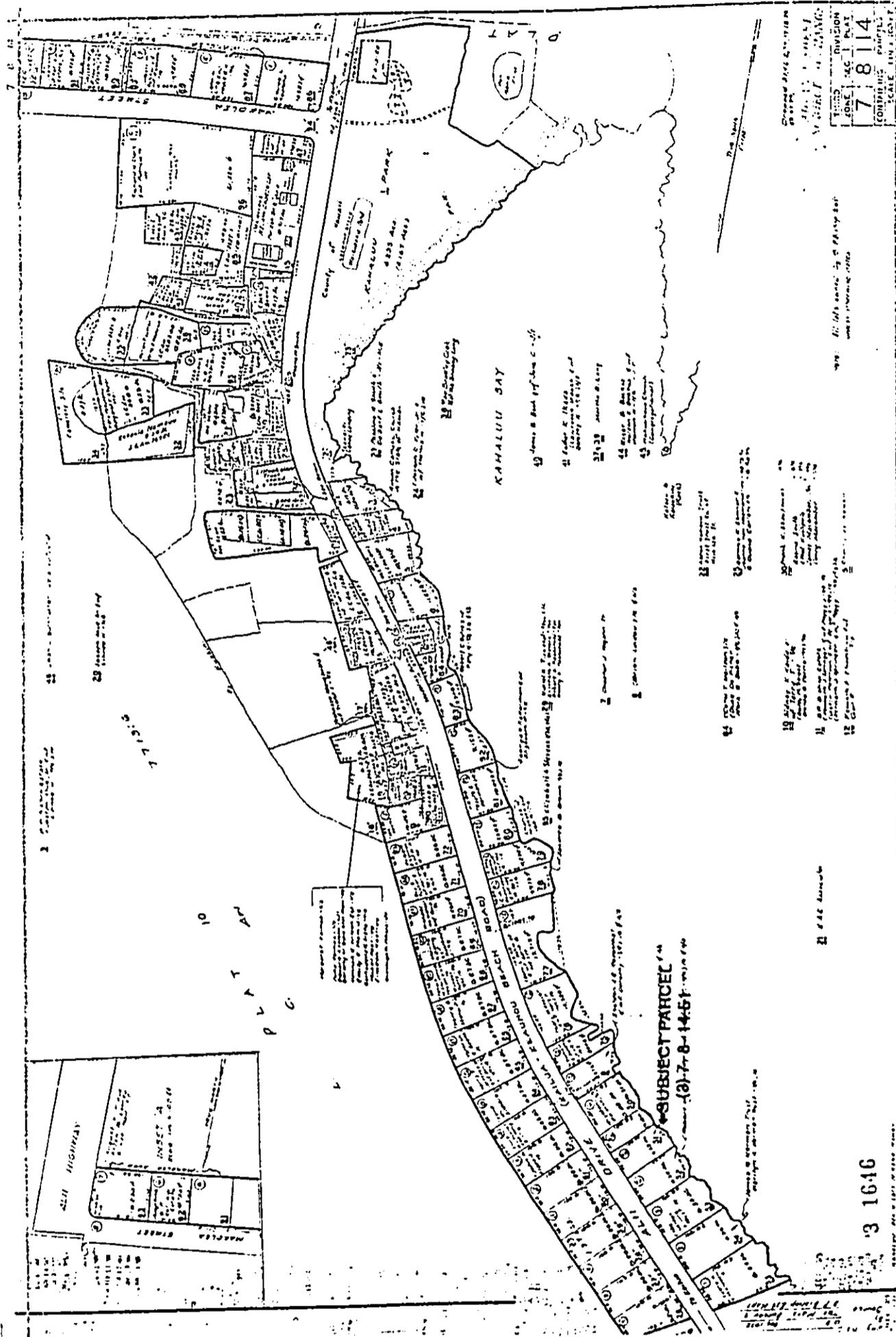


EXHIBIT A  
LOCATION MAP



COUNTY OF HAWAII  
 DEPARTMENT OF LAND AND NATURAL RESOURCES  
 DIVISION OF LAND MANAGEMENT  
 JOB NO. 7-8-145  
 SHEET NO. 7  
 SCALE: AS SHOWN

1. Public Highway  
 2. Public Street  
 3. Public Alley  
 4. Public Easement  
 5. Public Right-of-Way  
 6. Public Use  
 7. Public Property  
 8. Public Building  
 9. Public Structure  
 10. Public Facility  
 11. Public Utility  
 12. Public Service  
 13. Public Agency  
 14. Public Institution  
 15. Public Office  
 16. Public School  
 17. Public Church  
 18. Public Cemetery  
 19. Public Park  
 20. Public Recreation  
 21. Public Amusement  
 22. Public Entertainment  
 23. Public Performance  
 24. Public Exhibition  
 25. Public Meeting  
 26. Public Assembly  
 27. Public Gathering  
 28. Public Convention  
 29. Public Conference  
 30. Public Discussion  
 31. Public Debate  
 32. Public Lecture  
 33. Public Speech  
 34. Public Address  
 35. Public Presentation  
 36. Public Demonstration  
 37. Public Experiment  
 38. Public Test  
 39. Public Trial  
 40. Public Hearing  
 41. Public Inquiry  
 42. Public Investigation  
 43. Public Research  
 44. Public Study  
 45. Public Work  
 46. Public Labor  
 47. Public Industry  
 48. Public Business  
 49. Public Enterprise  
 50. Public Corporation  
 51. Public Company  
 52. Public Firm  
 53. Public Shop  
 54. Public Store  
 55. Public Warehouse  
 56. Public Office  
 57. Public Agency  
 58. Public Institution  
 59. Public Office  
 60. Public Institution

3 1646

EXHIBIT B  
AREA TAX MAP



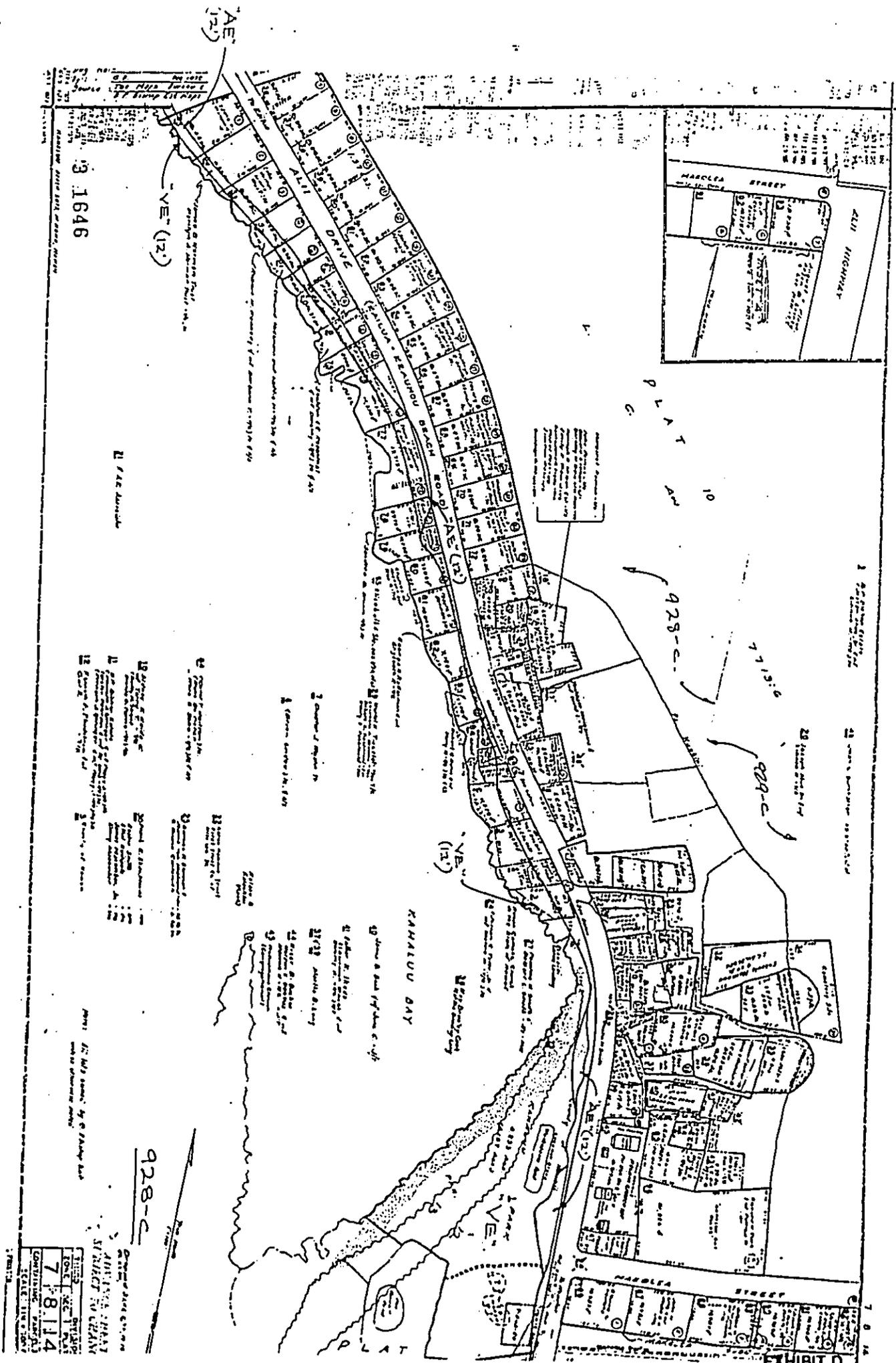


EXHIBIT D  
FLOOD INSURANCE RATE MAP (FIRM)

DOCUMENT CAPTURED AS RECEIVED



VIEW OF CLEMENS RESIDENCE FROM SHORELINE  
AREA, LOOKING IN MAUKA DIRECTION



ALII DRIVE FRONTAGE  
OF CLEMENS RESIDENCE



EXHIBIT E  
SITE PHOTOGRAPHS

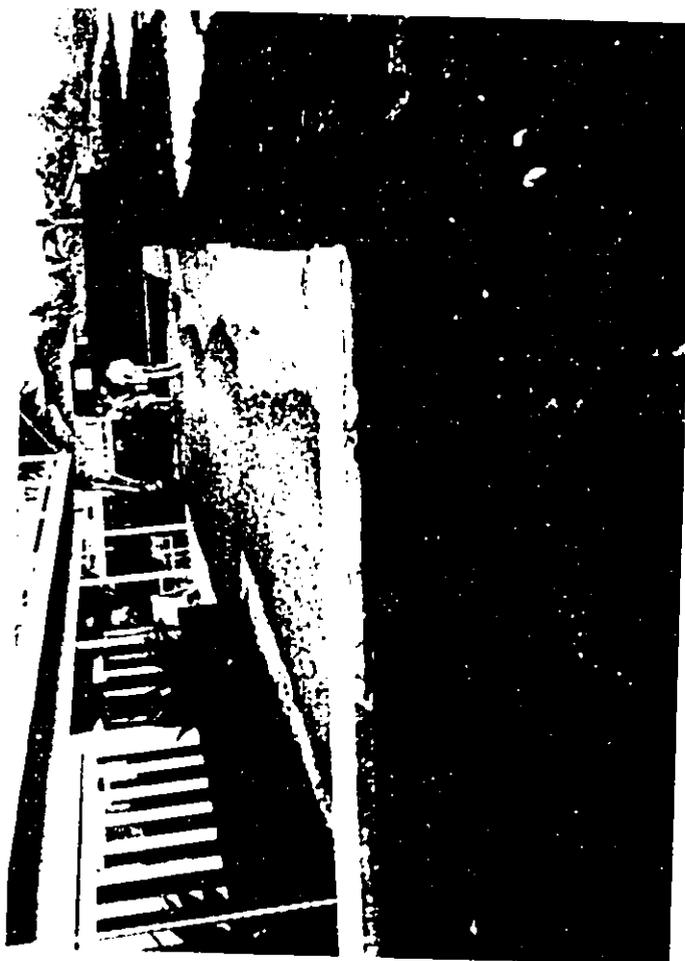
DOCUMENT CAPTURED AS RECEIVED



PROPOSED REMOVAL OF NORTH-SIDE STAIRWAY  
AND PORTION OF BATHROOM UNDER STAIRWAY.



AREA OF PROPOSED LAP POOL LOOKING TO THE NORTH



AREA OF PROPOSED LAP POOL LOOKING TO THE SOUTH

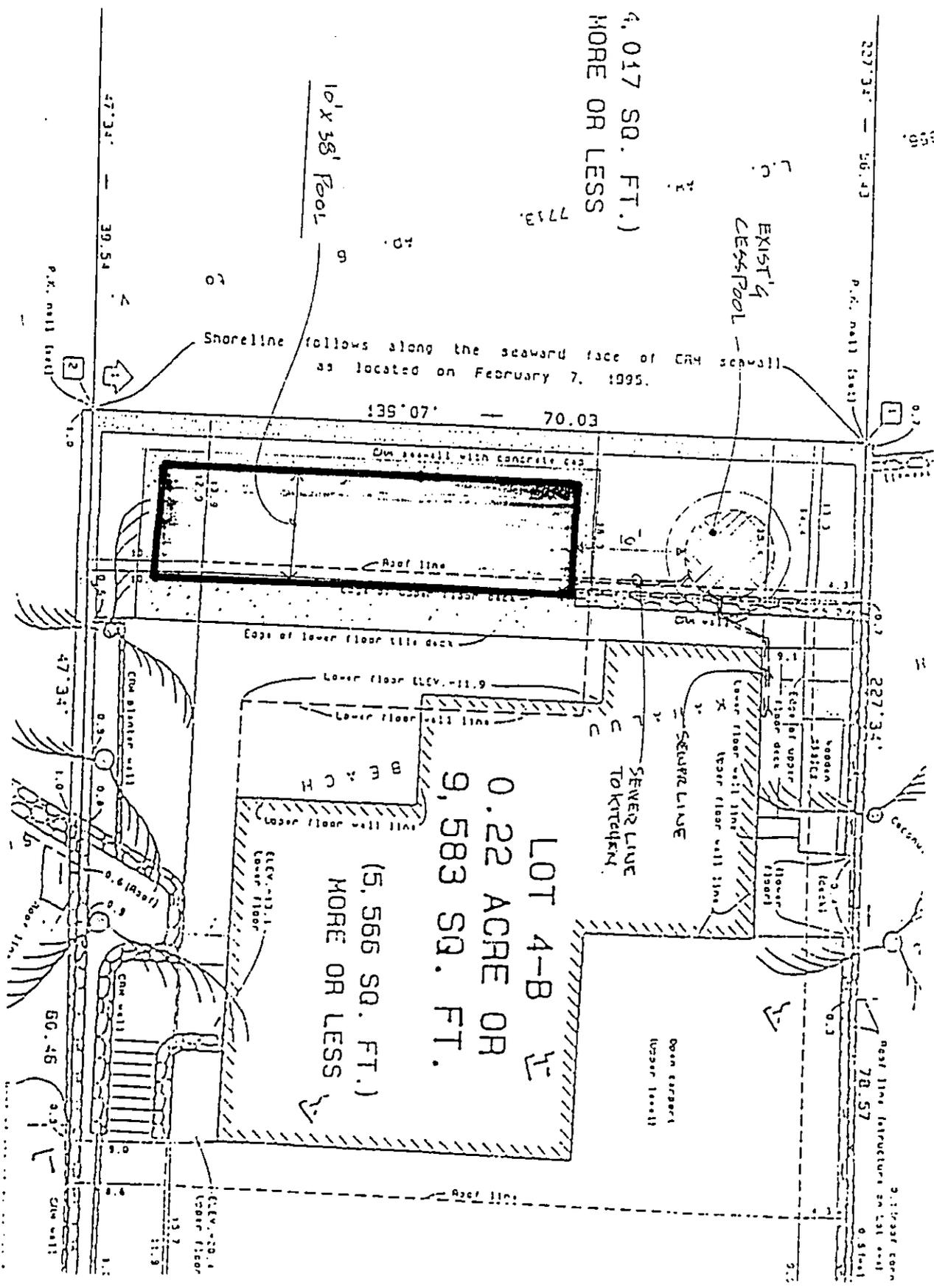
DOCUMENT CAPTURED AS RECEIVED



SHORELINE AREA FRONTING CLEMENS RESIDENCE.  
CERTIFIED SHORELINE IS AT FACE OF ROCKWALL.



VIEW OF PROPOSED LAP POOL AREA LOOKING TO THE NORTH,  
SHOWING NO ADDITIONAL ADVERSE VIEW IMPACTS ON THE SHORELINE AREA



4,017 SQ. FT.)  
MORE OR LESS

10' X 38' POOL

Shoreline follows along the seaward face of CMR seawall as located on February 7, 1995.

70.03

LOT 4-B  
0.22 ACRE OR  
9,583 SQ. FT.  
(5,566 SQ. FT.)  
MORE OR LESS

EXHIBIT F  
SITE PLAN FOR PROPOSED LAP POOL

nezes Tsukazaki Yeh & Moore  
ATTORNEYS AT LAW

Luaha Street, Suite 204 Hilo, Hawaii 96720  
Phone: (808) 961-0059 FAX (808) 969-1531

STEPHEN J. MENEZES  
R. BEN TSUKAZAKI  
THOMAS L.H. YEH  
MICHAEL W. MOORE

June 3, 1996

Virginia Goldstein  
Planning Director  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

Re: Variance Application: WH (VAR 96-25)  
Applicants: Larry and Veronica Clemens  
Tax Map Key: (3)7-8-014:051

Dear Ms. Goldstein:

We represent Dr. Elizabeth Marshall who owns property which is adjacent to the south of the property which is the subject of the above-referenced variance application. We understand Mr. and Mrs. Clemens, the applicants, seek "after-the-fact" permits for existing improvements on the subject property.

Dr. Marshall prefers not to challenge the minimal degrees of the existing structure's non-compliance with the Zoning Code's front-yard and side-yard setback requirements. She also understands that Mr. and Mrs. Clemens did not construct or cause to construct the various improvements which they now seek to legitimize.

However, Dr. Marshall seeks your consideration of the propriety of the various improvements when seen in their totality and the resulting impacts upon the environment in general and Dr. Marshall's property in specific. The most egregious improvements involve the placement of a six-foot seawall approximately 20 feet or more makai of the previous seawall and the subsequent backfilling mauka of the seawall and various structural improvements which extended the residential dwelling makai of its previous footprint.

Of these improvements, the second-story lanai has destroyed Dr. Marshall's view to the north. It also causes an invasion of her privacy because when someone is on the lanai, that person is so close as to view right into Dr. Marshall's living room.

The view of a person standing on the apparently illegal seawall into Dr. Marshall's home also destroys her privacy.

Dr. Marshall also believes that the seawall is so far makai as to create a risk of danger to fishermen and others who attempt to traverse on the makai side of the seawall.

EXHIBIT G  
OBJECTION TO ZONING CODE VARIANCE

JUN 05 1996  
MENEZES TSUKAZAKI YEH & MOORE  
ATTORNEYS AT LAW

Virginia Goldstein  
Planning Director  
County of Hawaii  
June 3, 1996  
Page 2.

Dr. Marshall has photographs which she wishes to submit to your office for review concerning the above-mentioned improvements. She is attempting to reproduce those photographs and will submit them to your office as soon as possible.

We understand that under SMA rule provisions, a single-family residence may be determined to be exempt from SMA permit requirements. However, various accessory improvements must be in compliance with all applicable State and County regulations, statutes, or ordinances (See Section 9-4(21), Planning Commission Rules of Practice and Procedure). Various improvements on the subject property appear not to be in compliance with one or more laws and regulations (e.g., shoreline setback law). Thus, there appears to be a need for an in-depth assessment of the propriety of the improvements on the subject property in order for a proper SMA determination to be made.

In light of the fact that an SMA determination and a shoreline setback variance must still be processed, we request your continuance of the pending variance application in order that the issues relating to the seawall, backfill, and subsequent structural improvements can first be fully and chronologically assessed. It is possible that an adverse SMA determination or shoreline setback variance decision may affect the status of other improvements such as those which are the subject of the subject variance application.

If you are not inclined to continue this matter as to allow a full review of the improvements which have apparently been illegally made on the subject property, please consider this letter as an objection to the requested variance.

Very truly yours,

MENEZES TSUKAZAKI YEH & MOORE

  
R. BEN TSUKAZAKI

RBT:sr

xc: Steven S.C. Lim Esq.

Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Norman Olesen  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

#### CERTIFIED MAIL

June 10, 1996

Mr. Steven S.C. Lim  
Carlsmith Ball Wichman Case & Ichiki  
P.O. Box 686  
Hilo, Hawaii 96721-0686

Dear Mr. Lim:

Variance Application WH(VAR 96-25)  
Variance No. 751  
Applicant: LARRY AND VERONICA CLEMENS  
Variance from Minimum FRONT YARD AND OPEN SPACE Requirements  
Tax Map Key: 7-8-014:051

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow an existing two story single family dwelling with a 14.4 feet front yard and a 9.9 feet open space in lieu of the minimum 15 foot front yard and 10 foot open space as required by Chapter 25, Article 4, Section 25-124(a)(1) and Article 1, Division 10, Section 25-66(a)(1).

The subject property is located on the makai side of Alii Drive, in Kahaluu, North Kona, Hawaii, TMK: 7-8-014:51.

The Planning Director has concluded that the variance request from the minimum front yard and open space requirements should be approved based on the following findings:

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The present homeowners purchased the property on February 18, 1994 with no disclosure from the sellers encroachments into the required setbacks.
2. There appears to be a discrepancy with the Department of Public Works, Building Division, Real Property Tax records and the actual size of the dwelling.

EXHIBIT H  
APPROVAL OF ZONING CODE VARIANCE

Mr. Steven S.C. Lim  
Page 2  
June 10, 1996

3. In 1968 the Single Family Dwelling consisted of 960 square feet in living area and 440 square feet of lanai. At the present time the dwelling consists of 2,948 square feet of living area and 1,568 square feet of other covered area.
4. It appears that not all of the necessary Department of Public Works, Building Division approvals for dwelling were issued.
5. It has been over 28 years since the construction of the existing dwelling and the applicant is trying to resolve a situation which they had no control over and have honestly conducted a certified survey to ensure to disclosure of all facts concerning the dwelling.
6. The variance application was acknowledged as received by the Planning Department on February 21, 1996.
7. A survey map prepared by Wes Thomas Associates on February 28, 1995, shows the EXISTING TWO STORY SINGLE FAMILY DWELLING with 14.4 feet front yard. The subject dwelling encroaches into the front yard by 7 and 1/4 inch.
8. In addition the survey map indicates the existing two story single family dwelling with 9.9 open space. The subject dwelling encroaches into the open space by 1 and 1/4 inch.

Therefore, considering the foregoing facts, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

#### ALTERNATIVES

1. The applicant on their own volition is honestly trying to resolve this long standing problem which was not created by them.
2. The applicant have agreed to remove portions of the residence which encroach into the required side yard at the north end, and to delete a stairway and portions of a bath/shower area consisting of approximately 288 square feet. After the deletion the

Mr. Steven S.C. Lim  
Page 3  
June 10, 1996

dwelling will contain approximately 2,948 square feet of living area and 1,280 feet of other covered area.

3. Any other architectural alterations or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardships of the applicant when other more reasonable options are available.
4. While there are other alternatives available the more practical solution is the granting of the variance.

Based on the above cited considerations, there are no reasonable available solutions without excessive demands placed on the applicant when a more reasonable alternative is available by the granting of this variance application.

#### INTENT AND PURPOSE

The intent and purpose of requiring buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines.

The existing two story single family dwelling with 14.4 front yard encroaches by 7 and 1/4 inch. In addition the existing two story single family dwelling encroaches into the open space by 1 and 1/4 inch.

These encroachments into the front yard and open space are minor and not visually perceptible that it will diminish the ability for adequate light, air and open space. Therefore, while the Zoning Code requires a minimum 15 feet front yard and 10 feet open space, in this particular case, the encroachments are minor that will not visually or physically impact or be adverse to any adjacent properties or development with the granting of this variance. The rest of the existing dwelling complies with the minimum yard requirements of the Zoning Code.

There were no objections from any of the participating government agencies or any surrounding property owners.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

Mr. Steven S.C, Lim  
Page 4  
June 10, 1996

This variance request is approved, subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The approval of this variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. Obtain approval from the Board of Appeals for all Housing and Building Code Violations, if applicable.
4. Remove all encroachments into the north side of the parcel.
5. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EMM:rld  
a:\78014051\clemens.app

xc: West Hawaii Office

Stephen K. Yamashiro  
Mayor



## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

July 18, 1996

Steven S.C. Lim, Esq.  
Carlsmith Ball Wichman Case & Ichiki  
P.O. Box 686  
Hilo, HI 96720

Dear Mr. Lim:

Applicants: Dale Lawrence Clemens & Veronica Clemens  
Special Management Area Use Permit Assessment Application  
No. 96-13

Request: Expansion of Existing Single Family Dwelling,  
Construct Seawall and Boundary Walls with Backfill, and  
Construct At-grade Lap Pool & Related Improvements  
Shoreline Setback Variance Application (INC)

Request: Expansion of Single Family Dwelling, Construct  
Seawall and Boundary Walls with Backfill, and Construct  
At-grade Lap Pool & Related Improvements within 40-foot  
Shoreline Setback Area

Tax Map Key: 7-8-14:51, North Kahaluu Beach Subdivision,  
Kahalu'u, North Kona, Hawaii

Thank you for your letter dated June 26, 1996, in response to our April 30, 1996 letter requesting additional information regarding the above-described application.

According to your letter, you were unsuccessful in your attempts to obtain additional information regarding the expansion of the former 960 square-foot single family dwelling into the larger existing 2,948 square-foot dwelling and the construction of the existing seawall and backfilled lawn area and patio. Information contained within our files overwhelmingly suggests that the expansion of the former 960 square-foot dwelling and the construction of the seawall and boundary walls and backfilled lawn and patio area were accomplished after 1987 and apparently without the issuance of appropriate building permits, SMA approvals and Shoreline Setback Variances. Since the applicants are unable to provide this office with any additional information to the contrary, we will assume that these improvements were constructed in violation of the requirements of Planning Commission Rule No. 8 regarding Shoreline Setback. However, since our review of this property was initiated by the submittal of the Shoreline Setback Variance application, we will defer further action pending a decision on the applicants' request by the Planning Commission.

EXHIBIT I  
EXEMPTION FROM SMA REQUIREMENTS

Steven S. C. Lim, Esq.  
Carlsmith Ball Wichman Case & Ichiki  
Page 2  
July 18, 1996

Pursuant to Planning Commission Rule No. 9-4(10)(B)(i), "development" does not include the construction of a single family residence. Therefore, all of the improvements existing and proposed under the subject applications are considered exempt from further SMA review. However, the Shoreline Setback Variance application and our compliance with the requirements of Chapter 343, Hawaii Revised Statutes regarding Environmental Impact Statements will consider the following in an effort to legitimize all improvements which have occurred on the subject property in addition to the improvements originally proposed:

1. Expansion of a former 960 square foot single family dwelling to a 2,948 square foot dwelling, portions of which are located within the 40-foot shoreline setback area;
2. Construction of a seawall and boundary walls with backfill, portions of which are located within the 40-foot shoreline setback area; and
3. Construction of a 380 square-foot at-grade lap pool and related improvements.

As we mentioned previously, we are also awaiting the adoption of departmental rules regarding Shoreline Setback sometime in September 1996. Therefore, action on the Shoreline Setback Variance Application will continue to be deferred. In the meantime, we are proceeding with our compliance with the requirements of Chapter 343, HRS.

Please feel free to contact Daryn Arai of this office should you have any questions.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

DSA:mjs  
F:\WP60\CZM\SMAA\SMAA9613.DA2

xc w/ltr: West Hawaii Office  
Planning Commission Section  
Land Use Controls Division  
SMA Section

Stephen K. Yamashiro  
Mayor



## County of Hawaii

### BOARD OF APPEALS

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

September 3, 1996

Steven S. C. Lim, Esq.  
Carlsmith Ball Wichman Case & Ichiki  
P. O. Box 686  
Hilo, HI 96821-0686

Dear Mr. Lim:

Board of Appeals (BOA 96-5)  
Appellants: Larry and Veronica Clemens  
Request: Variance from the Housing Code's Minimum Yard Requirements  
Tax Map Key: 7-8-14-51, Lot 4-B

The Board of Appeals at its August 9, 1996 meeting voted to approve the above variance request and to have you prepare the proposed Findings of Fact, Conclusions of Law and Decision and Order.

This is to acknowledge receipt of the proposed Findings of Fact, Conclusions of Law and Decision and Order to be considered by the Board at its October meeting. You will be informed as to the exact date, time and place of the meeting as soon as they have been determined.

Should you have any questions in the meantime, please feel free to contact Rodney Nakano of the Planning Department, who serves as staff to the Board, at 961-8288.

Sincerely,

A handwritten signature in cursive script that reads "Deanna N. Hammersley".

Deanna N. Hammersley, Chairperson  
Board of Appeals

xc/att: Board of Appeals  
Corporation Counsel  
Chief Engineer  
Planning Director  
West Hawaii Office

EXHIBIT J  
APPROVAL OF HOUSING CODE VARIANCE



## SIERRA CLUB, HAWAI'I CHAPTER

'96 NOV 14 PM 12 44  
PLANNING DEPT.  
COUNTY OF HAWAII

P.O. Box 2577,  
Honolulu, Hawai'i 96803  
(808) 538-6616

November 12, 1996

Virginia Goldstein  
Planning Director  
County of Hawai'i  
25 Aupuni St.  
Hilo, HI 96720

Dear Ms. Goldstein,

The Hawai'i Chapter of the Sierra Club objects to the proposed shoreline setback variance for the Clemens residence. Many of these concerns represent systemic problems with the manner in which government agencies treat such applications.

1) The shoreline was improperly certified at the makai face of the rockwall. The shoreline was certified at the face of the wall even though the wall was illegally constructed approximately twenty feet mauka of the previous wall. It should be certified where the shoreline would be had the illegal wall not been constructed. Unfortunately, the state surveyor continues to certify the shoreline at illegal seawalls because he believes it is the county's responsibility to bring forth information on their illegality during the certification process. As long as the county fails to inform the surveyor about the illegality of specific walls being certified, he will continue to certify them as the shoreline.

2) This seawall extends makai beyond where neighboring seawalls extend. The high wash of the waves will make it far more difficult for fishermen and others to traverse the shoreline. HRS 205A-46(c) prohibits the issuance of a variance unless conditions are imposed to "maintain safe lateral access to and along the shoreline or adequately compensate for its loss."

3) In order to justify the construction of a swimming pool in the setback area, the applicant must prove "hardship." According to R.R. Powell, 6 Powell on Real Property § 79c.16[1] (1995), a variance should be viewed as an extraordinary exception which should be sparingly granted. The reasons to justify approval must be substantial, serious and compelling. The Office of Environmental Quality Control so noted in the late November edition of its Environmental Notice.

The applicant in this case has failed to meet its burden of proof. The applicant is currently making reasonable use of the property. The law does not allow for everyone to make maximum use of his or her property. A variance is not necessary when an applicant is already making reasonable use of the property. What

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EXHIBIT K  
COMMENTS FROM SIERRA CLUB

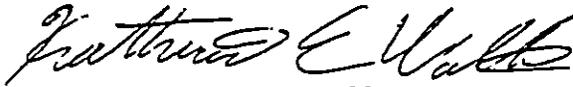


hardship is the applicant suffering by not having a swimming pool?

4) Granting this request would only encourage landowners to build first and ask for permission later. After-the-fact permits should not be a routine matter. Issuance of a permit without a penalty will only reward noncompliance.

5) If the applicant has been caused hardship it was caused by the illegal actions of the previous owner. The applicant's remedy is to seek compensation from the previous owner -- not to seek an exemption from the law from the county. Clearly, the applicants have a cause of action for the "unpermitted improvements already in place and undisclosed to them."

Sincerely,



Katherine E. Walker

187-C Hukulani St.  
Hilo HI 96720

Nov. 17, 1996

Planning Commission  
c/o County Planning Department  
25 Aupuni Street, Suite 109  
Hilo HI 96720

Dear Sirs and Mesdames:

I wish to comment on the following SMA applications for a permit for after-the-fact improvements:

**Clemens Single-family Dwelling and Seawall,**

and for the related

**Clemens request for a lap pool/apron within the shoreline setback.**

I understand from the draft environmental assessment that the improvements to the house and the construction of the seawall were undertaken by a previous owner without the required permits. In addition, several encroachments into setback areas around property lines were made, some of which are proposed for removal at this time.

What appears to have happened in this case is that the previous owner, who increased the house size approximately three-fold, has profited greatly from his illegal work. The new owners now throw themselves on the commission's mercy, asking for after-the-fact approvals.

Should these approvals be granted, there will be little incentive for other owners of shoreline property to abide by the county's (and state's) rules and regulations. The lesson will be: break the law, and run with the money.

The only recourse the county has in this case to get at the former owner is to deny the sought-for permissions and let the present owner seek recovery for damages from the party who sold the property. Current laws require disclosure of improvements made without requisite permits. In this case, if that disclosure was not made to the present owners, they can seek recovery via the court system against the party from whom they purchased the property. If disclosure was made, then the present owners purchased the property with their eyes open. That being the case, they surely can have no reasonable expectation that the county will -- or should -- simply award the requested permits without further ado.

Should the county grant these permits, against what I consider good sense, I would urge you to impose substantial penalties. A penalty based upon, say, 100 percent of the value added to the property by the illegal improvements would not be out of line, I'd suggest.

Yours truly,

Patricia Tummons

cc: OFQC  
Steven Lim ✓

EXHIBIT L  
COMMENTS FROM P. TUMMONS

Ms. Goldstein  
November 20, 1996  
Page 3

c: Dale Lawrence and Veronica Clemens  
Steven Lim, Esq.  
DLNR  
DAGS

BENJAMIN J. CAYETANO  
GOVERNOR



GARY GILL  
DIRECTOR

STATE OF HAWAII  
OFFICE OF ENVIRONMENTAL QUALITY CONTROL

220 SOUTH KING STREET  
FOURTH FLOOR  
HONOLULU, HAWAII 96813  
TELEPHONE (808) 586-4186  
FACSIMILE (808) 586-4188

November 20, 1996

Ms. Virginia Goldstein, Director  
Planning Department  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

Dear Ms. Goldstein:

Subject: Clemens After-the-Fact Improvements of Existing Single Family Dwelling and After-the-Fact Seawall, North Kona, Hawaii, TMK 7-8-14:51

It is the policy of the State of Hawaii under HRS Chapter 205A to discourage all shoreline hardening that may affect access to, or the configuration of, our island beaches.

Any EA prepared in conjunction with an application to construct or maintain a seawall, revetment or similar structure should be accompanied by appropriate justification and detailed studies including, but not limited to, the following:

1. A Historical Shoreline Analysis of coastal erosion and accretion rates. This should include a description of all movements of the neighboring shoreline over at least the past 30 years. This analysis should be based, at least in part, on aerial photographs available through government agencies and private vendors. The analysis should provide a detailed history of erosion and accretion patterns using all available evidence.
2. A description of the nature of the affected shoreline, whether sandy, rocky, mud flats or any other configuration. The history and characteristics of adjoining sand dunes and reefs should be included.
3. Site maps that clearly show the current certified shoreline, previous certified shorelines, the private property line and the location of the proposed structure. Any nearby public access right-of-way should also be depicted.

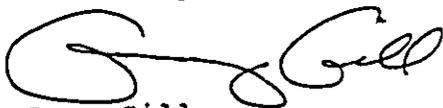
EXHIBIT M  
COMMENTS FROM OEQC

Ms. Goldstein  
November 20, 1996  
Page 2

4. Beach profiles that extend off shore at appropriate intervals along the beach indicating the width and slope of both the submerged and dry portions of the beach.
5. An analysis of any existing nearby walls or revetments and their cumulative impacts on the shoreline.
6. A description of existing and proposed structures and improvements (such as homes or swimming pools) on the subject property, their distance from the property line and shoreline, and how they may be affected by the seawall.
7. A wave and storm frequency analysis for the area in question. This should include any relevant coastal processes such as longshore currents and seasonal wave patterns.
8. An analysis that predicts the location of future shorelines with and without the wall at least 30 years into the future or over the expected life of the hardening project.
9. Photos of the site that illustrate past and present conditions and locate the proposed structures.
10. All alternatives to shoreline hardening should be thoroughly researched and analyzed. These alternatives should include beach replenishment, dune-scaping, retreat from the shoreline by moving existing and proposed structures inland, removing illegal structures, and a no action alternative.
11. Please indicate whether the surveyor was aware at the time of shoreline certification that the seawall was illegal. If the surveyor was not aware of this fact, the shoreline should be recertified to show correct shoreline placement. Section 205A-43.6, Hawaii Revised Statutes states that "the authority of the Department of Land and Natural Resources to determine the shoreline . . . shall not be diminished by an artificial structure in violation of this part [of the statute]."

The inclusion of this information will help make an Environmental Assessment complete and meet the requirements of Chapter 343, HRS. Only after thorough study and analysis should any permit for shoreline hardening be considered. If you have any questions please call Jeyan Thirugnanam at 586-4185.

Sincerely,



Gary Gill  
Director



## University of Hawai'i at Mānoa

Environmental Center  
A Unit of Water Resources Research Center  
Crawford 317 • 2550 Campus Road • Honolulu, Hawai'i 96822  
Telephone: (808) 956-7361 • Facsimile: (808) 956-3980

November 22, 1996  
EA: 00151

Dale and Veronica Clemens  
100 10th Street  
Del Mar, CA 92014

Mr. and Mrs. Clemens:

Clemens After-the-Fact Seawall  
Draft Environmental Assessment (EA)  
North Kona, Hawaii

The referenced environmental assessment pertains to encroachments into the shoreline setback caused by improvements to a single-family dwelling and the subject property. The applicants seek approval for an existing seawall, a planter and boundary wall, and lawn improvements. The applicants also seek pre-construction approval of a proposed new, at-grade lap pool approximately 10 feet in width and 38 feet in length. The pool will be surrounded by a ground-level concrete/tile apron approximately 3 feet wide, fronting the existing single-family dwelling and located within the County's 20-foot shoreline setback area. The applicants' shoreline setback variance request for the existing single-family dwelling will be limited to: 1) an exterior wall line encroachment of 1.7 feet; 2) a second story lanai encroachment of 6.1 feet; and 3) an eaves encroachment of approximately 7.1 feet.

This review was completed with the assistance of Tom Hawley, Environmental Center.

Though we recognize that the actions which give rise to this shoreline setback variance request are not directly attributable to the applicant, there are nevertheless issues which the applicant must resolve prior to granting this setback variance. The first is a safety issue related to the existing 6-8 foot-high rock seawall. What precautionary measures are in place to ensure that no one falls over the wall? Photos included in the draft EA reveal that the shoreline below is rocky at least part of the time, presenting a clear hazard to anyone near the edge of the wall, particularly children and the elderly.

Secondly, what actions are planned to alleviate the concerns

EXHIBIT N  
COMMENTS FROM UHM'S ENVIRONMENTAL CENTER

Mr. and Mrs. Clemens  
November 22, 1996  
Page 2

of neighboring residents? Of specific concern are the points raised by Dr. Elizabeth Marshall and reproduced within the draft EA. As Dr. Marshall points out, issues including privacy, quality of view, and the cumulative effect of numerous incremental improvements at the subject property must be addressed. Has the applicant consulted with this and other neighbors about the variance request? Have appropriate mitigative measures relating to these concerns been discussed and adopted?

Though we realize that existing, unpermitted seawalls present unique decision-making circumstances, we are nevertheless concerned about the presence of the subject seawall within the shoreline setback. Numerous studies point to the deleterious impacts of any shoreline-hardening activity and the specific problems related to seawalls, including beach narrowing, lateral erosion, and the increased threat to mauka structures during storm events. In Hawai'i, hardening of the shoreline has become an especially prevalent problem, particularly as the result of shoreline development. Rising sea level, partly due to island subsidence, further exacerbates the harmful effects of seawalls.

We suggest that given the problems associated with hardening of the shoreline generally and the impacts of seawalls particularly, applications and proposals for seawalls should be assessed with utmost caution. Several researchers have suggested that all decision-makers discourage the construction of seawalls, revetments, or other shoreline hardening devices entirely. A related recommendation urges the inclusion of permit conditions which stipulate a beach monitoring period of 30 years following the construction of a seawall to track erosion and other changes in beach composition. We support these ideas and would like to see them considered in relation to the subject variance request.

In relation to the aforementioned issues, we are concerned about the lack of substantive information in this draft EA regarding shoreline characteristics in this area. The State of Hawai'i Office of Environmental Quality Control has formulated a 10-step evaluation process for all seawall assessments, and it appears that few of these guidelines have been observed in the preparation of this draft EA. Accordingly, we have included OEQC's recommendations for your information, which stipulate that assessments of all seawall projects must include:

- 1) An Historical Shoreline Analysis of coastal erosion and accretion rates for the previous 30 years. This analysis should be based, at least in part, on aerial photos, and should provide a detailed history of erosion and accretion patterns for the subject shoreline.

Mr. and Mrs. Clemens  
November 22, 1996  
Page 3

- 2) A description of the nature of the affected shoreline, whether sandy, rocky, mud flats or any other configuration. The history and characteristics of adjoining sand dunes and reefs should be included.
- 3) Site maps that clearly show the current certified shoreline, previous certified shorelines, the private property line and the location of the proposed structure. Any nearby public access right-of-way should also be depicted.
- 4) Beach profiles that extend off-shore at appropriate intervals along the beach indicating the width and slope of both the submerged and dry portions of the beach.
- 5) An analysis of any existing nearby walls or revetments and their cumulative impacts on the shoreline.
- 6) A description of structures and improvements (such as homes or swimming pools) on the subject property, their distance from the property line and the shoreline, and how they may be affected by the construction of the proposed hardening project.
- 7) A wave and storm frequency analysis for the area in question. This should include any relevant coastal processes such as longshore currents and seasonal wave patterns.
- 8) An analysis that predicts the location of future shorelines with and without the proposed wall at least 30 years into the future or over the expected life of the hardening project.
- 9) Photos of the site that illustrate past and present conditions and locate the proposed structure.
- 10) All alternatives to shoreline hardening should be thoroughly researched and analyzed. These alternatives should include beach replenishment, dune-scaping, retreat from the shoreline by moving existing structures inland, and a no-action alternative.

We believe that inclusion of this information and the consideration of alternatives and mitigative measures will contribute to shoreline projects which avoid many of the long-term and detrimental affects typically associated with seawalls.

Thank you for the opportunity to comment.

Mr. and Mrs. Clemens  
November 22, 1996  
Page 4

Sincerely,



John T. Harrison  
Environmental Coordinator

cc: OEQC  
Roger Fujioka  
County of Hawai'i Planning Dept.  
Steven S.C. Lim, Esq.  
Tom Hawley

CARLSMITH BALL WICHMAN CASE & ICHIKI

ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING LAW CORPORATIONS  
121 WAIANUENUE AVENUE  
POST OFFICE BOX 686  
HILO, HAWAII 96721-0686

TELEPHONE (808) 935-6644  
FAX (808) 935-7975

June 25, 1997

Ms. Katherine E. Walker  
Sierra Club, Hawaii Chapter  
P.O. Box 2577  
Honolulu, Hawaii 96803

Re: Dale Lawrence and Veronica Clemens  
Draft Environmental Assessment ("DEA") for Shoreline Setback  
Variance Application for After-the-Fact approval of existing  
single-family dwelling, seawall, planter and boundary wall, and  
lawn improvements, and proposed lap pool improvements  
Kahaluu Beach Lots, North Kona  
Tax Map Key No.: (3) 7-8-14:51

Dear Ms. Walker:

Thank you for reviewing the DEA for Mr. & Mrs. Clemens' ("Clemens") shoreline setback variance application for after-the-fact approval of existing single-family dwelling, seawall, planter and boundary wall, and lawn improvements, and proposed lap pool improvements at Kahaluu Beach Lots, North Kona. This letter addresses comments contained in your letter dated November 12, 1996.

Shoreline certification. You question whether the shoreline certification was legal. The Clemens commissioned a registered land surveyor to prepare the necessary documentation for shoreline certification and subsequent reconfirmation. The shoreline certification map certified on April 26, 1995, and reconfirmed on March 13, 1996, by the State Department of Land & Natural Resources locates the shoreline of the property along the makai face of its existing seawall in compliance with Section 205A-42, HRS, and Sections 13-222-11 and 13-222-12, of the Shoreline Certification Rules, Hawaii Administrative Rules.

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EXHIBIT O  
RESPONSE TO SIERA CLUB

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Ms. Katherine E. Walker  
June 25, 1997  
Page 2

Lateral shoreline access. You expressed concern that fishermen and others who traverse the shoreline will not have safe lateral access to and along the shoreline. Individuals who traverse the shoreline will continue to have safe lateral access to and along the shoreline area fronting the property. As you can see from the photographs attached to the DEA, the wall is aligned with that of the property to the north.

Construction of swimming pool. You questioned the justification of the Clemens' request for construction of the swimming pool in the setback area. The Clemens would be deprived of the reasonable use of the property in light of similar residential improvements enjoyed by other in the area. In addition, the proposed "at grade" lap pool and related improvements will not be visible from the shoreline area and are consistent in character and size with other residential improvements in the subdivision and other oceanfront communities along Alii Drive. Further, the improvement will neither conflict with or intensify existing land uses, nor burden existing area resources.

Issuance of after-the-fact permit. You question the propriety of issuance of after-the-fact permit without penalty. The Clemens' are seeking after-the-fact approvals for these improvements in an effort to voluntarily comply with County shoreline setback requirements. A penalty imposed for the voluntary effort to correct unpermitted improvements would be unfair to the Clemens who are willing to bring the unpermitted uses into compliance with required County variance procedures. Additionally, real property taxes have been assessed and collected on expanded unpermitted improvements since 1989.

Illegal actions of previous landowner. You object to the applicants seeking an exemption from the County and suggest that the Clemens seek legal remedies against the previous landowner. The Clemens acquired the property with the existing unpermitted improvements in 1994. The existing seawall, planter and boundary wall and lawn improvements were installed by a previous landowner, and were not disclosed to the Clemens at the time of purchase. Although litigation has been filed over those issues, the prospects of a money damages recovery are uncertain due to the financial condition of the defendants. The Clemens' are seeking after-the-fact approvals for

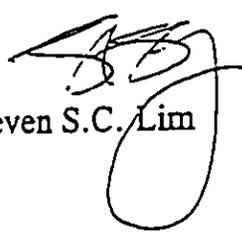
Ms. Katherine E. Walker  
June 25, 1997  
Page 3

these improvements in an effort to comply with County shoreline setback requirements.

We appreciate your comments on Mr. & Mrs. Clemens' draft environmental assessment. The final environmental assessment will be revised, as appropriate, because of your comments. Your letter and this response will also be appended to the final environmental assessment to ensure a document that adequately addresses pertinent development and environmental issues.

Very truly yours,

CARLSMITH BALL WICHMAN  
CASE & ICHIKI

  
Steven S.C. Lim

SSL:KYL

xc: Office of Environmental & Quality Control  
Hawaii County Planning Department  
Mr. & Mrs. Clemens  
Mr. Robert D. Triantos, Esq.

CARLSMITH BALL WICHMAN CASE & ICHIKI

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING LAW CORPORATIONS

121 WAIANUENUE AVENUE

POST OFFICE BOX 686

HILO, HAWAII 96721-0686

TELEPHONE (808) 935-6644

FAX (808) 935-7975

June 25, 1997

Ms. Patricia Tummons  
187-C Hokulani Street  
Hilo, Hawaii 96720

Re: Dale Lawrence and Veronica Clemens  
Draft Environmental Assessment ("DEA") for Shoreline Setback  
Variance Application for After-the-Fact approval of existing  
single-family dwelling, seawall, planter and boundary wall, and  
lawn improvements, and proposed lap pool improvements  
Kahaluu Beach Lots, North Kona  
Tax Map Key No.: (3) 7-8-14:51

Dear Ms. Tummons:

Thank you for reviewing the DEA for Mr. & Mrs. Clemens' ("Clemens") shoreline setback variance application for after-the-fact approval of existing single-family dwelling, seawall, planter and boundary wall, and lawn improvements, and proposed lap pool improvements at Kahaluu Beach Lots, North Kona. This letter addresses comments contained in your letter dated November 17, 1996.

You object to the Clemens seeking after-the-fact permits and suggest that they seek recovery for damages against the individuals who sold them the property. The Clemens acquired the property with the existing unpermitted improvements in 1994. The existing seawall, planter and boundary wall and lawn improvements were installed by the previous landowner, and were not disclosed to the Clemens at the time of purchase. The Clemens' are seeking after-the-fact approvals for these improvements in an effort to comply with County shoreline setback requirements. Although litigation has been filed against the prior owner and sales agents, the prospects of a money damage recovery are uncertain due to the financial condition of the defendants.

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EXHIBIT P  
RESPONSE TO P. TUMMONS

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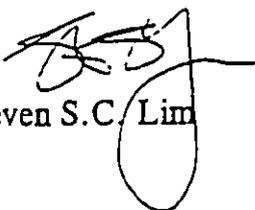
Ms. Patricia Tummons  
June 25, 1997  
Page 2

You further suggest that a penalty be imposed against the Clemens for the value added to the property by the unpermitted improvements. A penalty imposed for the unpermitted improvements would be unfair as the Clemens are voluntarily willing to bring the unpermitted uses into compliance with required County variance procedures. To do so would encourage others to avoid the process and hide the encroachments. Additionally, real property taxes have been assessed and collected on expanded unpermitted improvements since 1989.

We appreciate your comments on Mr. & Mrs. Clemens' draft environmental assessment. Your letter and this response will be appended to the final environmental assessment to ensure a document that adequately addresses pertinent development and environmental issues.

Very truly yours,

CARLSMITH BALL WICHMAN  
CASE & ICHIKI

  
Steven S.C. Lim

SSL:KYL

xc: Office of Environmental & Quality Control  
Hawaii County Planning Department  
Mr. & Mrs. Clemens  
Mr. Robert D. Triantos, Esq.

CARLSMITH BALL WICHMAN CASE & ICHIKI

ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING LAW CORPORATIONS  
121 WAIANUENUE AVENUE  
POST OFFICE BOX 686  
HILO, HAWAII 96721-0686

TELEPHONE (808) 935-6644  
FAX (808) 935-7975

June 25, 1997

Mr. Gary Gill  
Director  
Office of Environmental Quality Control  
220 South King Street, Fourth Floor  
Honolulu, Hawaii 96813

Re: Dale Lawrence and Veronica Clemens  
Draft Environmental Assessment ("DEA") for Shoreline Setback  
Variance Application for After-the-Fact approval of existing  
single-family dwelling, seawall, planter and boundary wall, and  
lawn improvements, and proposed lap pool improvements  
Kahaluu Beach Lots, North Kona  
Tax Map Key No.: (3) 7-8-14:51

Dear Mr. Gill:

Thank you for reviewing the DEA for Mr. & Mrs. Clemens' ("Clemens") shoreline setback variance application for after-the-fact approval of existing single-family dwelling, seawall, planter and boundary wall, and lawn improvements, and proposed lap pool improvements at Kahaluu Beach Lots, North Kona. This letter addresses comments contained in your letter dated November 20, 1996.

You state that it is the policy of the State of Hawaii under HRS Chapter 205A to discourage all shoreline hardening that may affect access to, or the configuration of beaches. The standards outlined in Section 205A-46(a)(8), HRS, have been met by the Clemens in that the existing seawall is ancillary to a private facility, and does not artificially fix the shoreline nor restrict public access to the shoreline since the shoreline is secured makai of the existing seawall which delineates the certified shoreline for the

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EXHIBIT Q  
RESPONSE TO OEQC

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Mr. Gary Gill  
June 25, 1997  
Page 2

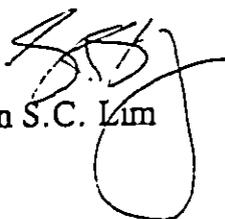
property. As you can see from the photographs attached to the DEA, the shoreline in that area consists of lava rock that extends well past the seawall. In addition, the property's elevation approximately 11.9 feet above mean sea level precludes the single-dwelling, planter, and boundary wall and lawn improvements from impacting upon beach processes.

Shoreline certification. You questioned whether the surveyor was aware at the time of shoreline certification that the seawall was illegal. The Clemens commissioned a registered land surveyor to prepare the necessary documentation for shoreline certification and subsequent reconfirmation. The shoreline certification map certified on April 26, 1995, and reconfirmed on March 13, 1996, by the State Department of Land & Natural Resources locates the shoreline of the property along the makai face of its existing seawall in compliance with Section 205A-42, HRS, and Sections 13-222-11 and 13-222-12 of the Shoreline Certification Rules, Hawaii Administrative Rules.

We appreciate your comments on Mr. & Mrs. Clemens' draft environmental assessment. Your letter and this response will be appended to the final environmental assessment to ensure a document that adequately addresses pertinent development and environmental issues.

Very truly yours,

CARLSMITH BALL WICHMAN  
CASE & ICHIKI

  
Steven S.C. Lim

SSL:KYL

xc: Office of Environmental & Quality Control  
Hawaii County Planning Department  
Mr. & Mrs. Clemens  
Mr. Robert D. Triantos, Esq.

CARLSMITH BALL WICHMAN CASE & ICHIKI

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING LAW CORPORATIONS

121 WAIANUENUE AVENUE

POST OFFICE BOX 686

HILO, HAWAII 96721-0686

TELEPHONE (808) 935-6644

FAX (808) 935-7975

June 25, 1997

Mr. John T. Harrison  
Environmental Coordinator  
University of Hawaii AT Manoa  
Environmental Center  
Crawford 317  
2550 Campus Road  
Honolulu, Hawaii 96822

Re: Dale Lawrence and Veronica Clemens  
Draft Environmental Assessment ("DEA") for Shoreline Setback  
Variance Application for After-the-Fact approval of existing  
single-family dwelling, seawall, planter and boundary wall, and  
lawn improvements, and proposed lap pool improvements  
Kahaluu Beach Lots, North Kona  
Tax Map Key No.: (3) 7-8-14:51

Dear Mr. Harrison:

Thank you for reviewing the DEA for Mr. & Mrs. Clemens' ("Clemens") shoreline setback variance application for after-the-fact approval of existing single-family dwelling, seawall, planter and boundary wall, and lawn improvements, and proposed lap pool improvements at Kahaluu Beach Lots, North Kona. This letter addresses comments contained in your letter dated November 22, 1996.

Safety of seawall. You questioned whether any precautionary measures are in place to ensure the safety of individuals from falling over the wall. The Clemens have and will continue to inform and educate guests of their home as to the height of the seawall. We are not aware of any instances of past problem with this issue. The

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EXHIBIT R  
RESPONSE TO UHM'S ENVIRONMENTAL CENTER

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Mr. John T. Harrison  
June 25, 1997  
Page 2

height of the seawall, which has existed for years does not impact upon individuals who have public access along the shoreline.

Concerns raised by neighboring residents. You expressed a concern as to whether issues raised by Dr. Marshall involving privacy, quality of view and cumulative effect of numerous incremental improvements have been addressed and whether mitigative measures have been adopted. You also questioned whether the Clemens' consulted with other neighbors regarding the subject application. The Clemens have consulted with adjacent landowners, including Dr. Elizabeth Marshall, whose property is located south of the Clemens' property. Dr. Marshall had earlier raised concerns regarding privacy, quality of view and the effect of improvements on the Clemens' property. The Clemens have provided additional plant screening on the parties' common boundary line to mitigate visual impacts on Dr. Marshall's scenic views and privacy from her property. We believe that all concerns raised by Dr. Marshall have been addressed to her satisfaction, and that Dr. Marshall no longer objects to the Clemens' application. We are in the process of finalizing our discussion with Dr. Marshall at this time. The Clemens have also consulted with adjoining landowner, Jim Gregory, whose property is located north of the Clemens' property. Mr. Gregory has no objection to the Clemens' application.

Beach monitoring condition. You suggested that a beach monitoring period of 30 years following the construction of the seawall be included as a permit condition. A 30-year beach monitoring period would involve a substantial expenditure to the current landowners. As best as the Clemens can determine from examination of County of Hawaii Planning Department records, the existing seawall was constructed by the property's former landowner long ago. The Clemens' are seeking after-the-fact approvals for these improvements in an effort to comply with County shoreline setback requirements. Additionally, it would be unfair to impose a condition on the Clemens property when similar oceanfront properties within the vicinity have no such conditions placed on those properties.

Shoreline characteristics. You expressed concern that the DEA did not sufficiently address the shoreline characteristics of the area and suggested that additional information be included to assist with the assessment of seawall projects. A wave study was conducted in 1996, as part of a proposed seawall construction for an

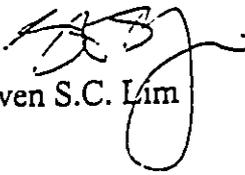
Mr. John T. Harrison  
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Page 3

oceanfront property on Alii Drive, approximately two miles from the Clemens' property. The study was conducted to determine: (1) whether interaction of waves with the seawall would result in any adverse impact on neighboring property or on Alii Drive, and (2) whether base flood levels would increase. The study concluded that the proposed seawall would not cause any increase in base flood elevation and would not cause any adverse impact on adjoining properties or on Alii Drive. The study further concluded that since neighboring properties have seawalls, the proposed seawall would enhance protection of those other properties in the area. The Clemens' adjoining neighbors to the north and south, and several oceanfront properties within the subdivision have existing seawalls. Based on the wave study conducted within the vicinity, the Clemens' seawall would enhance the protection of other properties within its immediate area. As shown in the photographs attached to the DEA, the lava rock ocean frontage of the subject property is substantial, and beach processes are not affected by this seawall.

We appreciate your comments on Mr. & Mrs. Clemens' draft environmental assessment. The final environmental assessment will be revised, as appropriate, because of your comments. Your letter and this response will also be appended to the final environmental assessment to ensure a document that adequately addresses pertinent development and environmental issues.

Very truly yours,

CARLSMITH BALL WICHMAN  
CASE & ICHIKI

  
Steven S.C. Lim

SSL:KYL

xc: Office of Environmental & Quality Control  
Hawaii County Planning Department  
Mr. & Mrs. Clemens  
Mr. Robert D. Triantos, Esq.

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BEN JAMIN J. CAYETANO  
GOVERNOR



GARY GILL  
DIRECTOR

STATE OF HAWAII  
OFFICE OF ENVIRONMENTAL QUALITY CONTROL

236 SOUTH BERETANIA STREET  
SUITE 702  
HONOLULU, HAWAII 96813  
TELEPHONE (808) 586-4186  
FACSIMILE (808) 586-4186

July 10, 1997

Ms. Virginia Goldstein, Director  
Planning Department  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

Dear Ms. Goldstein:

Subject: Clemens After-the-Fact Improvements of Existing Single  
Family Dwelling and After-the-Fact Seawall, North Kona,  
Hawaii, TMK 7-8-14:51

Our office is in receipt of the June 25, 1997 letter from the  
applicant responding to our comments of November 20, 1996 on the  
draft environmental assessment for the above project.

After reviewing the responses to our comments, it is plainly clear  
that our questions have not been answered. Accordingly, we must  
recommend that the Hawaii County Planning Department not process  
the final environmental assessment until adequate responses are  
provided to our comments.

The environmental impact statement process requires that  
satisfactory responses be provided to comments that are received.  
Section 11-200-22 of the EIS rules state "the response to comments  
shall include: (1) point-by-point discussion of the validity,  
significance, and relevance of comments; and (2) discussion as to  
how each comment was evaluated and considered in planning the  
proposed action."

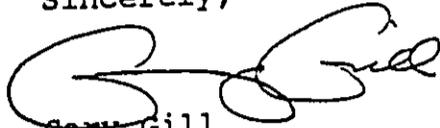
In our letter we raised eleven major comment points. The response  
provided by the applicant was covered in two paragraphs which did  
not address any of our points directly. As you will see in the  
enclosed comment and response letters, the reply clearly does not  
include a point-by-point discussion of our comments. Unless the  
applicant provides a new and satisfactory response, this failure to  
answer comments properly warrants a rejection of the final  
environmental assessment by your office.

EXHIBIT S  
COMMENTS FROM OEQC

Ms. Goldstein  
June 25, 1997  
Page 2

If you have any questions please call Jeyan Thirugnanam at 586-4185.

Sincerely,



Gary Gill  
Director

Enclosures

c: Dale Lawrence and Veronica Clemens  
Steven Lim, Esq.

CARLSMITH BALL WICHMAN CASE & ICHIKI

ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING LAW CORPORATIONS  
121 WAIANUENUE AVENUE  
POST OFFICE BOX 686  
HILO, HAWAII 96721-0686

TELEPHONE (808) 935-6644  
FAX (808) 935-7975

July 17, 1997

Mr. Gary Gill  
Director  
Office of Environmental Quality Control  
220 South King Street, Fourth Floor  
Honolulu, Hawaii 96813

Re: Dale Lawrence and Veronica Clemens  
Draft Environmental Assessment ("DEA") for Shoreline Setback  
Variance Application for After-the-Fact approval of existing  
single-family dwelling, seawall, planter and boundary wall, and  
lawn improvements, and proposed lap pool improvements  
Kahaluu Beach Lots, North Kona  
Tax Map Key No.: (3) 7-8-14:51

Dear Mr. Gill:

I am in receipt of your July 10, 1997 letter to Planning Director Virginia Goldstein regarding our June 25, 1997 response letter to your November 20, 1996 comments on the draft environmental assessment for the above-referenced project.

As I understand it, the 10-step evaluation process suggested by the OEQC to assess shoreline hardening activities such as seawalls, was formulated to meet the concerns for seawall construction along areas susceptible to erosion such as the windward coast of the island of Oahu, where oceanfront properties have experienced problems with sand transport. The shoreline area of the subject property is predominantly pahoehoe flows, with mixed coral and rock rubble, and very little sand or organic soil. (See, DEA, Exhibit E, site photographs.) The existing seawall does not affect beach processes nor the transport of sand along the shoreline. The rocky lava shoreline in the area of the Property has remained stable for probably centuries, and certainly since the construction of the improvements in the late 1980s. Although many of the 10 points raised in your November 20, 1996 supplemental comment letter are not applicable to the

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EXHIBIT T  
RESPONSE TO OEQC

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Mr. Gary Gill  
July 16, 1997  
Page 2

proposed action due to the volcanic nature of this shoreline area, we are responding to your comments to more clearly address those development and environmental issues.

1. Historical Shoreline Analysis: As far as the Applicants are aware, and due to the short time of ownership of the Property, we believe that the lava based shoreline area fronting the Property has changed very little over the past years. We are not aware of any such historical analysis done by the State or County which is available for review.

2. Description of the nature of the affected shoreline: A description of the nature of the affected shoreline, its configuration, and character is discussed in Section VI.A of the DEA. The shoreline photographs included in the DEA also provide more detail.

3. Site maps: The current certified shoreline and the previous certified shoreline are discussed in Section V.A.1. of the DEA. The Shoreline Certification Map was certified on April 26, 1995, and reconfirmed on March 13, 1996, by the State Department of Land and Natural Resources and is attached to the DEA as Exhibit C. A site map which is attached to the DEA as Exhibit F clearly depicts the private property line, the location of the existing and proposed improvements, and the public lateral shoreline access area fronting the property.

4. Beach profiles: The shoreline characteristics of the Property and adjoining oceanfront properties along the North Kahaluu Beach Subdivision is fixed by historical lava flow and is predominantly pahoehoe flows, with mixed coral and rock rubble, and very little sand or organic soil. The slope of the shoreline in the area is characterized by a general gradual slope to the sea. See site photographs attached to the DEA as Exhibit E.

5. Analysis of existing nearby walls or revetments: Existing seawalls are constructed on adjoining properties on either side as shown on photographs attached to the DEA as Exhibit E. As further discussed in no. 7 below, based on the wave study conducted within the vicinity, the Applicants' seawall would enhance the protection of other properties within its immediate area.

6. Description of structures and improvements: A description of the existing single-family dwelling, seawall, planter and boundary wall, and lawn improvements is discussed in Section VII of the DEA. The distance from the makai face of the seawall to the shoreline ranges between approximately 10 feet through 20 feet. The existing seawall and related improvements have been in existence for approximately eight to ten years, do not artificially fix the shoreline or restrict public access to the shoreline, and since the Property's elevation is approximately 11.9

Mr. Gary Gill  
July 16, 1997  
Page 3

feet above mean sea level, precludes the planter and boundary walls and existing lawn area and proposed lap pool from impacting upon beach processes.

7. Wave and storm frequency analysis: A wave study was conducted in 1996, as part of a proposed seawall construction for an oceanfront property on Alii Drive, approximately two miles from the Clemens' property. The study was conducted to determine: (1) whether interaction of waves with the seawall would result in any adverse impact on neighboring property or on Alii Drive, and (2) whether base flood levels would increase. The study concluded that the proposed seawall would not cause any increase in base flood elevation and would not cause any adverse impact on adjoining properties or on Alii Drive. The study further concluded that since neighboring properties have seawalls, the proposed seawall would enhance protection of those other properties in the area. The Clemens' adjoining neighbors to the north and south, and several oceanfront properties within the subdivision have existing seawalls. Based on the wave study conducted within the vicinity, the Clemens' seawall would enhance the protection of other properties within its immediate area. As shown in the photographs attached to the DEA, the lava rock ocean frontage of the subject property is substantial, and beach processes are not adversely affected by this seawall.

8. Analysis that predicts location of future shorelines with or without the proposed wall 30 years into the future: The rocky lava shoreline in the area of the Property has remained stable for many years, and certainly since the construction of the improvements in the late 1980s. The existing seawall and related improvements have been in existence for approximately eight to ten years and have remained stable during the coastal storms over the last eight to ten years despite a portion of the Property closest to the shoreline being in an area of coastal floods with a base flood elevation of 12 feet.

9. Photos of site: Site photographs showing the location of the existing improvements, the area of proposed lap pool improvements and shoreline area fronting the property are attached to the DEA as Exhibit F.

10. Alternatives: Major impacts and alternatives considered by the Applicants are discussed in Section VII of the DEA. Alternatives to shoreline hardening such as beach replenishment and dune-scaping are not applicable to the proposed action since the shoreline is predominately a lava rock shoreline. The alternative of moving the existing structure inland would cause the Applicants an extreme economic and personal hardship. Any demolition of, or removal of the existing seawall and fill material would cause substantial adverse impacts to the coastal waters, shoreline area and Property. A no action alternative would cause the Applicants

Mr. Gary Gill  
July 16, 1997  
Page 4

to abandon the improvement project thereby depriving Applicants of reasonable use of the Property in light of similar residential improvements enjoyed in the area.

We appreciate your additional comments, and your supplemental letter and this response will be appended to the final environmental assessment to ensure a document that adequately addresses pertinent development and environmental issues.

Very truly yours,

CARLSMITH BALL WICHMAN  
CASE & ICHIKI

  
Steven S.C. Lim

SSL:KYL

xc: Office of Environmental & Quality Control  
Hawaii County Planning Department  
Mr. & Mrs. Clemens  
Mr. Robert D. Triantos, Esq.