

BENJAMIN J. CAYETANO  
GOVERNOR



**STATE OF HAWAII**  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM  
**LAND USE COMMISSION**  
P.O. Box 2359  
Honolulu, HI 96804-2359  
Telephone: 808-587-3822  
Fax: 808-587-3827

01 MAY 11 02:39

May 11, 2001

Ms. Genevieve Salmonson, Director  
Office of Environmental Quality Control  
Department of Health  
235 South Beretania Street, Suite 702  
Honolulu, Hawaii 96813

Dear Ms. Salmonson:

Subject: LUC Docket No. A00-733/Harrison J. and Sharene Z. Klein

At its meeting on February 16, 2001, the State Land Use Commission issued a negative declaration for the Final Environmental Assessment ("FEA") prepared for the subject docket. The Commission determined that the Petition and the FEA submitted by Harrison J. and Sharene Z. Klein ("Petitioner") will not have a significant effect upon the environment and therefore did not require an environmental impact statement pursuant to its Finding of Fact, Conclusions of Law and Decision and Order issued on March 15, 2001.

On April 6, 2001, Petitioner filed a second amended petition to reclassify approximately 2.621 acres from the State Land Use Conservation District to the State Land Use Urban District ("Second Amended Petition") for the Petition Area. The Second Amended Petition proposed improvements to the existing single-family residential dwelling, including without limitation, an interior stairway. In addition, Petitioner proposed to pursue cultivation of ti-leaf plants, coconut trees and palms on approximately one-half acre of the Petition Area.

On April 19, 2001, the Commission determined that Petitioner's FEA is acceptable for the Second Amended Petition for its reclassification request to the Urban District and the negative declaration determined on March 15, 2001 was reaffirmed.

64

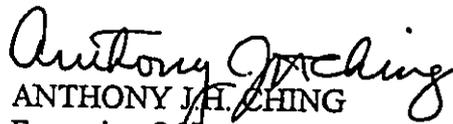
Ms. Genevieve Salmonson  
May 11, 2001  
Page 2

In accordance with Section 343-5 (c), Hawaii Revised Statutes, we are filing four copies of the revised cover pages of FEA, whereas four copies have been submitted at an earlier date, and one copy of the Publication Form. The Commission's Order accepting Petitioner's FEA for the Second Amended Petition will be sent under a separate cover.

We request that the notice of the Commission's negative declaration be published in the Office of Environmental Quality Control's The Environmental Notice.

Please feel free to contact Russell Kumabe of my staff at (808) 587-3822, should you require clarification or any further assistance.

Sincerely,

  
ANTHONY J.H. CHING  
Executive Officer

Enclosures: Four (4) copies of the FEA  
OEQC Publication Form

c: Steven S. C. Lim, Esq. (w/o enclosures)  
Planning Department, County of Hawaii (w/o enclosures)  
Office of Planning (w/o enclosures)

65

2001-05-23-HI-FEA-Klein's Reclassification  
of Land

**FILE COPY**

MAY 23 2001

---

***FINAL ENVIRONMENTAL ASSESSMENT***

01 MAY 11 PM '01

***PETITION FOR AMENDMENT OF DISTRICT  
BOUNDARIES AND RECLASSIFICATION FROM  
CONSERVATION TO URBAN***

Lot 8, Portion of R.P. Grant No. 1533 to Kekoa  
at Keonepoko Iki, District of Puna, Hawaii  
TMK: (3) 1-5-09:39

LAND USE COMMISSION  
STATE OF HAWAII  
2001 MAY -9 P 1:12

**Prepared for:**  
Harrison J. & Sharene Z. Klein, Trustees  
under the Klein Living Trust dated September 17, 1999

**Prepared by:**  
Steven S.C. Lim  
Carlsmith Ball LLP  
121 Waiuanue Avenue  
Hilo, Hawaii 96720  
Telephone: (808) 935-6644

**Revised February, 2001**

## TABLE OF CONTENTS

SUMMARY .....	1
1.0 INTRODUCTION .....	2
1.1 Identification of Petitioners and Ownership .....	2
1.2 Identification of Approving Agency .....	2
1.3 Identification of Agencies Consulted in Making Assessment .....	2
2.0 PROJECT DESCRIPTION .....	3
2.1 Location .....	3
2.2 Existing Uses and Activities .....	3
2.3 Permits Issued for the Project .....	4
2.3.1 Special Management Area Use Permit .....	4
2.3.2 Special Management Area Exemption; Single-Family Dwelling Agreement .....	4
2.3.3 Conservation District Use Permit No. HA-1605 .....	5
2.3.4 Conservation District Use Permit No. HA-1605A .....	5
2.4 Surrounding Area Uses and Activities .....	5
2.5 Proposed Uses and Activities .....	6
2.6 Timetable for Development .....	6
3.0 ENVIRONMENTAL SETTING, IMPACTS & MITIGATION MEASURES .....	7
3.1 Physical Characteristics .....	7
3.1.1 Physiography and Soils .....	7
3.1.2 Natural Hazards .....	7
3.1.3 Flora/Fauna .....	8
3.1.4 Historical/Cultural and Archaeological Resources .....	9
3.1.5 Air and Noise Quality .....	10
3.1.6 Scenic and Open Space Resources .....	10
3.1.7 Coastal Resources .....	11
3.2 Socioeconomic Considerations .....	11
3.3 Public Facilities and Services .....	11
3.3.1 Access .....	11
3.3.2 Water Resources .....	12
3.3.3 Utilities .....	12
3.3.4 Police and Fire Protection .....	12
4.0 RELATIONSHIP OF THE PROPOSED ACTION TO LAND USE PLANS, POLICIES AND CONTROLS FOR THE AFFECTED AREA .....	12
4.1 Chapter 205, HRS, State Land Use Law .....	12
4.2 State Administrative Rules Governing Land Uses Commission .....	14

---



---

4.3	State Administrative Rules Governing Land Uses Within Conservation Districts .....	14
4.4	Hawaii State Plan .....	15
4.5	Hawaii County General Plan .....	17
4.6	Hawaii County Zoning Code .....	19
4.7	County Special Management Area .....	19
4.8	Coastal Zone Management .....	20
4.9	Shoreline Setback Area .....	21
4.10	Environmental Impact Statement .....	22
5.0	IDENTIFICATION OF MAJOR IMPACTS AND ALTERNATIVES CONSIDERED .....	22
5.1	Major Impacts .....	22
5.2	Alternative to the Proposed Action .....	22
6.0	OTHER PERMITS AND APPROVALS .....	26
7.0	PRE-ASSESSMENT CONSULTATION .....	26
8.0	WRITTEN COMMENTS AND RESPONSES DURING PUBLIC REVIEW PERIOD .....	26
9.0	AGENCY ANTICIPATED DETERMINATION AND FINDINGS AND REASONS SUPPORTING ANTICIPATED DETERMINATION .....	27

## SUMMARY

- Petitioners/Owners:** Harrison J. & Sharene Z. Klein, Trustees under the Klein Living Trust dated September 17, 1999
- Property Location:** Coastal property situate at Keonepoko Iki, District of Puna, Hawaii
- Tax Map Key and Parcel Size:** 1-5-09:39  
2.621 acres
- Approving Agency:** State Land Use Commission  
P.O. Box 2359  
Honolulu, Hawaii 96804-2359
- Consultant:** Steven S. C. Lim  
Carlsmith Ball LLP  
121 Waiianuenue Avenue  
Hilo, Hawaii 96720  
Telephone: (808) 935-6644
- Proposed Action:** Petitioners Harrison J. and Sharene Z. Klein, as Trustees, seek to amend the State Land Use District Boundaries to reclassify the approximately 2.621-acre property situate at Keonepoko Iki, District of Puna, from the Conservation District into the Agricultural District. The Project Area is located within the State Land Use Conservation District, Resource (R) Subzone, is zoned Agricultural with a minimum lot size of one-acre (A-1a) by the Hawaii County Zoning Code, and is within the County of Hawaii Special Management Area ("SMA"). In the alternative, the Petitioners may propose to reclassify the Property from the Conservation District into the Urban District to conform to the adjacent Hawaiian Beaches Subdivision Urban District lands.
- Determination:** The proposed action is expected to have no significant impact on the environment, therefore, a Finding of No Significant Impact ("FONSI") is anticipated, subject to the provisions of Section 11-200-9, Hawaii Administrative Rules.
- Agencies Consulted**
- Federal
    - Department of Agriculture
    - Department of Defense
    - U.S. Army Corps of Engineers, Pacific Ocean Division
    - Department of the Army, U.S. Army Engineering District, Honolulu
    - U.S. Department of the Interior, Fish & Wildlife Service
  - State of Hawaii
    - Department of Land & Natural Resources, Historic Preservation Division & Land Management
    - Office of Planning
    - Office of Hawaiian Affairs
    - Department of Hawaiian Home Lands
    - University of Hawaii, Environmental Center and Water Resource Research Center
    - Department of Health, Environmental Management Division
    - State Conservationist Resources Conservation Service
    - Office of Environmental and Quality Control
  - County of Hawaii
    - Planning Department
    - Department of Water Supply
    - Department of Public Works
    - Fire Department
    - Department of Parks & Recreation
    - Police Department

## 1.0 INTRODUCTION

### 1.1 Identification of Petitioners and Ownership

The Petitioners are Harrison J. and Sharene Z. Klein, Trustees under the Klein Living Trust dated September 17, 1999, whose mailing address is 2233 Bunker Hill Drive, San Mateo, California 94402. The Petitioners are the fee owners of the Property, being Lot 8, a subdivision of a portion of Royal Patent Grant Number 1533 to Kekoa situate at Keonepoko Iki, District of Puna, Island, County and State of Hawaii, more particularly identified as tax map key parcel: (3) 1-5-09:39. The Petitioners' ownership of the Property is evidenced by the Warranty Deed, dated October 19, 1999, and recorded at the Bureau of Conveyances of the State of Hawaii on October 22, 1999, as Document No. 99-169343 (see, Exhibit 1-Location Map; Exhibit 2-Tax Map; Exhibit 3-Warranty Deed).

### 1.2 Identification of Approving Agency

This environmental assessment is being submitted in conjunction with an application to the State Land Use Commission for a Verified Petition for Amendment of District Boundaries and Reclassification from Conservation to Agricultural ("Petition for Amendment"), in accordance with Sections 205-3.1(c) and 205-4, Hawaii Revised Statutes, as amended, and Subchapter 6 of Title 15, Chapter 15, Hawaii Administrative Rules. Alternatively, the Petitioners may submit an amended Petition for reclassification from the Conservation District to the Urban District. In either event, the approving agency for this environmental assessment will be the State Land Use Commission.

### 1.3 Identification of Agencies and Community Groups Consulted in Making Assessment

The following agencies provided assistance or information in preparing this assessment:

#### Federal

- Department of Agriculture
- Department of Defense
- U.S. Army Corps of Engineers, Pacific Ocean Division
- Department of the Army, U.S. Army Engineering District, Honolulu
- U.S. Department of the Interior, Fish & Wildlife Service

#### State of Hawaii

- Department of Land & Natural Resources, Historic Preservation Division & Land Management
  - Office of Planning
  - Office of Hawaiian Affairs
  - Department of Hawaiian Home Lands
  - University of Hawaii, Environmental Center and Water Resource Research Center
  - Department of Health, Environmental Management Division
  - State Conservationist Resources Conservation Service
  - Office of Environmental & Quality Control
-

## County of Hawaii

- Planning Department
- Department of Water Supply
- Department of Public Works
- Fire Department
- Department of Parks & Recreation
- Police Department

## Community Groups

- Several property owners within the Hawaiian Beaches Subdivision

## 2.0 PROJECT DESCRIPTION

### 2.1 Location

The "L" shaped oceanfront Property of approximately 2.621 acres is located adjacent to and north of the Hawaiian Beaches Subdivision at Keonepoko Iki, District of Puna, Island, County and State of Hawaii, and is designated by TMK No.: (3)1-5-09:39 ("Property") (see, Exhibit 1-Location Map; Exhibit 2-Tax Map). The Property's southern boundary abuts the Waiakahiula 1" ahupua'a, and Welea Street, a dead-end street within the Hawaiian Beaches Subdivision. The Property's shoreline is approximately 253 feet in length and its frontage along the Government Beach Road (also known as the Puna Trail) is approximately 107 feet in length (see, Exhibit 4-Plot Plan). The street address of the Property is 15-2678 Welea Street.

The Property is classified "Conservation," Resource (R) Subzone by the State Land Use Commission, and zoned "Agricultural," with a minimum lot size of one-acre (A-1a), under the Hawaii County Zoning Code (Chapter 25, Hawaii County Code). The LUPAG map designates the Property along the shoreline as "Open," and the remaining portion of the Property as "Orchard." The Property is located within the County of Hawaii's Special Management Area ("SMA") which runs makai of and along the Government Beach Road.

### 2.2 Existing Uses and Activities

Existing improvements on the Property consist of a split-level single-family residential dwelling, enclosed garage/storage unit, at-grade lap pool, cesspool, and extensive landscaping (including a gravel driveway, a putting green, and two ponds). An entrance gate and a rockwall border the mauka (southwestern) boundary of the Property. A rockwall borders the Property's southern boundary (see Exhibit 4-Plot Plan; Exhibit 5-Site Photographs). The single-family residential dwelling is sited approximately 175 feet inland from the shoreline.

- Split-level Single-Family Residential Dwelling. The split-level dwelling of approximately 2,900 square feet living area consisting of two levels was approved by

the Board of Land & Natural Resources under Conservation District Use Permit No. HA-1605 on December 2, 1983 (see, Exhibit 8 CDUP No. HA-1605).

*Lower level:* The lower level consists of two bedrooms, two full bathrooms, a sitting room and laundry room (approximately 914 square feet) and basement deck (approximately 734 square feet).

*Main level:* The main level consists of the master bedroom, one and one-half bathrooms, living room, kitchen, and covered lanai (approximately 1,965 square feet), and a covered deck (approximately 1,601 square feet).

- Garage/Storage Unit. A 1,200 square feet enclosed garage and storage area which is used to store gardening tools and equipment is located adjacent to and mauka (west) of the main dwelling and was approved by the Board of Land & Natural Resources under Conservation District Use Permit No. HA-1605A on July 27, 1984 (see, Exhibit 10).
- At-grade Lap Pool. A 370 square feet at-grade lap pool is located adjacent to and south of the single-family residential dwelling and was approved by the Board of Land & Natural Resources under Conservation District Use Permit No. HA-1605A on July 27, 1984 (see, Exhibit 10).
- Cesspool. The cesspool is located adjacent to and south of the single-family residential dwelling.
- Landscaping. The Property is extensively landscaped with coconut trees, Norfolk pines, ti-leaf, naupaka kahakai, lauhala, palms, dry land taro, fruit trees, and ornamental plants, an extensive gravel driveway, a putting green, and two ponds (see, Exhibit 4-Plot Plan).

## **2.3 Permits Issued for the Project**

### **2.3.1 Special Management Area Minor Permit**

By letter dated July 20, 1983, the Planning Director issued Special Management Area Minor Permit No. 83-24 to prior property owner, Jerry Merrill, to allow hand-clearing activity for the maintenance of the ti-leaf farm on the Property (see, Exhibit 6-SMA Minor Permit No. 83-24).

### **2.3.2 Special Management Area Exemption; Single-Family Dwelling Agreement**

The Planning Director by letter dated November 4, 1983, determined that the construction of the proposed single-family dwelling would be exempt from the permitting requirements of Hawaii County's SMA if prior owners, Jerry E. and Patricia E. Merrill

---

either incorporate an interior stairway into the single-family dwelling or execute a Single-Family Dwelling Agreement ("Agreement"). The Merrills entered into the Agreement with the Hawaii County Planning Department dated November 7, 1983, which was recorded in the Bureau of Conveyances of the State of Hawaii on January 3, 1984, in Liber 17566, Page 781. The Agreement restricts the use of the dwelling on the Property to single-family dwelling uses (see, Exhibit 7-Agreement).

### 2.3.3 Conservation District Use Permit No. HA-1605

On December 2, 1983, the Board of Land & Natural Resources granted prior property owners, Jerry E. and Patricia E. Merrill, Conservation District Use Permit ("CDUP") No. HA-1605 to allow for the construction of a single-family dwelling on the Property, subject to conditions of approval. The conditions of approval were recorded in the Bureau of Conveyances of the State of Hawaii on February 8, 1984, in Liber 17646, Page 444 (see Exhibit 8-CDUP No. HA-1605; Exhibit 9-Declaration of Restrictive Covenants).

### 2.3.4 Conservation District Use Permit No. HA-1605A

On July 27, 1984, the Board of Land & Natural Resources amended CDUP Permit No. HA-1605 and issued CDUP Permit No. HA-1605A to allow for the installation of a swimming pool, garden sprinkler system and garden storage house on the Property, subject to conditions of approval (see Exhibit 10-CDUP No. HA-1605A). Prior owners, Jerry E. and Patricia E. Merrill constructed the swimming pool and storage house, but did not install the garden sprinkler system.

## 2.4 Surrounding Area Uses and Activities

*Makai of the Government Beach Road:* The Hawaiian Beaches Subdivision abuts the Property at its southern boundary, with lots classified as "Urban" by the State Land Use Commission, and similarly zoned "Agricultural" with a minimum lot size of one-acre (A-1a) under the Hawaii County Zoning Code, designated "Orchard" and "Open" along the shoreline on the County's General Plan Land Use Pattern Allocation Guide ("LUPAG") map, and within the County of Hawaii's Special Management Areas ("SMA"). Lands to the north of the Property are characterized by other privately owned lots which are similarly classified "Conservation," Resource (R) Subzone by the State Land Use Commission, zoned "Agricultural" with a minimum lot size of one-acre (A-1a) under the Hawaii County Zoning Code, designated "Orchard" and "Open" along the shoreline on the LUPAG map, and located within the SMA.

*Shoreline:* The rocky shoreline of low/medium height sea cliffs of the Property (along the eastern boundary) and adjoining oceanfront properties are characterized by predominantly historical a'a flows that slope to the sea. The high/medium height sea cliffs of the Waiakahiula Shoreline Reserve are located south of the Property.

---

*Mauka of the Government Beach Road:* Lands west of the Property are characterized by other privately owned lots which are classified "Agricultural" by the State Land Use Commission, zoned "Agricultural" with a minimum lot size of five-acre (A-5a) under the Hawaii County Zoning Code, designated "Orchard" on the LUPAG map, and located outside of the SMA.

## 2.5 Proposed Uses and Activities

The Petitioners are seeking to amend the district boundary to reclassify the approximately 2.621-acre property from the Conservation District into the Agricultural District for the purpose of cultivating ti-leaf plants, coconut trees and palms on approximately one-half acre of the Property. Though the soil is rocky in character and content, it can support the cultivation of ti-leaf plants, coconut trees and palms as evidenced by the thriving ti-leaf plants and coconut trees on the Property which were cultivated by the Merrills in the early 1980's as part of their commercial farming operation. The Petitioners propose to cultivate these plants and continue the commercial farming operation commenced by the prior owners (see Exhibit 4- Plot Plan). In the alternative, the Petitioners may propose to reclassify the Property from the Conservation District into the Urban District to conform to the adjacent Hawaiian Beaches Subdivision Urban District lands. See discussion of proposed Urban reclassification in Section 5.2, Alternatives to the Proposed Action. Regardless of the proposed Agricultural or Urban reclassification of the Property, the County of Hawaii A-1a zoning will allow subdivision of the 2.6± acre Property site into two lots.

For purposes of this assessment, the improvements being proposed by the Petitioners will be called either the "Project" or the "Proposed Action," and the Conservation District land on which the Project is proposed will be called the "Project Area" or "Property."

## 2.6 Timetable for Development

The Petitioners propose commencement of the commercial farming operation within six months of receipt of all required permits from the State (Petition for Amendment of District Boundaries and Reclassification), and County (SMA exemption for the proposed agricultural uses.)

---

### 3.0 ENVIRONMENTAL SETTING, IMPACTS & MITIGATION MEASURES

#### 3.1 Physical Characteristics

##### 3.1.1 Physiography and Soils

*Setting.* The elevation of the Property ranges from sea level to approximately 54 feet above mean sea level along the mauka (southwesterly) boundary at the Government Beach Road. The overall slope of the Property is approximately 6 to 12% along the coastline and 0 to 6% inland (see Exhibit 13-Topographical map).

The soils on the Property are classified by the United States Department of Agriculture, Soil Conservation Services, Soil Survey Report as "rLW" or "Lava Flows, a'a," which is a miscellaneous land type. This lava has practically no soil covering and is rough and broken.

The Land Study Bureau Overall Master Productivity Rating classifies the soil within the Property as "E," or "Very Poorly Suited," to agricultural productivity. The State of Hawaii, Department of Agriculture's Land of Importance to the State of Hawaii ("ALISH"), which lists all of the land in Hawaii with agricultural significance classifies a portion of the Property as "Other Important Agricultural Lands," and the remaining area of the Property is not classified as "Prime", "Unique" or "Other Important Agricultural Lands."

*Impacts and Mitigation.* Minor changes to the land form have occurred during the construction of the existing single-family residential dwelling and accessory improvements, and cultivation of ti-leaf plants for the farming operations. Minor changes to the land form will result from the reestablishment of the agricultural uses, however, no significant adverse impacts are expected. Though the soil is rocky in character and content, the land is capable of being utilized for active agricultural pursuits, as evidenced by the thriving ti-leaf plants and coconut trees on the Property which were cultivated by the Merrills in the early 1980's as part of their commercial farming operation. In addition, the Proposed Action complies with the ALISH designation and will foster agricultural activities on a portion of the Property.

##### 3.1.2 Natural Hazards

*Setting.*

*Flood and Coastal Hazards.* The shoreline characteristics of the Property and adjoining oceanfront properties are historical a'a flows. The shoreline along the Property is approximately 253 feet in length and is characterized by a general gradual slope with low/medium height sea cliffs to the sea. The U. S. Corps of Engineers Flood Insurance

Rate Map (FIRM) designates the Property in Zone X. Zone "X" is designated for those areas outside of the 500-year flood plain (see, Exhibit 15-FIRM map). The shoreline portion of the Property is located within the County of Hawaii Civil Defense Agency's evacuation area for hazards due to tsunami and possible surges from hurricanes.

**Volcanic and Earthquake Hazards.** According to the United States Geological Survey map, the Property is located within Lava Flow Hazard Zone 2, on a scale of ascending risk 9 to 1. Zone 2 areas include the areas that are adjacent to, and down slope from, the East Rift Zone of Kilauea volcano. The entire area south of the East Rift Zone lies in Zone 2. Lava flows are most likely to travel in this direction due to the ground sloping downhill from the rift zone to the ocean. Lava flows in this area are 400 to 750 years old (see, Exhibit 16-Volcanic and Siesmic Hazards map). The Building Code designates the entire island of Hawaii in Earthquake Zone 3 and contains certain structural requirements to address the relative seismic hazards.

**Impacts and Mitigation.** Although the Property is located within the coastal high hazard area, there is no tsunami data for the Property Area, and the shoreline along the Property has remained stable during coastal storms. The placement of the existing structures is sufficiently inland from the shoreline, and thus the degree of risk to human life is minimal. In addition, although the Property is located in the area flanked by Kilauea volcano, and is subject to down slope lava flows, the degree of risk to human life is minimal.

### 3.1.3 Flora/Fauna

**Setting.** No plant species listed by the U.S. Fish & Wildlife Services or State protected plant species as threatened or endangered, proposed, or a candidate species or "species of concern" occur on the Property or immediate vicinity. The shoreline of the Property and adjoining oceanfront properties are bare of vegetation. Coconut (*Cocos nucifera*), Norfolk pines and naupaka kahakai (*Scaevola sericea*) border the coastline. The Property is extensively landscaped with coconut trees, Norfolk pines, ti-leaf, naupaka kahakai, lauhala, palms, dry land taro, fruit trees, and ornamental plants.

No endangered or otherwise rare bird or mammal species were observed within the Project Area. The area is not included within the critical habitat for protected species. Known occupied fauna within the Property consists predominantly of lowland urban birds, such as common mynah (*Acridotheres tristis*), house finch (*Carpodacus mexicanus*), northern cardinal (*Cardinalis cardinalis*) and Japanese white-eye (*Zosterops japonica*). None of these species are rare or endangered. Additionally, no resident endemic and indigenous land birds, resident indigenous seabirds, resident endemic and indigenous water birds and migratory indigenous birds have been recorded on the Property. Mammal species which are expected to occur on the Property include

mongoose, feral cat, mouse and rat. These are common species which are found throughout the island.

Marine mammals and sea turtles have not been observed along the low/medium height jagged, barren lava sea cliffs on the Property.

*Impacts and Mitigation.* No rare or endangered plant or animal species or habitats would be affected since there is no evidence of threatened, endangered or rare plants, birds, mammals, or marine mammals within the Property.

#### 3.1.4 Historical/Cultural and Archaeological Resources

*Setting.* The Lower Puna area was well-populated by Hawaiians before 1800, but was nearly abandoned during the 19<sup>th</sup> century. Extensive cattle raising and scattered agriculture dominated land use during the late 1800s and the population in Puna remained the lowest of any district on the island during that time. The production of plantation sugar in the 1900s brought with it a need for labors, and villages occupied by immigrants occurred. Homesteads were offered to farmers throughout Puna, and the population rebound. Growth has accelerated since 1970 as a result of low costs for residential agricultural lots. The Petitioners consulted with native Hawaiian gathers and were informed that in light of the existing residential development of the Property, and the continued residential use of the Property for over 15 years, there are no valued cultural, historical or natural resources evident on the Property. Community contacts and consultation with native gathers disclosed that there are no known traditional and customary native Hawaiian practices on the Project, with the possible exception of opihi and limu gathering and fishing at the shoreline areas. The Petitioner remains committed to allow access along the shoreline area of their Property for traditional and customary cultural practices and related shoreline access.

There are no known historical and/or cultural sites on the Property as confirmed by the Department of Land & Natural Resources, State Historic Preservation Division by letters dated January 11, 2000, and January 10, 2001 which states that "we believe there are no historic properties present in the subject parcel. The proposed action of a boundary amendment will have no effect on significant historic sites." (see Exhibit 11-DLNR-SHPD letter).

Further, the Property is not among those listed as historic properties in the Hawaii State Register of Historic Places, has not been determined to be eligible for inclusion in the National Register of Historic Places, and is not profiled as a significant cultural and/or historic site in the General Plan within the Puna district, and in the Puna Community Development Plan. The Honolulu Landing Habitation Complex (TMK: 1-4-03:19), located approximately one mile south of the Property is listed as a historic site in the Hawaii State Register of Historic Places.

*Impacts and Mitigation.* There are no known historical and/or cultural sites on the Property as confirmed by the Department of Land & Natural Resources, State Historic Preservation Division. In addition, the Property is not listed as a historic property in the Hawaii State Register of Historic Places, has not been determined to be eligible for inclusion in the National Register of Historic Places, and is not profiled as a significant cultural and/or historic site in the General Plan within the Puna district, and in the Puna Community Development Plan. Since the Property is fully developed for residential purposes with the existing dwelling, improvements and infrastructure, there are no observable traditional and customary native Hawaiian practices being exercised outside the shoreline area. Known traditional and customary native Hawaiian practices and other valued cultural, historical or natural resources on the Property are located at the shoreline area and will be recognized and allowed by the Petitioners.

### 3.1.5 Air and Noise Quality

#### *Setting.*

*Air.* The air quality in the Puna district is largely affected by air pollutants from natural rather than vehicular sources. The most predominant source of natural pollutants is from the Kilauea volcano's east rift eruption located west of the Property. Emissions from the ongoing eruption can be seen in the form of a volcanic haze which intermittently blankets the area. Vehicular exhaust is a lesser source of air pollutants.

*Noise.* The noise generated in the vicinity of the Project Area is associated with existing vehicular sources along the Government Beach Road. Other noises in the Project Area come from natural sources (ocean and wind).

*Impacts and Mitigation.* Given the limited nature of the Project, no short-term or long-term increase in noise level will be experienced in the Project Area.

### 3.1.6 Scenic and Open Space Resources

*Setting.* The Property is extensively landscaped with coconut trees, Norfolk pines, lauhala, naupaka, palms, dry land taro, fruit trees, and ornamental plants. The Property is not listed as a distinctive and identifiable land form distinguished as landmarks or as having a frontyard vista of distinctive features as identified in the General Plan within the Puna district, nor in the Puna Community Plan. The Waiakahiula Shoreline Reserve located one mile south of the Property is identified in the General Plan as an example of natural beauty in the Puna district and is designated as a future Hawaiian Shores Community Association park site (see, Exhibit 12, Shoreline Inventory Map).

*Impacts and Mitigation.* The Proposed Action is not anticipated to change the visual attributes of the Project Area which has been improved. The Proposed Action will

---

continue to foster the goals, policies and standards of the scenic and open space resources of the General Plan.

### 3.1.7 Coastal Resources

*Setting.* The coastal resources between the low-tide mark and the upper reaches of the wave-splash zone consist of low/medium height jagged, barren lava seacliffs.

The County of Hawaii Public Access to the Shoreline Inventory (1979) does not list the Project Area as one which provides public access from the Government Beach Road. The Waiakahiula Shoreline Reserve is located south of the Property (see, Exhibit 12-Shoreline Inventory map).

*Impacts and Mitigation.* The Project does not involve any direct or chemical modifications to the nearshore environment, nor will it cause the possibility of erosion and sedimentation seepage into the coastline. Therefore, there should be no physical disruption of the existing habitat, and more important, no changes that would affect the amount of wave energy striking the shoreline. Lateral pedestrian access to the coastal shoreline within the Project Area will not be curtailed since pedestrian public shoreline access to the shoreline is secured along the coastline. Any cultural, historical or natural resources customarily and traditionally gathered along the shoreline area will be recognized and continued by the Petitioners.

### 3.2 Socioeconomic Considerations

The Project should generate minor improvements to the economy resulting from the creation of agricultural related jobs. The Project will employ a part-time agricultural helper.

### 3.3 Public Facilities and Services

#### 3.3.1 Access

*Setting.* Access to the Property is provided from the Keaau-Paho Highway that connects to Kahakai Boulevard in Hawaiian Paradise Park, and to the Government Beach Road, also known as the Puna Trail, an improved gravel/dirt roadway having a 10-foot wide right-of-way. A 40-foot wide building setback line runs along the makai side of the Government Beach Road within the mauka portion of the Petition Area.

*Impacts and Mitigation.* The existing roadway is adequate to accommodate the Proposed Action, and is not anticipated to create any substantial adverse impact upon access.

### 3.3.2 Water Resources

*Setting.* No municipal water system is available to the Project Area. The nearest County of Hawaii municipal water system is provided by a 12-inch line located within the vicinity of Keonepoko School. Potable water for the Project Area is drawn from the Hawaiian Beaches Subdivision private water system managed by Miller & Lieb Water Company, Inc. The mean annual rainfall in the vicinity is about 100 to 125".

*Impacts and Mitigation.* Since there is no municipal water service to the Project Area, there will be no adverse impact upon the municipal system by reason of the Proposed Action. The availability of potable water from the private water system and amply rainfall within the Project Area is sufficient to service the requirements for the proposed agricultural use.

### 3.3.3 Utilities

*Setting.* Underground electrical and telephone service entries are located at the end of Welea Street within the Hawaiian Beach Subdivision, and the Project Area is serviced by Hawaii Electric Light Company and Verizon.

*Impacts and Mitigation.* There is no anticipated adverse impact upon electrical and telephone utility services by reason of the Proposed Action since services are available to the Project Area.

### 3.3.4 Police and Fire Protection

*Setting.* Police and fire protection services are provided from the Puna police and fire stations located in Pahoa, approximately six miles west of the Property.

*Impacts and Mitigation.* The Proposed Action is not anticipated to increase the demand for police and fire services which are available to the Project Area.

## 4.0 RELATIONSHIP OF THE PROPOSED ACTION TO LAND USE PLANS, POLICIES AND CONTROLS FOR THE AFFECTED AREA

### 4.1 Chapter 205, Hawaii Revised Statutes, State Land Use Law

All lands within the State have been classified into one of our land use districts: Urban, Rural, Agricultural and Conservation, by the State Land Use Commission, pursuant to Chapter 205, HRS. The Property is located within the State Land Use Conservation District, Resource (R) Subzone (see Exhibit 14-SLU subzone map).

---

Section 205-2(e), HRS, provides that Conservation District shall include:

areas necessary for protecting watersheds and water sources; preserving scenic and historic area; providing park lands, wilderness, and beach reserves; conserving endemic plants, fish and wildlife; preventing floods and soil erosion; forestry; open space area whose existing openness; natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept.

Section 205-2(d), HRS, provides that the Agricultural District shall include:

activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, aquaculture, and game and fish propagation; aquaculture, which means the production of aquatic plant and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public, private, and commercial use; bona fide agricultural services and uses which support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory. . .

Section 205-4.5(c), HRS, provides that permissible uses within the Agricultural Districts shall include:

Within the agricultural district all lands, with soils classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).

Section 205-5(b), HRS, provides that within Agricultural Districts, uses compatible to the activities described in Section 205-2 as determined by the Commission shall be permitted; provided that accessory agricultural uses and services described in Sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance.

Section 205-3.1(c), HRS, provides that district boundary amendments involving land areas of fifteen acres or less in conservation districts is processed by the State Land Use Commission pursuant to Section 205-4.

Lands located within the State Land Use Conservation Districts are administered by DLNR, pursuant to Chapter 183C, HRS.

The proposed reclassification would not be violative of Sections 205-2(d) and 205-4.5, HRS, which provides that Agricultural Districts shall include activities or uses as characterized by farming activities or uses which support the agricultural activities of the fee owner of the property. The soil classification for the Property by the Land Study Bureau's Detailed Land Classification in overall productivity rating is "E" and the Proposed Action conforms to the permitted uses with the Agricultural Districts as set forth in Section 205-5(b).

**4.2 State Administrative Rules Governing Land Use Commission, Section 15-15-19, Hawaii Administrative Rules**

In determining the boundaries for the Agricultural District, the following standards shall apply:

- (1) It shall include lands with a high capacity for agricultural production;
- (2) It may include lands with significant potential for grazing or for other agricultural uses; and
- (3) It may include lands surrounded by or contiguous to agricultural lands or which are not suited to agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

The proposed reclassification of the Property into the Agricultural District would meet with above-cited standards since: (1) although the soil is rocky in character and content, it can support the cultivation of ti-leaf plants, coconut and palm plants as evidenced by the thriving ti-leaf plants and coconut trees on the Property which were cultivated by the Merrills in the early 1980's as part of their farming operation, (2) land adjacent to and west of the Property are in active papaya farm production, and (3) lands adjacent to and west of the Property are classified "Agricultural" by the State Land Use Commission, and lands to the north and west are zoned "Agricultural" with a minimum lot size of one-acre (A-1a) and five-acres (A-5a), respectively, thereby resulting in a contiguous Agricultural District.

**4.3 State Administrative Rules Governing Land Uses within Conservation Districts, Section 13-5-13, Hawaii Administrative Rules**

Title 13 of the Hawaii Administrative Rules ("HAR"), for the Department of Land and Natural Resources, under Subtitle 1, Chapter 5, regulates land uses within the Conservation District. The rules establish five subzones within the Conservation District:

---

the Protective (P), Limited (L), Resource (R), General (G) and Specific subzones. All land within the Conservation District has been designated within one of the five subzones by BLNR. The Property is designated within the Resource (R) subzone.

Section 13-5-13, HAR, provides that the objective of the Resource (R) subzone "is to develop, with proper management, areas to ensure sustained use of the natural resources of those area." The (R) subzone shall encompass:

(1) Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;

(2) Lands suitable for growing and harvesting or commercial timber or other forest products;

(3) Lands suitable for outdoor recreational uses such as hunting, fishing hiking, camping, and picnicking;

(4) Offshore islands of the State of Hawaii, unless placed in a (P) or (L) subzone;

(5) Lands and state marine waters seaward of the uppers reaches of the wash of wavers, usually evidences by the edge of vegetation or by the debris left by the wash of waves on shore to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone.

Further, all identified land uses listed for the Protective (P) subzone (Section 13-5-22, HAR) and Limited (L) subzone (Section 13-5-23, HAR) also apply to the Resource (R) subzone under Section 13-5-24, HAR.

#### 4.4 Hawaii State Plan, Chapter 266, Hawaii Revised Statutes

The Hawaii State Plan, Chapter 226, HRS, establishes a set of goals, objectives and policies to serve as long-range guidelines for the growth and development of the State. The following sections of the Hawaii State Plan contain guidelines that are relevant to the Project.

##### Section 226-7. Objectives and policies for the economy - agriculture.

###### Objective:

- Planning for the State's economy with regard to agriculture shall be directed towards achievement of growth and development of diversified agriculture throughout the State.

*Policies:*

- Enhance agricultural growth by providing public incentives and encouraging private initiatives.
- Assure the availability of agriculturally suitable lands with adequate water to accommodate present and further needs
- Increase the attractiveness and opportunities for an agricultural education and livelihood.
- Expand Hawaii's agricultural base by promoting growth and development of flowers, tropical fruits and plants, livestock, feed grains, forestry, food crops, aquaculture, and other potential enterprises.
- Promote economically competitive activities that increase Hawaii's agricultural self-sufficiency.

*Analysis:* The Proposed Action will compliment the State Plan's agricultural objective of continued growth and development of diversified agriculture throughout the State. The reclassification of the Property to accommodate the proposed agricultural activity would foster the agricultural policies by assuring the availability of agriculturally suitable lands with adequate water to promote and expand Hawaii's agricultural base and self-sufficiency.

**Section 226-11. Objective and policies for the physical environment - scenic, natural beauty, and historic resources.**

*Objectives:*

- Prudent use of Hawaii's land-based, shoreline, and marine resources.
- Effective protection of Hawaii's unique and fragile environmental resources.

*Policies:*

- Exercise an overall conservation ethic in the use of Hawaii's natural resources.
  - Take into account the physical attributes of areas when planning and designing activities and facilities.
  - Manage natural resources and environs to encourage their beneficial and multiple use without generating costly or irreparable environmental damages.
  - Pursue compatible relationships among activities, facilities and natural resources.
-

*Analysis:* The Proposed Action has been designed to harmonize with the existing physical environment. No changes in the shoreline or topography are envisioned. Lateral pedestrian access to the coastal shoreline within the Project Area will not be curtailed since lateral pedestrian public shoreline access to the shoreline is secured along the coastline.

**Section 226-12. Objective and policies for the physical environment - scenic, natural beauty, and historic resources.**

*Objective:*

- Planning for the State's physical environment shall be directed towards achievement of the objective of enhancement of Hawaii's scenic assets, natural beauty, and multiple-cultural/historic resources.

*Policies:*

- Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, oceans, scenic landscapes and other natural features.
- Encourage the design of development and activities that complement the natural beauty of the islands.

*Analysis:* The Proposed Action will continue to preserve the natural beauty of the coastline's view and vistas and aesthetic value of the area.

#### **4.5 Hawaii County General Plan**

The Hawaii County General Plan is a policy document for the long range comprehensive development of all land within the County of Hawaii. The plan contains goals, policies and standards, as well as, a set of land use maps, designated as the General Plan Land use Pattern Allocation Guide ("LUPAG") maps, showing the location of desired land uses.

The LUPAG map designates a narrow coastal strip of the Property along the shoreline as "Open," and the remaining portion of the Property as "Orchard." The Open designation includes parks and historic sites, and the Orchard designation includes those land which though rocky in character and content support productive macadamia nuts, papaya, citrus and other similar agricultural products. The proposed agricultural use does not conflict with the Orchard designation of the General Plan and conforms to the following elements:

### **Economic - General**

*Policies:*

- The County of Hawaii shall assist the expansion of the agricultural industry, especially diversified agriculture, through the protection of important agricultural lands, capital improvements and other programs, and continued cooperation with appropriate State and Federal agencies.
- The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

### **Economic - Puna**

*Policy:*

- Agricultural land shall be used as one form of open space or as green belt.

*Course of Action:*

- The County shall assist the further development of the agricultural industry by providing support services, such as co-operation with other agencies in developing manpower training programs, protecting important agricultural lands, and requesting and providing necessary capital improvements.

*Analysis:* The Puna district has an abundance of under utilized agricultural land. The implementation of the proposed agricultural use will increase the productivity of the Property. Though the soil is rocky in character and content, it can support the cultivation of ti-leaf plants, coconut trees and palms as evidenced by the thriving ti-leaf plants and coconut trees on the Property. In addition, the reclassification of the Property will not adversely affect the scenic beauty, existing openness and natural conditions of the area, and the proposed agricultural uses will continue to maintain the open space function and character of the area.

### **Land Use - Agriculture**

*Policy:*

- Agricultural land shall be used as one form of open space or as green belt.

*Course of Action:*

- Assist in the further development of diversified agriculture in the district.

*Analysis:* Although the reclassification would remove the Property from the Conservation District, such action will not adversely affect the scenic beauty, existing

---

openness and natural conditions of the area. The proposed agricultural use will continue to maintain the open space function and character of the area.

#### 4.6 Hawaii County Zoning

The Property is zoned under the Hawaii County Zoning Code (Chapter 25, Hawaii County Code) as Agricultural, with a minimum lot size of one acre (A-1a). The Proposed Action is a permitted use under this zoning district.

#### 4.7 County Special Management Area

The Property is located within the Special Management Area ("SMA") which runs makai of the Government Beach Road, as defined in Chapter 205A, HRS, and Rule 9 of the County of Hawaii Planning Commission Rules.

Rule 9-4(10)B provides that "Development" does not include the following uses, activities or operations:

- (i) Construction of a single-family residence that is not part of a larger development.

\* \* \* \* \*

- (viii) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes subject to review by the Department in accordance with Rule 9.4(10)(C).

Rule 9.4(10)C provides that: "Any proposed use, activity, or operation listed in paragraph B shall be deemed to be 'Development' until the Director has determined it to be exempted from the definition of 'development.'"

The Planning Director by letter dated November 4, 1983, determined that the construction of the proposed single-family dwelling would be exempt from the permitting requirements of Hawaii County's SMA if prior owners, Jerry E. and Patricia E. Merrill either incorporate an interior stairway into the single-family dwelling or execute a Single-Family Dwelling Agreement ("Agreement"). The Merrills entered into the Agreement with the Hawaii County Planning Department dated November 7, 1983, which was recorded in the Bureau of Conveyances of the State of Hawaii on January 3, 1984, in Liber 17566, Page 781. The Agreement restricts the use of the dwelling on the Property to single-family dwelling uses (see, Exhibit 7-Agreement).

Petitioners have submitted a SMA Use Permit Assessment Application and Special Management Area Impact Assessment which seeks exemption for the proposed agricultural uses from the definition of "development" and SMA Rules pursuant to Planning Commission Rules 9-4(10)B(viii), 9-4(10)C and 9-10G.

#### 4.8 Coastal Zone Management, Chapter 205A, Hawaii Revised Statutes

- A. Recreational resources.** The proposed agricultural uses should not impact upon recreational resources, since public shoreline access is available inland along the shoreline.
- B. Historic resources.** There are no known historical and/or cultural sites on the Property as confirmed by the Department of Land & Natural Resources, State Historic Preservation Division by letter dated January 11, 2000 and January 10, 2001, which states that "we believe there are no historic properties present in the subject parcel. The proposed action of a boundary amendment will have no effect on significant historic sites."

Further, the Property is not among those listed as historic properties in the Hawaii State Register of Historic Places, has not been determined to be eligible for inclusion in the National Register of Historic Places, and is not profiled as a significant cultural and/or historic site in the General Plan within the Puna district, nor in the Puna Community Development Plan. The Honolulu Landing Habitation Complex (TMK: 1-4-03:19), located approximately one mile south of the Property is listed as a historic site in the Hawaii State Register of Historic Places.

The proposed agricultural activities will be limited to an area along the southern boundary of the Property and does not involve an irrevocable commitment to loss or destruction of any natural or cultural resources. Accordingly, the proposed agricultural activities do not conflict with the historic resources objectives and policies which aim to protect, preserve and where desirable restore significant historic and prehistoric resources in the coastal zone management area.

- C. Scenic and open space resources.** The Property is extensively landscaped with coconut trees, Norfolk pines, lauhala, naupaka, palms, dry land taro, fruit trees, and ornamental plants. The Property is not listed as a distinctive and identifiable land form distinguished as landmarks or as having a frontyard vista of distinctive features as identified in the General Plan within the Puna district, nor in the Puna Community Plan. The Waiakahiula Shoreline Reserve located one mile south of the Property is identified in the General Plan, as an example of natural beauty in the Puna district which is a future Hawaiian Shores Community Association park site. The Proposed Action is not anticipated to change the visual attributes of the Project Area which has

been improved. The proposed agricultural use will continue to foster the goals, policies and standards of the scenic and open space resources of the General Plan.

- D. Coastal ecosystems.** The coastal resources between the low-tide mark and the upper reaches of the wave-splash zone consist of low/medium height jagged, barren lava sea cliffs. The County of Hawaii Public Access to the Shoreline Inventory (1979) does not list the Project Area as one which provides public access from the Government Beach Road. The Waiakahiula Shoreline Reserve is located south of the Property. The proposed agricultural use does not involve any direct or chemical modifications to the nearshore environment, nor will it cause the possibility of erosion and sedimentation seepage into the coastline. There should be no physical disruption of the existing habitat, and more important, no changes that would affect the amount of wave energy striking the shoreline. Lateral pedestrian access to the coastal shoreline within the Project Area will not be curtailed since pedestrian public shoreline access to the shoreline is secured along the coastline. Therefore, the proposed development is consistent with the coastal ecosystem objectives and policies which aim to protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems. Known traditional and customary native Hawaiian practices and other valued cultural, historical or natural resources on the Property are located at the shoreline area and will be recognized and allowed by the Petitioners.
- E. Economic uses.** The proposed agricultural use will provide short-term economic benefits by supporting part-time agricultural related employment opportunities. The long-term economic or social welfare of the community will not be affected by the proposed agricultural activities, and will not preclude the development of coastal dependent economic uses or public and private facilities.
- F. Coastal hazards.** The proposed agricultural uses will be limited to an area along the southern boundary of the Property. In addition, the Property is designated as "X" or outside the 500-year flood plain, per the U.S. Corps of Engineers Flood Insurance Rate Maps (FIRM). Accordingly, the proposed project is consistent with the coastal hazards objectives and policies which provide for the control of development in areas subject to tsunami, flood, erosion and subsistence hazard.

#### **4.9 Shoreline Setback Area**

The shoreline area of the Property is located within the 40-foot shoreline setback area as defined by Rule 8 of the County of Hawaii Planning Commission Rules. Improvements on the Property located approximately 175 feet inland from the shoreline exceeds the mandatory minimum 40-foot shoreline setback requirement (see, Exhibit 4-Site Plan; Exhibit 5-Site Photographs).

---

#### **4.10 Environmental Impact Statement**

Section 343-5(a)(2), HRS, provides that any use that is proposed within any land classified as Conservation District land by the State Land Use Commission under Chapter 205, is subject to the Environmental Impact Statement law, Chapter 343, HRS.

Section 343-5(c), HRS, provides that applicants proposing actions subject to Chapter 343, HRS,

" . . . shall prepare an environmental assessment of such proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required."

This environmental assessment has been prepared to fulfill these requirements.

#### **5.0 IDENTIFICATION OF MAJOR IMPACTS AND ALTERNATIVES CONSIDERED**

##### **5.1 Major Impacts**

The reclassification it is not expected to contribute to any economic, social or environmental concerns, or cause adverse environmental impacts. In addition, no major long-term impacts are anticipated as a result of the implementation of Petitioners' proposal to enhance and expand the agricultural activities on the Property.

##### **5.2 Alternatives to the Proposed Action**

In the alternative, the Petitioners seek to amend the State Land Use District Boundaries from the Conservation District into the Urban District. In determining the boundaries for the Urban District, the following standards shall apply:

- (1) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses;
- (2) It shall take into consideration the following specific factors:
  - (A) Proximity to centers of trading and employment except where the development would generate new centers of trading and employment;
  - (B) Availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation system, public utilities, and police and fire protection; and

- (C) Sufficient reserve areas for foreseeable urban growth;
- (3) It shall include lands with satisfactory topography, drainage, and reasonably free from the danger of any flood, tsunami, unstable soil conditions, and other adverse environmental effects;
- (4) Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, and particularly when indicated for further urban use on state or county general plans;
- (5) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans;
- (6) It may include lands which do not conform to the standards in paragraphs (1) to (5):
- (A) When surrounded by or adjacent to existing urban development, and
  - (B) Only when those lands represent a minor portion of this district.
- (7) It shall not include lands, the urbanization of which will contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services; and
- (8) It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and unsuitable for urban purposes and that the design and construction control, as adopted by any federal, state, or county agency, are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

The proposed reclassification of the Property into the Urban District would meet with above-cited standards since: (1) the Property is located adjacent to the Urban District classified Hawaiian Beaches Subdivision which is characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses; (2) the Property is located within close proximity to centers of trading and employment in Puna; (3) basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation system, public utilities, and police and fire protection are currently available to the Property; (4) given the Property's existing topography and drainage, it is reasonably free from the danger of any flood, tsunami, unstable soil conditions, and other adverse environmental effects; (5) the Property is located adjacent to the Hawaiian Beaches Subdivision which is within the State Land Use Urban designation and therefore is contiguous with existing urban areas; and (6) will not contribute toward scattered spot urban

---

---

development, necessitating unreasonable investment in public infrastructure or support services as it is located adjacent to and is contiguous with existing State Land Use Urban designation lands, and public infrastructure is currently available to the Property.

In addition, the Urban designation is in conformance with the objectives and policies of Chapter 205A, HRS, as follows:

Recreational resources. The proposed urban designation will not impact upon recreational resources, since public shoreline access is available inland along the shoreline.

Historic resources. There are no known historical and/or cultural sites on the Property as confirmed by the Department of Land & Natural Resources, State Historic Preservation Division by letter dated January 11, 2000, which states that "we believe there are no historic properties present in the subject parcel. The proposed action of a boundary amendment will have no effect on significant historic sites." Further, the Property is not among those listed as historic properties in the Hawaii State Register of Historic Places, has not been determined to be eligible for inclusion in the National Register of Historic Places, and is not profiled as a significant cultural and/or historic site in the General Plan within the Puna district, and in the Puna Community Development Plan. The Honolulu Landing Habitation Complex (TMK: 1-4-03:19), located approximately one mile south of the Property is listed as a historic site in the Hawaii State Register of Historic Places. Accordingly, the proposed urban designation does not conflict with the historic resources objectives and policies which aim to protect, preserve and where desirable restore significant historic and prehistoric resources in the coastal zone management area. Known traditional and customary native Hawaiian practices and other valued cultural, historical or natural resources on the Property are located at the shoreline area and will be recognized and allowed by the Petitioners.

Scenic and open space resources. The Property is extensively landscaped with coconut trees, Norfolk pines, lauhala, naupaka, palms, dry land taro, fruit trees, and ornamental plants. The Property is not listed as a distinctive and identifiable land form distinguished as landmarks or as having a frontyard vista of distinctive features as identified in the General Plan within the Puna district, nor in the Puna Community Plan. The Waiakahiula Shoreline Reserve located one mile south of the Property is identified in the General Plan, as an example of natural beauty in the Puna district designated as a future Hawaiian Shores Community Association park site. The proposed Urban designation is not anticipated to change the visual attributes of the Project Area which has been improved, and the goals, policies

and standards of the scenic and open space resources of the General Plan will continue to be fostered.

**Coastal ecosystems.** The coastal resources between the low-tide mark and the upper reaches of the wave-splash zone consist of low/medium height jagged, barren lava sea cliffs. The County of Hawaii Public Access to the Shoreline Inventory (1979) does not list the Project Area as one which provides public access from the Government Beach Road. The Waiakahiula Shoreline Reserve is located south of the Property. The proposed project does not involve any direct or chemical modifications to the nearshore environment, nor will it cause the possibility of erosion and sedimentation seepage into the coastline. There should be no physical disruption of the existing habitat, and more important, no changes that would affect the amount of wave energy striking the shoreline. Lateral pedestrian access to the coastal shoreline within the Project Area will not be curtailed since pedestrian public shoreline access to the shoreline is secured along the coastline. Therefore, the proposed development is consistent with the coastal ecosystem objectives and policies which aim to protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.

**Economic uses.** The proposed agricultural use will provide short-term economic benefits by supporting part-time agricultural related employment opportunities. The long-term economic or social welfare of the community will not be affected by the proposed agricultural activities, and will not preclude the development of coastal dependent economic uses or public and private facilities.

**Coastal hazards.** The proposed agricultural uses will be limited to an area along the southern boundary of the Property. In addition, the Property is designated as "X" or outside the 500-year flood plain, per the U.S. Corps of Engineers Flood Insurance Rate Maps (FIRM). Accordingly, the proposed project is consistent with the coastal hazards objectives and policies which provide for the control of development in areas subject to tsunami, flood, erosion and subsistence hazard.

Under the "No Action" alternative, the Property would continue to remain in the Conservation District designation. The proposed agricultural use of the Property would be a productive and profitable alternative to the current limited use of the Property, thereby providing the Petitioners the reasonable use of their Property. The Petitioners also submit that the County would realize no benefit if the Property were left unused and underutilized.

## 6.0 OTHER PERMITS AND APPROVALS

The Applicants have submitted an SMA Use Permit Assessment Application and Special Management Area Impact Assessment which seeks exemption for the proposed agricultural uses from the definition of "development" and SMA Rules pursuant to Planning Commission Rules 9-4(10)B(viii), 9-4(10)C and 9-10G.

## 7.0 PRE-ASSESSMENT CONSULTATION

Pre-assessment consultation letters were sent to the Department of Agriculture, Department of Defense, U.S. Army Corps of Engineers, Pacific Ocean Division, Department of the Army, U.S. Army Engineering District, Honolulu, U.S. Department of the Interior, Fish & Wildlife Service, Office of Planning, Office of Hawaiian Affairs, Department of Hawaiian Home Lands, University of Hawaii, Environmental Center and Water Resource Research Center, Department of Health, Environmental Management Division, and the State Conservationist Resources Conservation Service. Comments were received from the Office of the Hawaiian Affairs, Department of Defense, and the Department of the Army (see, Exhibit 17-Agency Pre-assessment Consultation letters).

The Office of Environmental and Quality Control was consulted relating to the extent of the Ka Pa'akai O Ka'aina v. Land Use Commission case and Act 50, Session Laws of Hawaii 2000 relating to inclusion of cultural impacts in the EIS process. In addition, a local hula halau was consulted relating to the lack of any traditional and customary native Hawaiian practices within the Project area, with the possible exception of opihi and limu gathering and fishing at the shoreline areas. As there is no Hawaiian Beaches Community Association, the Petitioners consulted with long time Hawaiian Beaches Subdivision area residents, Carlin Robinson and Samuel McKenney Wilkinson, both of whom expressed no objections to the Project.

## 8.0 WRITTEN COMMENTS AND RESPONSES DURING PUBLIC REVIEW PERIOD

Agency comments on the Draft Environmental Assessment were received from the County of Hawaii, Department of Public Works and Department of Water Supply; State of Hawaii, Department of Land & Natural Resources, Land Use Commission, Hawaiian Homes Commission, and the Department of the Army, U.S. Engineering District (see, Exhibit 18, agency comments and Petitioners' responsive letters).

---

**9.0 AGENCY ANTICIPATED DETERMINATION AND FINDINGS AND REASONS SUPPORTING ANTICIPATED DETERMINATION**

Based on the information described herein, the Proposed Action will not result in significant social, economic, cultural or environmental impacts. Consequently, a Finding of No Significant Impact ("FONSI") is anticipated, subject to the public review provisions of Section 11-200-9.1, HAR.

In considering the significance of potential environmental effects, the Petitioners have considered the sum of effects on the quality of the environment and evaluated the overall cumulative effects of the Proposed Action. The Petitioners have considered the expected consequences, both primary and secondary, and the cumulative, as well as, the short- and long-term effects of the Proposed Action. As a result of these considerations, the Petitioners have determined that the approval of the Proposed Action 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 as confirmed by the Department of Land & Natural Resources, State Historic Preservation Division by letters dated January 11, 2000, and January 10, 2001.
2. The beneficial uses of the environment for recreational and access purposes will not be curtailed since lateral pedestrian public shoreline access to the shoreline is secured along the coastline.
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 343, HRS.
4. The economic or social welfare of the community will be positively affected from the creation of part-time agricultural employment opportunities.
5. Public health will not be affected since improvements for the Proposed Action involve the establishment of agricultural uses.
6. The Proposed Action will not cause substantial secondary impacts, nor adversely affect population changes on public facilities. Access is provided off of Government Beach Road. Electrical and telephone services are available to the Project Area. There are no additional burdens on public facilities anticipated from the Proposed Action.

7. The Proposed Action does not involve a substantial degradation of environmental quality as the proposed improvements do not compromise the character of the Property and surrounding area.
8. The Property will remain consistent in character and size with other property 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 plant species listed by the U.S. Fish & Wildlife Services or State protected plant species as threatened or endangered, proposed, or a candidate species or "species of concern" on the property or immediate vicinity. There are no endangered or otherwise rare bird or mammal species on the property or immediate vicinity and the area is not included within the critical habitat for protected species.
10. The Proposed Action will not detrimentally affect air or water quality or ambient noise levels since the air quality in the area is largely affected by air pollutants from natural rather than vehicular sources, does not involve any *direct or chemical* modifications to the nearshore environment nor change the amount of wave energy striking the shoreline, and will not create an increase in noise level.
11. The Property is located outside of the 500-year flood plain. Although the shoreline of the Property is located within the Hawaii County Civil Defense Agency's evacuation area for hazards due to tsunami and possible surges from hurricanes, there is no tsunami data for the Project Area, and the shoreline along the Property has remained stable during seasonal coastal storms. Further, although the Property is located in the area flanked by Kilauea volcano, and is subject to down slope lava flows, the degree of risk to human life is minimal.
12. The Property is not listed as a distinctive and identifiable land form distinguished as landmarks or as having a frontyard vista of distinctive features as identified in the General Plan within the Puna District, nor the Puna Community Development Plan. The Project will not substantially impact upon the scenic vistas and view planes of surrounding properties.
13. No energy consumption will be required for the Proposed Action.





R-49

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

OCT 22, 1999 08:01 AM

Doc No(s) 49-169343

/s/ CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES  
CONVEYANCE TAX: 8720.00

LAND COURT SYSTEM

REGULAR SYSTEM

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

BANK OF HAWAII  
P O BOX 2900  
RL#364-KAP  
HONOLULU HI 96846  
LOAN NO 0693685

TG: 2328190  
TGE: 993021186  
Patricia M. Pacheco  
THIS DOCUMENT CONTAINS 1 PAGES

TITLE OF DOCUMENT:

WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: ROBERT JAMES CAMPBELL and CLARITA SIMBORIO  
CAMPBELL, husband and wife, whose mailing address is 15-2678 Walea  
Street, Pahoa, Hawaii 96778

GRANTEE: HARRISON J. KLEIN and SHARENE Z. KLEIN, Trustees, or their  
successors in trust, under the Klein Living Trust dated September 17,  
1999, and any amendments thereto, for the benefit of Harrison J. Klein and  
Sharene Z. Klein, whose mailing address is 2233 Bunker Hill Drive, San  
Mateo, California 94402

TAX MAP KEY (3) 1-S-009:039

PKK/TGES99402.DED/10-7-99

EXHIBIT 3  
WARRANTY DEED

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That ROBERT JAMES CAMPBELL and CLARITA SIMBORIO CAMPBELL, husband and wife, whose mailing address is 15-2678 Welea Street, Pahoa, Hawaii 96778, hereinafter called the "Grantor", for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the Grantor paid by HARRISON J. KLEIN and SHARENE Z. KLEIN, Trustees, or their successors in trust, under the Klein Living Trust dated September 17, 1999, and any amendments thereto, for the benefit of Harrison J. Klein and Sharene Z. Klein, having all powers under said trust agreement to sell, convey, exchange, mortgage, lease or otherwise deal with and dispose of all lands of the trust estate and interests therein, whose mailing address is 2233 Bunker Hill Drive, San Mateo, California 94402, hereinafter called the "Grantee", the receipt whereof is hereby acknowledged; do hereby grant, bargain, sell and convey unto the Grantee all of that certain real property designated on the tax maps of the Third Taxation Division, State of Hawaii, as Tax Map Key 1-5-009:039, more particularly described in Exhibit A attached hereto and made a part hereof, subject to the encumbrances noted therein.

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

TO HAVE AND TO HOLD the same unto the Grantee, in Trust, and the Grantee's successors in trust and assigns, in fee simple forever.

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

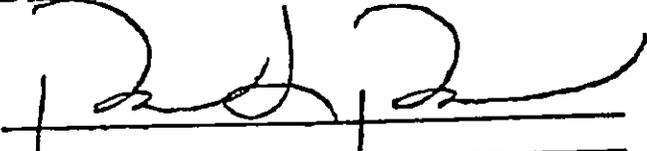
STATE OF HAWAII

)  
) ss.  
)

COUNTY OF HAWAII

On this 19<sup>th</sup> day of October 1999, before me personally appeared ROBERT JAMES CAMPBELL, to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

L.S.

  
\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: FAMELA M. PACHECO  
Expiration Date: May 29, 2002

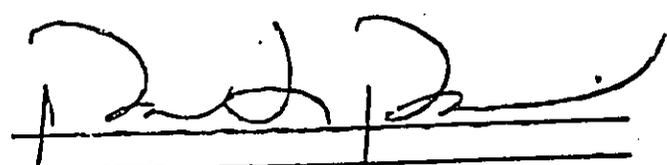
STATE OF HAWAII

)  
) ss.  
)

COUNTY OF HAWAII

On this 19<sup>th</sup> day of October 1999, before me personally appeared CLARITA SIMBORIO CAMPBELL, to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, and acknowledged to me that she executed the same as her free act and deed.

L.S.

  
\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: FAMELA M. PACHECO  
Expiration Date: May 29, 2002

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

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

IN WITNESS WHEREOF, this instrument has been executed by the undersigned on this 19th day of October, 1999.

Robert James Campbell  
ROBERT JAMES CAMPBELL

Clarita Simborio Campbell  
CLARITA SIMBORIO CAMPBELL

APPROVED AS TO FORM  
PETER K. KUBOTA  
ATTORNEY AT LAW

BY Peter Kubota  
10-7-99

EXHIBIT "A"

All of that certain parcel of land (being the subdivision of a portion of Royal Patent Grant Number 1533 to Kekoa) situate, lying and being at Keonepoko Iki, District of Puna, Island and County of Hawaii, State of Hawaii, being LOT 8, and thus bounded and described as per survey of Donald James Murray, Registered Surveyor with Murray, Smith & Associates, Ltd., dated October 19, 1995, to-wit:

Beginning at a pipe (found) at the south corner of this parcel of land and on the northerly side of the Government Beach Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPOHO" being 23,516.44 feet north and 18,805.13 feet west and running by azimuths measured clockwise from true South:

1.	108°	48'		107.45	feet along the northerly side of the Government Beach Road to a pipe (found);
	220°	15'	20"	427.54	feet along Lot 7, remainder of R.P. Grant 1533 to Kekoa to a pipe in concrete (found);
3.	130°	15'	20"	110.71	feet along Lot 7, remainder of R.P. Grant 1533 to Kekoa to a pipe;
4.	220°	15'	20"	326.18	feet (revised) along Lot 7, remainder of R.P. Grant 1533 to Kekoa to a pipe at New Highwater Mark at Seashore; thence along New Highwater Mark at Seashore for the next three (3) courses the direct azimuths and distance being;
5.	295°	50'		50.55	feet to a concrete nail;
6.	294°	56'		100.51	feet to a concrete nail;
7.	326°	36'	30"	63.34	feet to a spike;

3. 33° 42' 35.50 feet (revised) along Hawaiian Beaches Subdivision Lot 1, Block 59 to a pipe;
9. 40° 15' 20" 700.47 feet along Hawaiian Beaches Subdivision Lot 1, Block 59, 40-Foot Road, Lots 7-1 (Inclusive), Block 55 and Government Road to the point of beginning and containing a revised area of 2.621 acres, more or less.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : MARCIA JUNE FATT, Trustee of the Marcia June Fatt Trust dated September 17, 1990

GRANTEES : ROBERT JAMES CAMPBELL and CLARITA SIMBORIO CAMPBELL, husband and wife, as Tenants by the Entirety

DATED : October 27, 1995

RECORDED : Document No. 95-146036

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Shoreline setbacks: "Shoreline setbacks established pursuant to the laws of the State of Hawaii, or any political subdivision thereof, and any ordinances, rules or regulations adopted or promulgated by any governmental authority pursuant to such laws."
3. Seaward boundary: "Determination of the seaward boundary of the land described herein pursuant to the laws of the State of Hawaii."

4. SETBACK (40 feet wide)

ALONG : Government Beach Road  
 SHOWN : on Tax Map 1-5-009-039 (3)

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

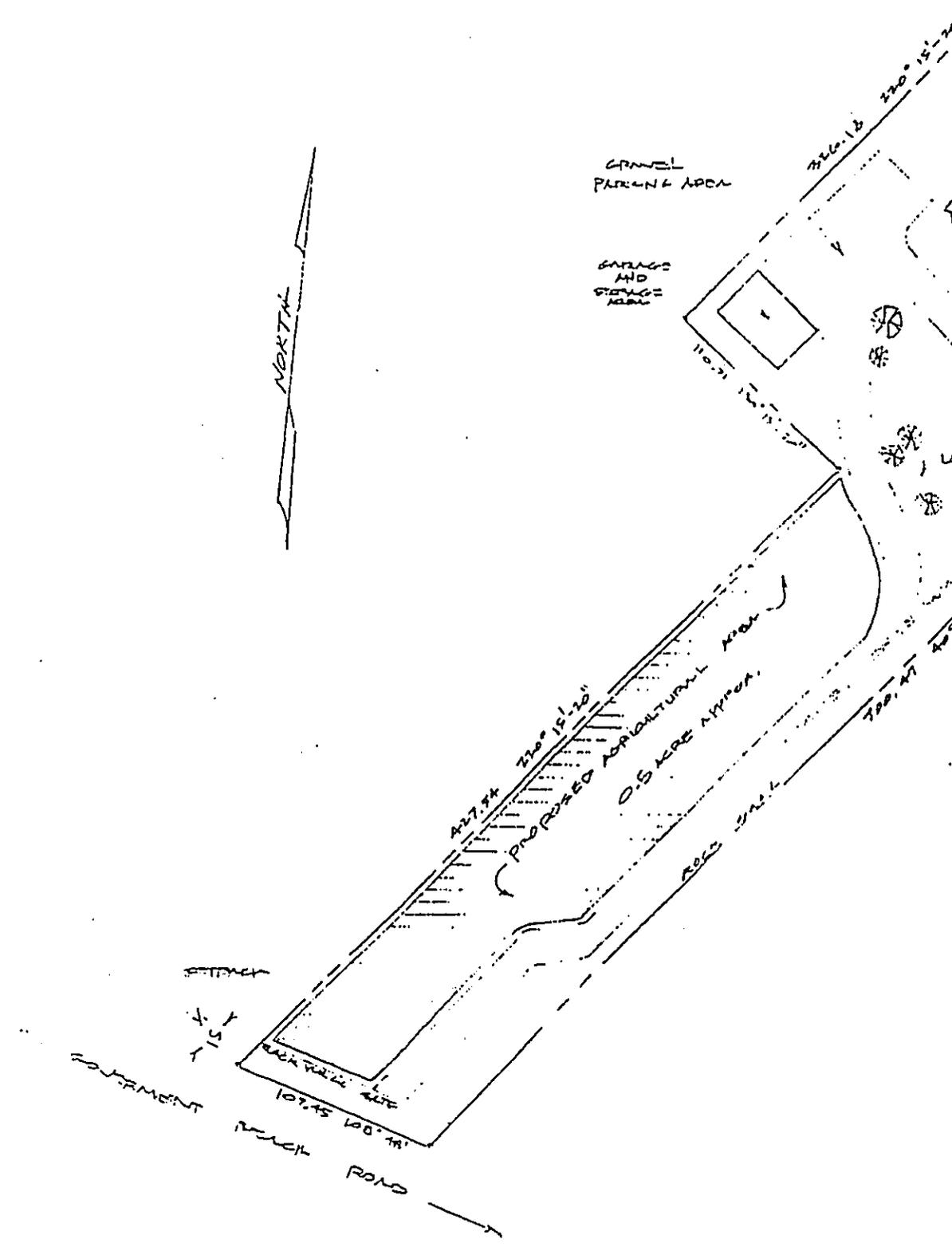
INSTRUMENT : AGREEMENT  
DATED : November 7, 1983  
RECORDED : Liber 17566 Page 781  
PARTIES : JERRY E. MERRILL, PATRICIA E. MERRILL,  
and PLANNING DEPARTMENT OF THE  
COUNTY OF HAWAII  
RE : IMPROVEMENTS

6. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : DECLARATION  
DATED : February 6, 1984  
RECORDED : Liber 17646 Page 444

END OF EXHIBIT "A"

Lot B  
2.621 AC



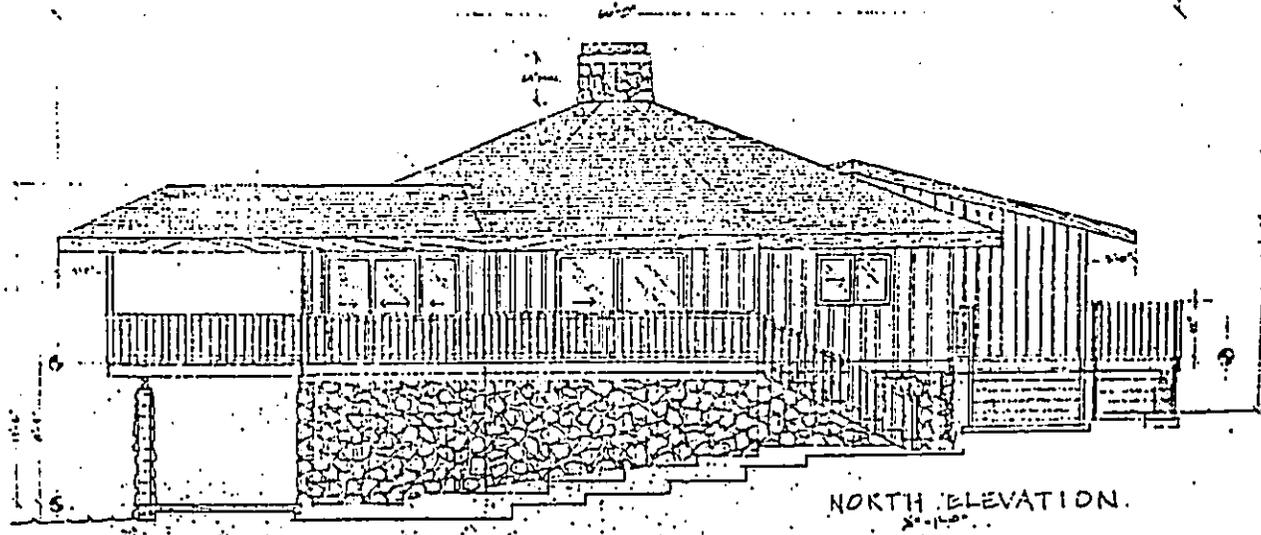




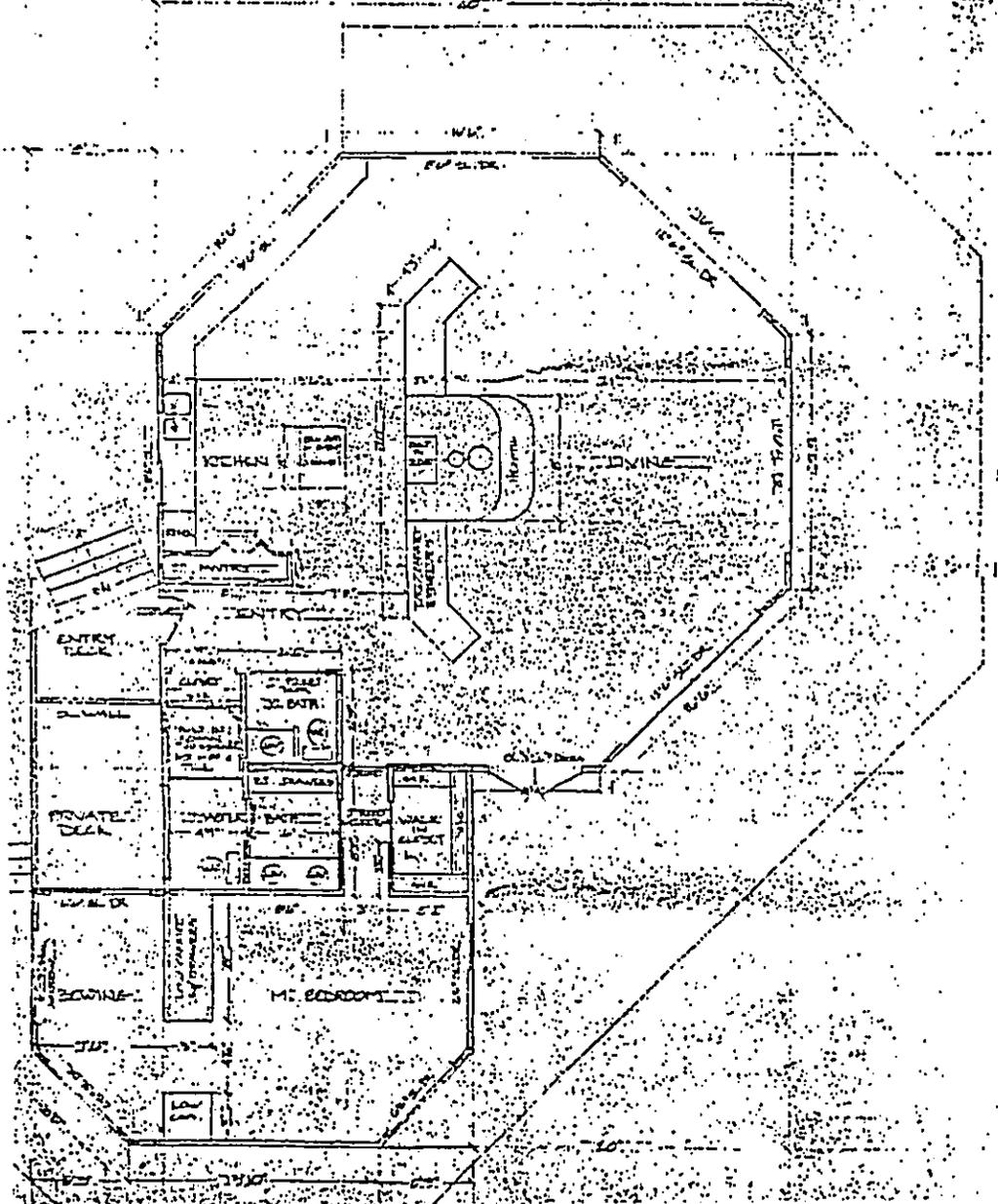
All of that certain parcel of land (being the subdivision of a portion of Royal Patent Grant Number 1533 to Kekoa) situate, lying and being at Keonepoko Iki, District of Puna, Island and County of Hawaii, State of Hawaii, being LOT 8, and thus bounded and described as per survey of Donald James Murray, Registered Surveyor with Murray, Smith & Associates, Ltd., dated October 19, 1995, to-wit:

Beginning at a pipe (found) at the south corner of this parcel of land and on the northerly side of the Government Beach Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPCHO" being 23,516.44 feet north and 18,805.13 feet west and running by azimuths measured clockwise from true South:

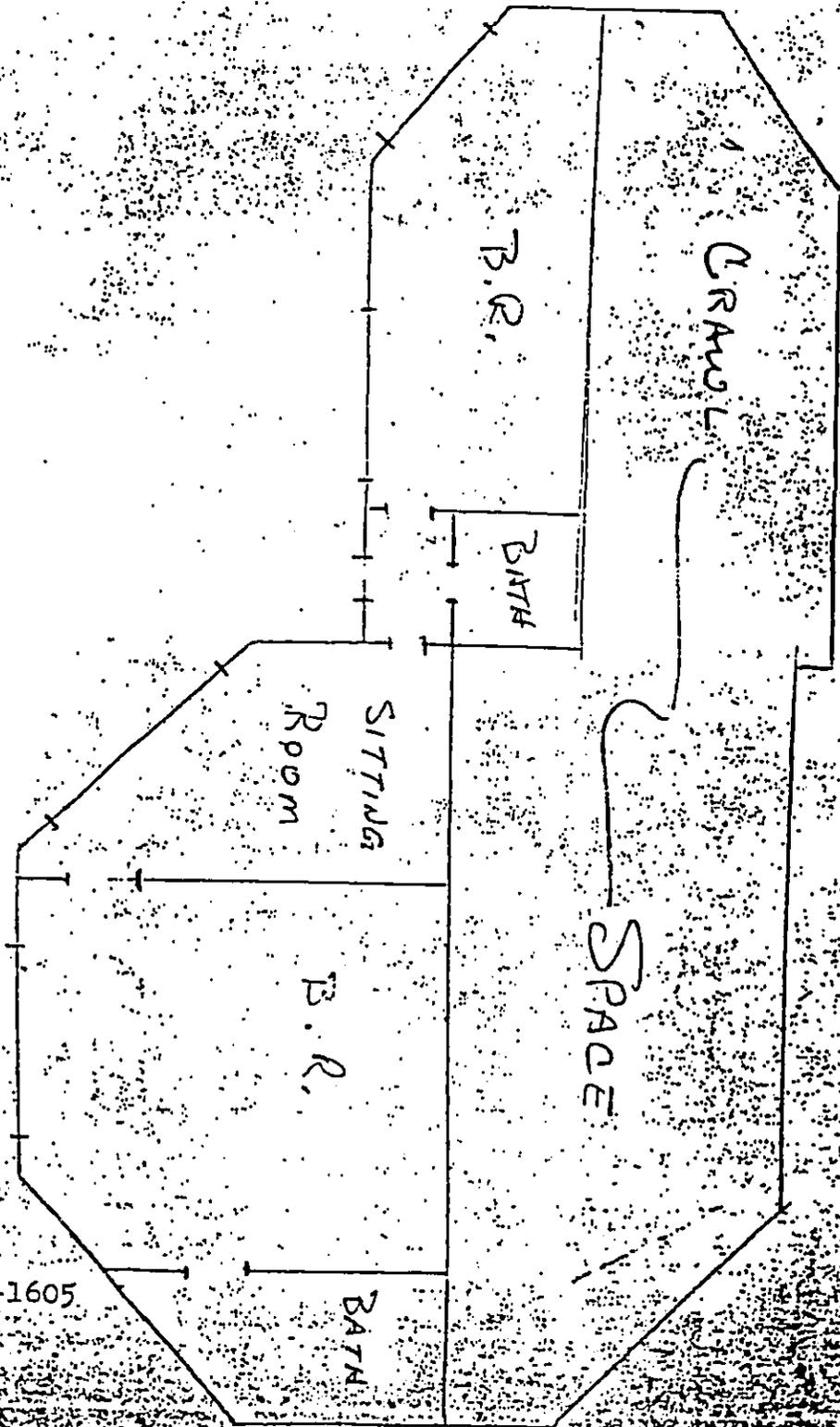
1.	108°	48'		107.45	feet along the northerly side of the Government Beach Road to a pipe (found);
2.	220°	15'	20"	427.54	feet along Lot 7, remainder of R.P. Grant 1533 to Kekoa to a pipe in concrete (found);
3.	130°	15'	20"	110.71	feet along Lot 7, remainder of R.P. Grant 1533 to Kekoa to a pipe;
4.	220°	15'	20"	326.18	feet (revised) along Lot 7, remainder of R.P. Grant 1533 to Kekoa to a pipe at New Highwater Mark at Seashore; thence along New Highwater Mark at Seashore for the next three (3) courses the direct azimuths and distance being:
5.	295°	50'		50.55	feet to a concrete nail;
6.	294°	56'		100.51	feet to a concrete nail;
7.	326°	36'	30"	63.34	feet to a spike;
8.	33°	42'		35.50	feet (revised) along Hawaiian Beaches Subdivision Lot 1, Block 59 to a pipe;
9.	40°	15'	20"	700.47	feet along Hawaiian Beaches Subdivision Lot 1, Block 59, 40-Foot Road, Lots 7-1 (Inclusive), Block 53 and Government Road to the point of beginning and containing a revised area of 2.621 acres, more or less.



NORTH ELEVATION.



NEW GROUNDS LEVEL PLAN



Jerry E. Merrill  
Ref. No.: CP0-059  
File No.: HA-7/12/83-1605



VIEW ALONG GOVERNMENT BEACH ROAD TOWARD PROPERTY  
ON THE RIGHT, AFTER THE MAILBOX

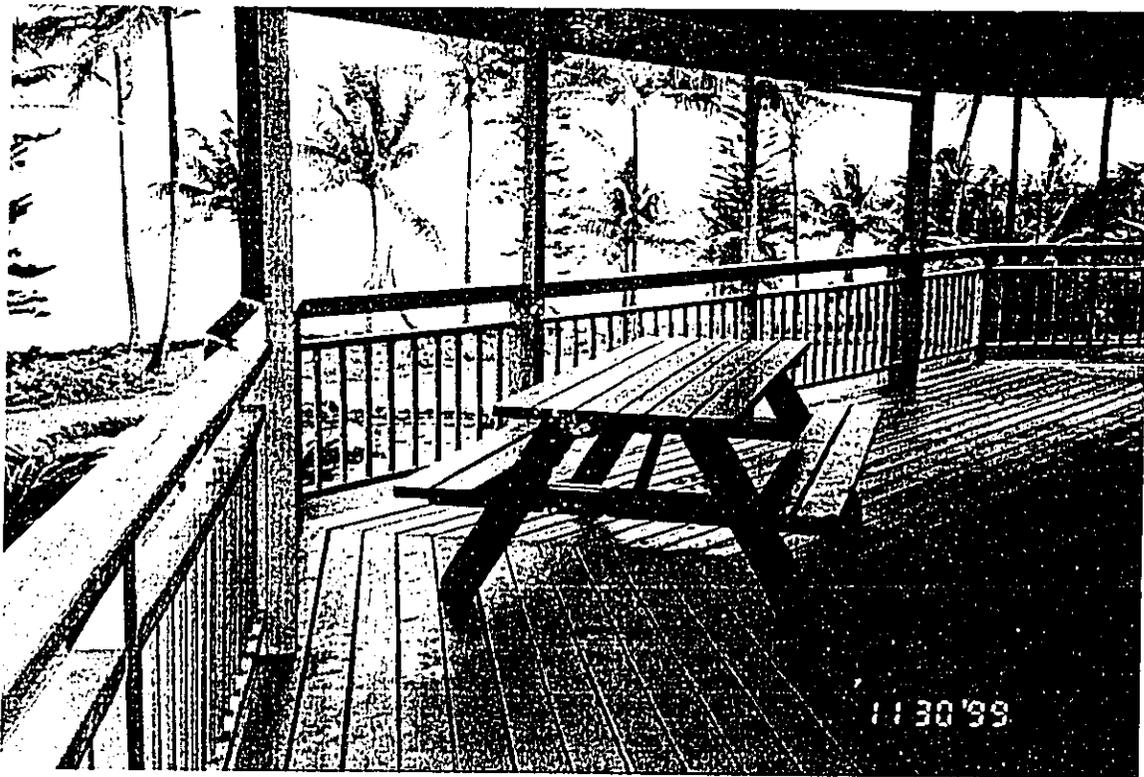


ENTRANCE GATE TO THE PROPERTY

EXHIBIT 5  
SITE PHOTOGRAPHS



VIEW OF SHORELINE (LOOKING TO THE NORTH)



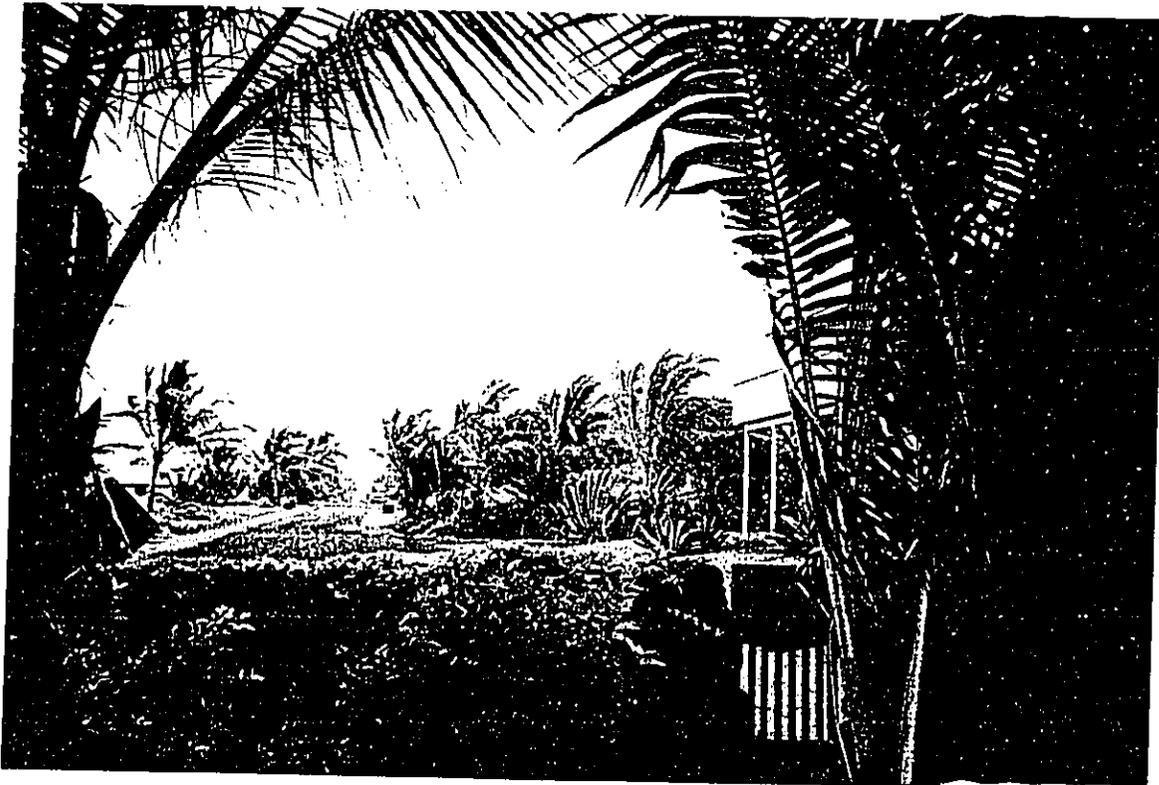
VIEW OF SHORELINE (LOOKING TO THE SOUTH)



VIEW OF SINGLE-FAMILY DWELLING (MAUKA DIRECTION)



GARAGE/STORAGE UNIT



VIEW OF PROPERTY ALONG THE SOUTHERN BOUNDARY,  
LOOKING INTO THE HAWAIIAN BEACHES SUBDIVISION

CONFIDENTIAL MAIL

July 20, 1983

Mr. Jerry Merrill  
15176 Puni Kahakai So.  
Pahoa, HI 96778

Dear Mr. Merrill:

SPECIAL MANAGEMENT AREA (SMA) MINOR PERMIT  
Tax Map Key: 1-5-09-39

Upon careful review of your SMA Use Permit request, we have found that it complies with the requirements for a Minor Permit set forth in Rule 9.7 of the Planning Commissions Rules and Regulations Relating to Environmental Shoreline Protection.

Accordingly, please find enclosed a SMA Minor Permit No. 83-24 for Mr. Jerry Merrill.

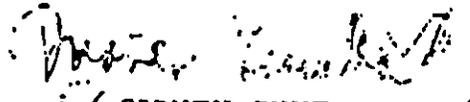
Please note that the permit approval is also subject to the following conditions:

1. That no clearing activity take place within the forty (40) foot shoreline setback area.

Should any of the foregoing conditions not be met, this SMA Minor Use Permit shall be void.

Should you have any questions regarding the above, please do not hesitate to contact Ed Cheplic of this department at 961-8288.

Sincerely,

  
for  
SIDNEY FUKE  
Planning Director

EC:gk

Enclosures

cc: Chief Engineer

ask me to pick up

EXHIBIT 6  
SMA MINOR PERMIT NO. 83-24

PLANNING DEPARTMENT - PLANNING COMMISSION

COUNTY OF HAWAII  
Hilo, Hawaii

PERMIT NO. 83-24

SPECIAL MANAGEMENT AREA MINOR PERMIT

The Planning Director completed on July 20, 1983  
an assessment on the application of Mr. Jerry Merrill  
for a Special Management Area (SMA) Minor Permit pursuant to Section 9.7.C,  
Rule No. 9 of the Planning Commission Rules Relating to Administrative  
Procedures, as amended. The permit request is for: allowing the  
hand-clearing of property situated at Keonepoko, iki, Puna,  
Hawaii, TMK 1-5-09:39

As indicated on the attached report, the Director finds that the proposed  
development is:

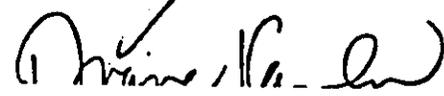
- (1) not in excess of \$65,000; and
- (2) will not significantly affect the SMA.

Therefore, with the concurrence of the Chief Engineer, the Director  
hereby grants to the applicant a minor permit under the authority vested in  
him by Section 9.7.C of said Rules, with the following condition(s) that:

A SMA Minor Use Permit is further approved subject to the  
condition, that no clearing activity take place within the forty (40)  
foot shoreline setback area.

Should any of the foregoing conditions not be met, this SMA  
Minor Use Permit shall be void.

  
\_\_\_\_\_  
Chief Engineer, DPW



RECORDATION REQUESTED BY:

S4- 393

RECORDATION  
DEPARTMENT  
COUNTY OF HAWAII

AFTER RECORDATION, RETURN TO: Planning Department  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

34 JAN 3 P 1: 21

RETURN BY: Mail (x) Pickup ( )

17566,781

A G R E E M E N T

WHEREAS, JERRY E. & PATRICIA E. MERRILL  
hereinafter called "Owner," whose residence address is 15739  
PUNI MAUKA NO, PANA, HI 96728 desires to enter into  
an agreement with the PLANNING DEPARTMENT of the County of Hawaii,  
hereinafter called "County";

WHEREAS, the said Owner is constructing A TWO STORY SINGLE  
FAMILY DWELLING WITHOUT AN INTERIOR STAIRWAY  
for THEIR own convenience and in consideration for the permission  
received by the County to construct and install said IMPROVEMENTS

\_\_\_\_\_, Owner  
assures the County that the said DWELLING will be used for SINGLE  
FAMILY use unless otherwise permitted by the County and  
makes the said agreement of record; and

WHEREAS, the subject area is zoned A-1A by the County  
of Hawaii and classified AGRICULTURE by the State Land Use  
Commission;

NOW, THEREFORE, in consideration of the foregoing, owner does  
hereby impose on the property described hereinafter, the following  
restriction:

1. Unless the applicable zone for the property shall be  
changed or the Planning Department of the County of Hawaii, or its  
successor body shall consent, the improvements located thereon shall  
be used only as a SINGLE FAMILY DWELLING and no part thereof shall  
be rented out as a separate unit. This agreement shall run with the  
land, and shall be included or mentioned in any future conveyance of  
the property; and

EXHIBIT 7  
AGREEMENT

17566 782

2. That the owner shall grant to the Planning Department a reasonable right of entry to periodically inspect the premises to assure compliance with provisions of this agreement; provided, however, that the Planning Department shall give the owner reasonable notice prior to entering upon the premises for inspection purposes; and

3. That this agreement shall run with the land and apply to all persons who may or in the future use or occupy the dwelling above described; and

4. That all of the provisions of these conditions shall be recorded with the State of Hawaii Bureau of Conveyances. A copy of the recordation shall be forwarded to the Planning Department, County of Hawaii, no later than six (6) months from the date of approval of the building permit; and

5. Failure of Owner to abide by this agreement shall result in the immediate removal of the said IMPROVEMENTS

---

by the Owner at Owner's expense upon demand by County.

Upon Owner's failure to remove said IMPROVEMENTS within one month after demand is made by the County, the parties agree that this agreement will be a nullity and the County may treat said IMPROVEMENTS as a violation of the ordinances then in existence. The parties further agree that the enforcement provision of this agreement shall be binding on all heirs, devisees and assigns.

The property upon which the restriction is imposed is described as follows:

Tax Map Key #1-5-09:39 LOT 8  
POR. OF PUUA-KEONEPOKO, IKI, PUNA  
CONTAINING A LAND AREA OF 2.692 ACRES  
ISLAND OF HAWAII, HAWAII





STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
P. O. BOX 621  
HONOLULU, HAWAII 96809

SUSUMU ONO, CHAIRMAN  
BOARD OF LAND & NATURAL RESOURCES

EDGAR A. KAMASU  
DEPUTY TO THE CHAIRMAN

DIVISIONS:  
AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

DEC 6 1983

REF. NO.: CPO-1099  
FILE NO.: HA-7/12/83-1605  
180-Day Exp. Date: 1/8/84

Mr. and Mrs. Jerry Merrill  
15-739 Puni Mauka North  
Pahoa, Hawaii 96778

Dear Mr. and Mrs. Merrill:

Conservation District Use Application for Single Family Dwelling  
at Keonepoko Iki, Pahoa, Puna, Hawaii, TMK: 1-5-9: 39

We are pleased to inform you that the Board of Land and Natural Resources, at its meeting of December 2, 1983, approved your application for a single family dwelling at TMK: 1-5-9: 39 at Pahoa, Hawaii, subject to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21 of Title 13, Chapter 2, Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. Other terms and conditions as prescribed by the Chairperson;
4. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered during construction, the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;
5. That the applicant comply with all applicable Public Health Regulations;
6. A fire contingency plan, acceptable to the Division of Forestry and Wildlife shall be implemented during and after the construction of the dwelling;

EXHIBIT B  
GROUP NO. HA-1605

DEC 3 1983

7. That the single family dwelling not be used for rental or any other commercial purposes;
8. That the applicant provide documentation (i.e. book and page number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans (please see attached sample);
9. The applicant shall implement appropriate erosion-sediment control measures during and after construction to ensure that coastal waters are not degraded in any way;
10. That the applicant shall specifically comply with the County requirement regarding the use of the structure for a single family dwelling, by executing the Agreement between himself and the County of Hawaii, a copy of which shall be appended to the Conservation District Use Application File No. HA-1605 (a copy of said agreement has been executed and will be retained in the case file);
11. The construction, alteration, moving, demolition and repair of any building or other improvement on lands within the Conservation District, shall be subject to the building codes of the respective counties in which the lands are located; provided that prior to the commencement of any construction, alteration or repair of any building or other improvement, four (4) copies each of the final location map, plans and specifications shall be submitted to the Chairperson, or his authorized representative, for approval;
12. Upon approval of a particular use by the Board, any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and, all work and construction must be completed within three (3) years of the approval of such use.

Should you have any questions on any of these conditions, please contact Mr. Roger C. Evans of our Planning Office at 548-7837.

Very truly yours,

  
SUSUMU ONO, Chairperson  
Board of Land and Natural Resources

Attachment

cc: Hawaii Board Member  
Hawaii District Land Agent  
DOH/OEQC/EQC/DPED/OHA  
Hawaii County Planning Dept.



corporated herein as Exhibit "A", which are to be declared and recorded as Restrictive Covenants running with said land;

NOW THEREFORE, the owners declare that said land shall be subject to the Restrictive Covenants contained in Exhibit "A", that said covenant shall run with the land and shall be binding upon the owners, their heirs, executors, administrators, assigns, successors and grantees, for as long as said land shall be subject to the Conservation Zoning of the State of Hawaii, and the breach of any covenant may be enjoined, abated or remedied by appropriate proceedings by the State of Hawaii.

IN WITNESS WHEREOF, the owners have executed this instrument on this 6th day of February, 1987.

Jerry E. Merrill  
Patricia E. Merrill

STATE OF HAWAII )  
COUNTY OF Hawaii ) SS.

On this 6th day of February, 1987, before me personally appeared Jerry E. Merrill and Patricia E. Merrill to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

6

Reverend C. J. Gray  
Notary Public, State of Hawaii  
My commission expires: 4/18/86

## EXHIBIT "A"

17648 448

## RESTRICTIVE COVENANTS

FOR HAWAII COUNTY, TAX MAP KEY No. 1-5-9:39  
HAWAII COUNTY, HAWAII

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21 of Title 13, Chapter 2, Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. Other terms and conditions as prescribed by the Chairperson;
4. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered during construction, the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;
5. That the applicant comply with all applicable Public Health Regulations;
6. A fire contingency plan, acceptable to the Division of Forestry and Wildlife shall be implemented during and after the construction of the dwelling;
7. That the single family dwelling not be used for rental or any other commercial purposes;
8. That the applicant provide documentation (i.e. book and page number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans (please see attached sample);
9. The applicant shall implement appropriate erosion-sediment control measures during and after construction to ensure that coastal waters are not degraded in any way;
10. That the applicant shall specifically comply with the County requirement regarding the use of the structure for a single family dwelling, by executing the Agreement between himself and the County of Hawaii, a copy of which shall be appended to the Conservation District Use Application File No. HA-1605 (a copy of said agreement has been executed and will be retained in the case file);
11. The construction, alteration, moving, demolition and repair of any building or other improvement on lands within the Conservation District, shall be subject to the building codes of the respective counties in which the lands are located; provided that prior to the commencement of any construction, alteration or repair of any building or other improvement, four (4) copies each of the final location map, plans and specifications shall be submitted to the Chairperson, or his authorized representative, for approval;
12. Upon approval of a particular use by the Board, any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and, all work and construction must be completed within three (3) years of the approval of such use.



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
P. O. BOX 621  
HONOLULU, HAWAII 96809

SUSUMU ONO, CHAIRMAN  
BOARD OF LAND & NATURAL RESOURCES  
EDGAR A. HAMASU  
DEPUTY TO THE CHAIRMAN

DIVISIONS:  
AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

REF. NO.: CPO-312-85  
FILE NO.: HA-2/9/84-1605A  
180-Day Exp. Date: 8/7/84

AUG 09 1984

Mr. Jerry Merrill  
15-2678 Welea Street  
Pahoa, Hawaii 96778

Dear Mr. Merrill:

Amendment to an Approved Conservation District Use Application For  
the Installation of a Swimming Pool, a Garden Sprinkler System and Garden  
Storage House at Waikahiula, Puna, Hawaii TMK: 1-5-9: 39

We are pleased to inform you that the Board of Land and Natural Resources, at its meeting of July 27, 1984, approved your application subject to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21 of Title 13, Chapter 2, Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. Other terms and conditions as prescribed by the Chairman;
4. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered during construction, the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;
5. That the applicant comply with all applicable Public Health Regulations;
6. A fire contingency plan, acceptable to the Division of Forestry and Wildlife shall be implemented during and after the construction of the swimming pool, sprinkler system and garden storage shed;

EXHIBIT 10  
CDUP NO. HA-1605A

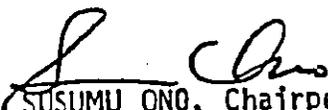
Mr. Jerry Merrill  
Page 2  
AUG 09 1984

CPO-312-85  
HA-1605A

7. That the uses proposed shall not be used for rental or any other commercial purposes;
8. The construction, alteration, moving, demolition and repair of any building or other improvement on lands within the Conservation District, shall be subject to the building codes of the respective counties in which the lands are located; provided that prior to the commencement of any construction, alteration or repair of any building or other improvement, four (4) copies each of the final location map, plans and specifications shall be submitted to the Chairperson, or his authorized representative, for approval of which three (3) copies will be returned; and
9. Any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and, all work and construction must be completed within three (3) years of the approval of such use, failure to comply with this condition will render this permit null and void.

Should you have any questions on any of these conditions, please contact Mr. Gordon Soh of our Planning Office at 548-7837.

Very truly yours,

  
SUSUMU ONO, Chairperson  
Board of Land and Natural Resources

xc: Hawaii Board Member  
Hawaii Land Agent  
Hawaii Planning Dept.



RECEIVED JAN 15 2000 a

TIMOTHY E. JOHNS, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

DEPUTIES  
JANET E. KAWILO  
LINDA NISHIKURA

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhikewe's Building, Room 555  
601 Kamohiwa Boulevard  
Honolulu, Hawaii 96707

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

January 11, 2000

Steven S. C. Lim  
Carlsmith Ball Attorneys at Law  
P.O. Box 686  
Hilo, Hawaii 96721

LOG NO: 24709 ✓  
DOC NO: 0001MS01

Dear Mr. Lim:

**SUBJECT: Harrison and Sharene Klein: Land Use District Boundary Amendment  
Application  
Waiakahiula, Puna, Hawaii Island  
TMK: (3)1-5-09:39**

This is in response to your December 9, 1999, letter requesting information concerning significant historic sites on the subject parcel.

Based on information in our files, and the recent photos sent with the boundary amendment application, we believe there are no historic properties present in the subject parcel. The proposed action of a boundary amendment will have no effect on significant historic sites. If you have further questions please call Pat McCoy at 692-8029 (Honolulu), or Marc Smith at 933-0482 (Hilo).

Aloha,

DON HIBBARD, Administrator  
State Historic Preservation Division

MS:jk

BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



GILBERT COLOMA-AGARAN, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

DEPUTIES  
JANET E. KAWELO  
LINNEL NISHIOKA

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhihewa Building, Room 655  
601 Kamokila Boulevard  
Kapolei, Hawaii 96707

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

January 10, 2001

Mr. Steven S.C. Lim  
Carlsmith Ball LLP  
121 Waiianuenue Ave.  
Hilo, Hawaii 96720

LOG NO: 26778 ✓  
DOC NO: 0101PM02

Dear Mr. Lim:

**SUBJECT: Draft Environmental Assessment for Harrison J. and Sharene Z. Klein  
-Petition for Amendment of District Boundaries and Reclassification from  
Conservation to Agricultural, Keonepoko, Puna, Hawaii Island  
TMK: 1-5-09:39**

Thank you for your letter of December 14, 2000 and the opportunity to review and comment on the Draft Environmental Assessment for the above referenced petition. Our office has already provided comments on this petition (Hibbard to Lim January 11, 2000).

In our January 11, 2000 letter we indicated that there is no evidence for historic properties in the subject area. We stated our belief that the proposed boundary amendment will have no effect on significant historic properties. We have nothing new to add to these comments.

If you should have any questions please contact our Hawaii Island archaeologist, Patrick McCoy (692-8029).

Aloha,

A handwritten signature in black ink, appearing to read "Don Hibbard".

DON HIBBARD, Administrator  
State Historic Preservation Division

PM:amk

c. State Land Use Commission  
Office of Environmental Quality & Control

RECEIVED JAN 22 2001





1:50,000  
SCALE

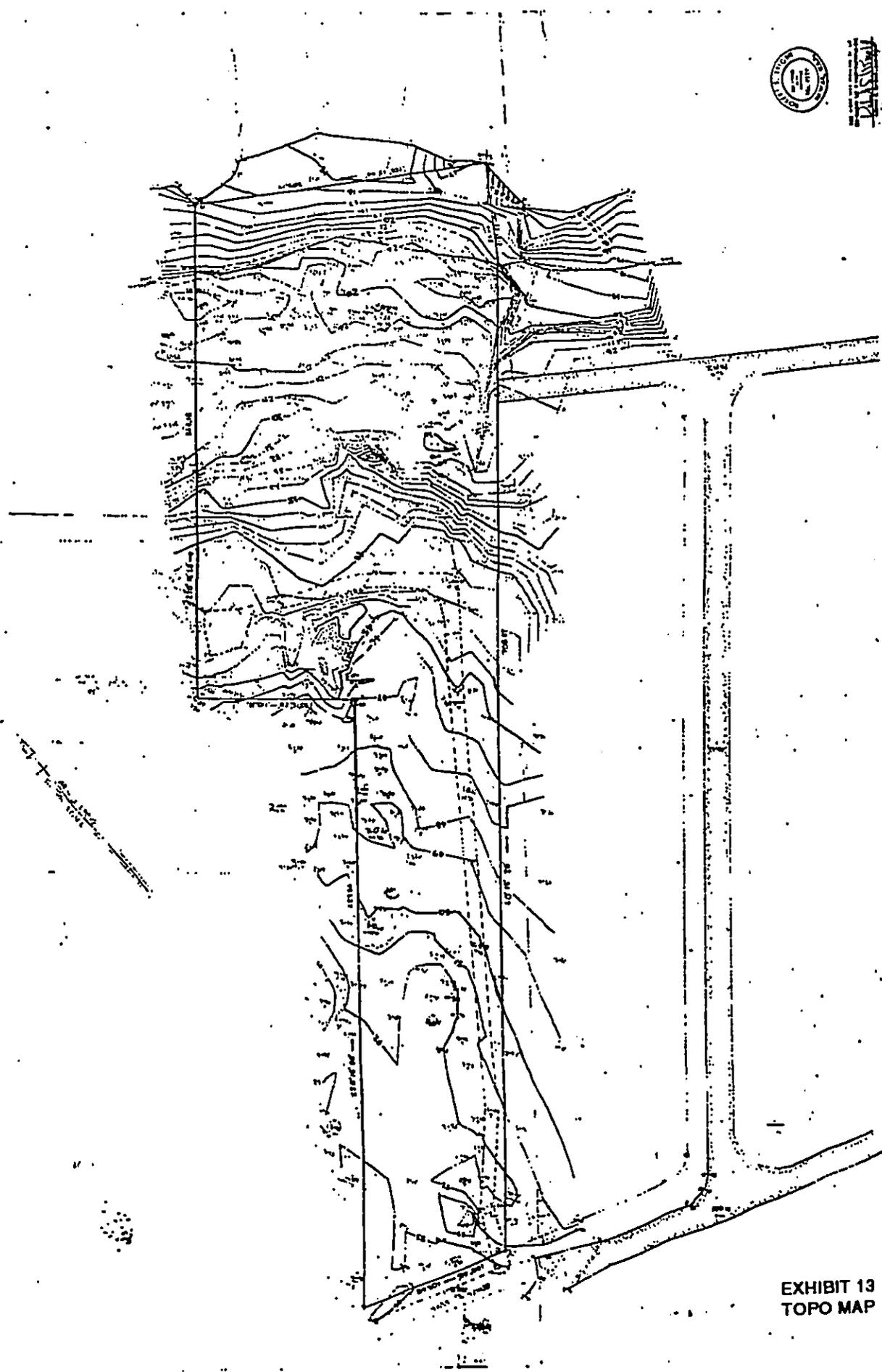


EXHIBIT 13  
TOPO MAP



Ken K. Yamashiro  
Mayor



Jiro A. Sumada  
Deputy Chief Engineer

## County of Hawaii

### DEPARTMENT OF PUBLIC WORKS

25 Aupuni Street, Room 202 · Hilo, Hawaii 96720-4252  
(808) 961-8321 · Fax (808) 961-5630

Date: Sept. 26, 2000

Katherine  
Carlsmith Ball  
121 Waiianuenu Ave.  
Hilo, Hawaii 96720

SUBJECT: FLOOD ZONE DESIGNATION  
TMK. (3) 1 - 5 - 09:039

We have determined that the subject property is located within the Zone(s) checked below according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).

#### SPECIAL FLOOD HAZARD AREAS INUNDATED BY 100-YEAR FLOOD

- Zone A No base flood elevations determined
- Zone AE Base flood elevations determined
- Zone AH Flood depths of 1 to 3 feet (usually areas of ponding); base flood elevations determined
- Zone AO Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
- Zone V Coastal flood with velocity hazard (wave action); No base flood elevations determined.
- Zone VE Coastal flood with velocity hazard (wave action); Base flood elevations determined.
- FLOODWAY areas in Zone AE

#### OTHER AREAS

- Zone X (shaded) Areas of 500-year flood; areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 100-year flood.
- Zone X Areas determined to be outside 500-year flood plain (may include areas not studied with unknown flood hazards).
- Zone D Areas in which flood hazards are undetermined.
- Panel Not Printed - Area all in Zone X
- Panel Not Printed - Minimal Tsunami Inundation

Any new construction or substantial improvements within Parcel :104 will be subject to the requirements of Chapter 27 - Flood Control of the Hawaii County Code.

Should you have any questions concerning this matter, please contact Mr. Kelly Gomes in our Engineering Division at (808) 961-8327.

  
for GALEN M. KUBA, Division Chief  
Engineering Division

EXHIBIT 15  
FIRM MAP

ty

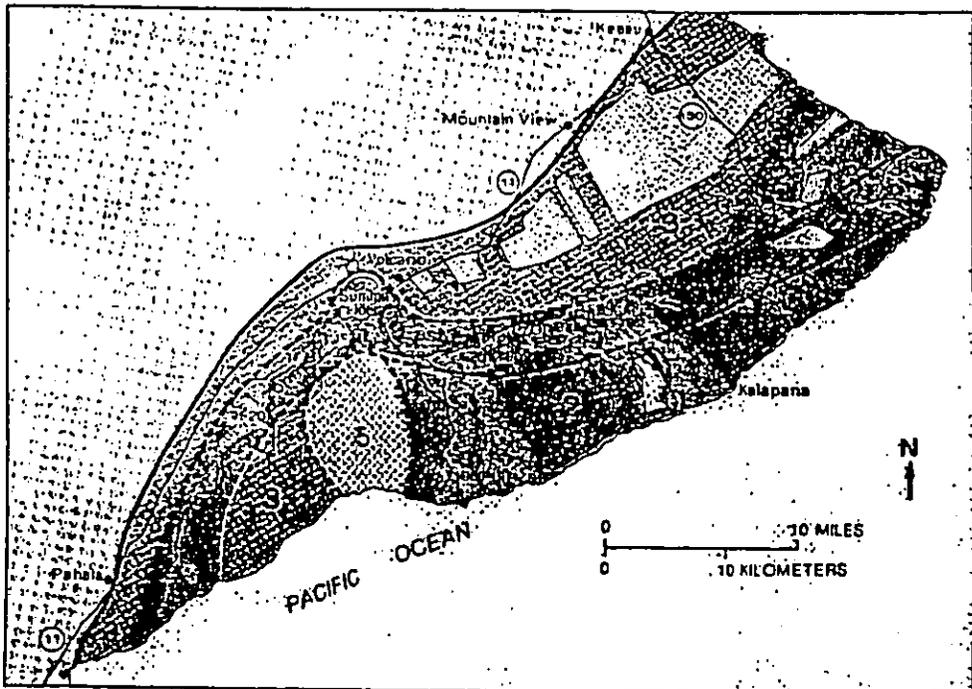
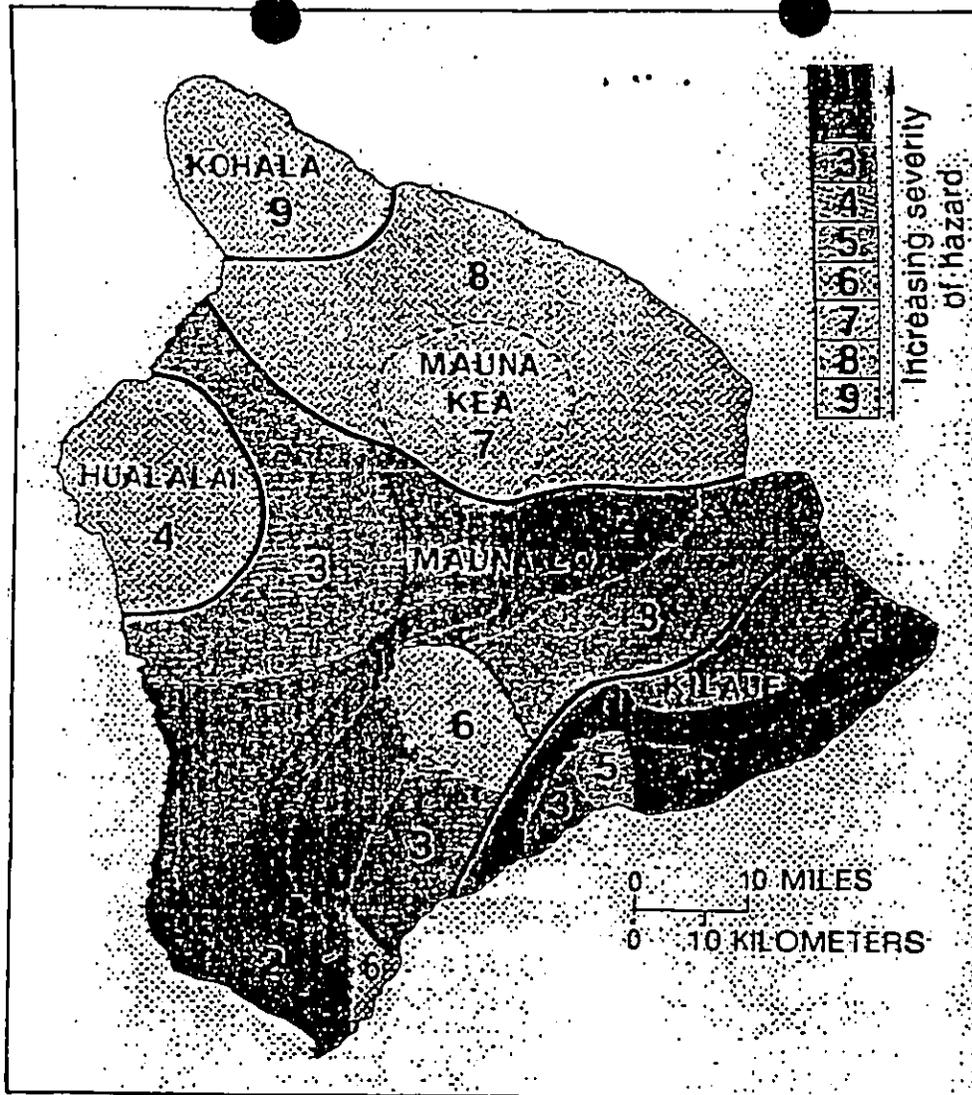


EXHIBIT 16  
VOLCANIC & SEISMIC HAZARDS MAP

have him  
xc. Klein



DEPARTMENT OF THE ARMY  
U. S. ARMY ENGINEER DISTRICT, HONOLULU  
FT. SHAFTER, HAWAII 96858-5440

REPLY TO  
ATTENTION OF

September 6, 2000

Regulatory Branch

Land Use Commission  
State of Hawaii  
P.O. Box 2359  
Honolulu, Hawaii 96804-2359

2000 SEP - 7 A 10:18  
LAND USE COMMISSION  
STATE OF HAWAII

Gentlemen:

This letter responds to the Notification of Petition Filing, Docket No. A00-733, dated August 21, 2000 concerning the request for a change in land use from Conservation to Agricultural for the Klein property (TMK (3)1-5-09:39). Based on the information provided it was not possible to determine if a Department of the Army permit would be required for activity on this parcel. Please advise the petitioners to contact this office if there are streams, drainage ways or wetlands on the property so that we may advise them of permit requirements.

The point of contact for this matter is William Lennan of my staff who may be reached at (808)438-6986 or FAX (808)438-4060. Please reference File No. 200000296.

Sincerely,

George P. Young, P.E.  
Chief, Regulatory Branch

PHONE (808) 594-1888

FAX (808) 594-1885



**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
711 KAPI'OLANI BOULEVARD, SUITE 500  
HONOLULU, HAWAII 96813

May 3, 2000

Mr. Steven S.C. Lum  
Carlsmith Ball  
121 Waianuenu Avenue  
Hilo, Hawai'i 96720

PC# 93

**Subject:** Pre-Assessment Consultation for Draft Environmental Assessment  
Amendment of District Boundaries and Reclassification from  
Conservation to Agricultural  
Keonepoko Iki, District of Puna, Hawai'i  
TMK: (3) 1-5-09:39

Dear Mr. Lum,

Thank you for the opportunity to review and comment on the above-referenced project. The reclassification, on behalf of Harrison J. and Sharene Z. Klein, Trustees under the Klein Living Trust, is for the purpose of maintaining the existing single-family dwelling and accessory structures, and cultivating ti-leaf plants, coconut trees and palm on approximately one acre of the 2.621-acre parcel as a commercial farming operation. No new development of structures is proposed. At this time, the Office of Hawaiian Affairs has no objection to the project. If you have any question, please contact Ken R. Salva Cruz, Policy Analyst, at 594-1847.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colin C. Kippen, Jr.".

Colin C. Kippen, Jr.  
Deputy Administrator

cc: Board of Trustees  
Hilo CRS  
State Land Use Commission  
OEQC

BENJAMIN J. CAYETANO  
GOVERNOR

MAJOR GENERAL EDWARD L. CORREA, JR.  
ADJUTANT GENERAL

EDWARD T. TEIXEIRA  
VICE DIRECTOR OF CIVIL DEFENSE

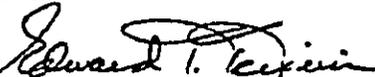


PHONE (808) 733-4300  
FAX (808) 733-4287

**STATE OF HAWAII**  
DEPARTMENT OF DEFENSE  
OFFICE OF THE DIRECTOR OF CIVIL DEFENSE  
3949 DIAMOND HEAD ROAD  
HONOLULU, HAWAII 96816-4495

May 10, 2000

TO: Mr. Steven S. C. Lim  
Carlsmith Ball  
P. O. Box 686  
Hilo, Hawaii 96721-0686

FROM: Edward T. Teixeira   
Vice Director of Civil Defense

SUBJECT: PRE-ASSESSMENT CONSULTATION, DRAFT ENVIRONMENTAL  
ASSESSMENT, AMENDMENT OF DISTRICT BOUNDARIES AND  
RECLASSIFICATION FROM CONSERVATION TO AGRICULTURAL,  
KEONEPOKO IKI, DISTRICT OF PUNA, HAWAII

We appreciate the opportunity to review and comment on the subject document.

State Civil Defense (SCD) does not have any comments or recommendations with regard to this project. Our SCD planners and technicians are available to discuss this further if there is a requirement.

If you have any questions, please contact Mr. Norman Ogasawara at 733-4300, ext. 531.

c: Hawaii Civil Defense Agency



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

25 AUPUNI STREET • HILO, HAWAII 96720  
TELEPHONE (808) 961-8660 • FAX (808) 961-8657

December 26, 2000

Steven S.C. Lim, Esq.  
Carlsmith Ball LLP  
P.O. Box 686  
Hilo, HI 96721-0686

**DRAFT ENVIRONMENTAL ASSESSMENT**  
**APPLICANT - HARRISON J. AND SHARENE Z. KLEIN**  
**TAX MAP KEY: 1-5-009:039**

We have reviewed the Draft Environmental Assessment and have the following comments.

For your information, the water system in the area is privately owned and operated. Therefore, the private water purveyor must be consulted for water concerns.

Should there be any questions, please call our Water Resources and Planning Branch at 961-8665.

Sincerely yours,

Milton D. Pavao, P.E.  
Manager

WA:gms

copy - State Land Use Commission  
OEQC  
Planning Department

EXHIBIT 18  
DEA COMMENTS & RESPONSES

... *Water brings progress* ...

RECEIVED JAN 02 2001

# CARLSMITH BALL LLP

ATTORNEYS AT LAW  
A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANUENUE AVENUE  
P.O. BOX 686  
HILO, HAWAII 96721-0686  
TELEPHONE (808) 935-6644 FAX (808) 935-7975  
WWW.CARLSMITH.COM  
E-MAIL SLIM@CARLSMITH.COM

January 17, 2001

Milton D. Pavao, P.E.  
Manager  
Department of Water Supply  
25 Aupuni Street  
Hilo, HI 96720

Re: Petition for Amendment of District Boundaries and Reclassification  
from Conservation to Agricultural  
Applicants: Harrison J. & Sharene Z. Klein, Trustees under the  
Klein Living Trust dated September 17, 1999  
Lot 8, Portion of R.P. Grant No. 1533 to Kekoa at Keonepoko Iki,  
District of Puna, Hawaii  
Tax Map Key No.: (3) 1-5-09:39

Dear Mr. Pavao:

Thank you for your comments on the Draft Environmental Assessment (DEA) for Mr. and Mrs. Klein's Petition for Amendment of District Boundaries and Reclassification from Conservation to Agricultural. Given the availability of potable water from the private water system and ample rainfall within the Project Area (mean annual rainfall in the vicinity is about 100 to 125"), there is sufficient water to service the requirements for the proposed agricultural use.

Your letter and this response will be appended to the final environmental assessment to ensure that the document adequately addresses pertinent development and environmental issues.

Very truly yours,

  
STEVEN S. C. LIM

SSL:KYL

xc: Mr. and Mrs. Klein  
Land Use Commission  
OEQC

Harry Kim  
Mayor



Jiro A. Sumada  
Deputy Director

**County of Hawaii**  
**DEPARTMENT OF PUBLIC WORKS**  
25 Aupuni Street, Room 202 • Hilo, Hawaii 96720-4252  
(808) 961-8321 • Fax (808) 961-8630

January 2, 2001

STEVEN S C LIM  
CARLSMITH BALL LLP  
121 WAIANUENUE AVENUE  
HILO HAWAII 96720

**SUBJECT : DRAFT ENVIRONMENTAL ASSESSMENT**  
Keonepoko-Iki, Puna, Hawaii  
TMK: 3 / 1-5-09: 39

We acknowledge receipt of your letter concerning the subject matter, and provide you with our comments as follows:

1. Any building construction shall conform to all requirements of code and statutes of the County of Hawaii.
2. All earthwork and grading shall be in conformance with Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.
3. The applicant should consult with the Natural Resources Conservation Service (NRCS); f.k.a., the Soil Conservation Service (SCS) for farming activities.
4. Any work within the County right-of-way shall be in conformance with Chapter 22, Streets and Sidewalks, of the Hawaii County Code. The 40-ft. Road is a County owned and maintained roadway. The Planning Department shall determine whether this roadway should continue through the subject lot.

RECEIVED JAN 04 2001

5. The Government Beach Road, along with the 80-ft. wide right-of-way is a County owned and maintained roadway. This occurs only within the Hawaiian Beaches Subdivision, up to the southern corner of the subject property. The Government Beach Road along the property's frontage is 10-ft. wide, and is not owned nor maintained by the County. This 10-ft. wide roadway is not wide enough to handle any increase in traffic. Consult with our Planning Department to figure out what the 40-ft. setback line is, fronting the subject lot.

Should there be any questions concerning this matter, please feel free to contact Mr. Casey Yanagihara in our Engineering Division at (808)961-8327.



Galen M. Kuba, Division Chief  
Engineering Division

CKY

copy: Planning Department  
State Land Use Commission  
Office of Environmental Quality & Control

# CARLSMITH BALL LLP

ATTORNEYS AT LAW  
A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANUENUE AVENUE  
P.O. BOX 686  
HILO, HAWAII 96721-0686  
TELEPHONE (808) 935-6644 FAX (808) 935-7975  
WWW.CARLSMITH.COM  
E-MAIL SLIM@CARLSMITH.COM

January 17, 2001

Galen M. Kuba, Division Chief  
Engineering Division  
Department of Public Works  
25 Aupuni Street  
Hilo, HI 96720

Re: Petition for Amendment of District Boundaries and Reclassification  
from Conservation to Agricultural  
Applicants: Harrison J. & Sharene Z. Klein, Trustees under the  
Klein Living Trust dated September 17, 1999  
Lot 8, Portion of R.P. Grant No. 1533 to Kekoa at Keonepoko Iki,  
District of Puna, Hawaii  
Tax Map Key No.: (3) 1-5-09:39

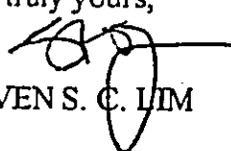
Dear Mr. Kuba:

Thank you for your comments on the Draft Environmental Assessment (DEA) for Mr. and Mrs. Klein's Petition for Amendment of District Boundaries and Reclassification from Conservation to Agricultural.

We have consulted with the Planning Department and have determined that the 40-ft. building setback line was established in a resubdivision of a portion of Grant 1533, into Lots 1 to 8, inclusive by the Planning & Traffic Commission in May, 1962. A copy is attached for your information.

Your letter and this response will be appended to the final environmental assessment to ensure that the document adequately addresses pertinent development and environmental issues.

Very truly yours,

  
STEVEN S. C. LIM

SSL:KYL

xc: Mr. and Mrs. Klein  
Land Use Commission  
OEQC

RECEIVED

PLANNING & TRAFFIC COMMISSION

DATE: MAR 14 1962

FILE NO. 1797

March 14, 1962

Planning & Traffic Commission  
County of Hawaii  
Hilo, Hawaii

Dear Sir:

Re-subdivision of portion of Grant 1553, into lots 1 to 8 inclusive, Keonopoko I Ki, Puna Hawaii. In compliance with the Planning & Traffic Comm. request for possibly of a rezoning wider buildings set back line, along the front of the Government road. The subdivision plan was revised to increase the set back width of 40 feet beyond the existing Government right of way for the entire frontage.  
It is requested that a final approval be granted.

I remain:

Very truly yours,

*Wm. K. Kamau Sr.*  
Wm. K. Kamau Sr. Surveyor

SUBDIVISION NUMBER 1797  
APPROVED FOR RECORDATION

PLANNING & TRAFFIC COMMISSION  
FOR THE CITY OF HILO & COUNTY OF HAWAII

*[Signature]*  
Chairman

MAR 27 1962



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, HONOLULU  
FORT SHAFTER, HAWAII 96858-5440

RECEIVED JAN 11 2001

January 11, 2001

Civil Works Technical Branch

Mr. Steven S.C. Lim  
Carlsmith Ball LLP  
121 Waiianuenu Avenue  
Hilo, Hawaii 96720

Dear Mr. Lim:

Thank you for the opportunity to review and comment on the Draft Environmental Assessment (DEA) for the Harrison J. and Sharene Z. Klein District Change, Puna, Hawaii (TMK 1-5-9: 39). The following comments are provided in accordance with Corps of Engineers authorities to provide flood hazard information and to issue Department of the Army (DA) permits.

- a. Based on the information provided, a DA permit will not be required for the project.
- b. The flood hazard information provided on page 7 of the DEA is correct.

Should you require additional information, please contact Ms. Jessie Dobinchick of my staff at (808) 438-8876.

Sincerely,

Stanley Boc  
Acting Chief, Civil Works  
Technical Branch



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

January 8, 2001

LD-NAV

Ref.: 15939CIZ.RCM

Carlsmith Ball LLP  
Attorney at Law  
Steven S. C. Lim, Consultant  
121 Waiianuenu Avenue  
Hilo, Hawaii 96721-0686

Dear Mr. Lim:

SUBJECT: Draft Environmental Assessment for Harrison J and  
Sharene Z. Klein Trustees under the Klein Living Trust  
District Boundary Amendment - Conservation to  
Agricultural - Puna, Hawaii, TMK 3<sup>rd</sup>/1-5-09: 39

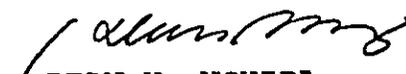
Thank you for the opportunity to review and comment on the  
subject matter.

We have no record of a shoreline certification for the  
subject property (TMK: 3<sup>rd</sup>/1-5-09: 39).

The Department has no other comment to offer.

Should you have any questions, please feel free to contact  
Nicholas Vaccaro of the Land Division Support Services Branch at  
808-587-0438.

Very truly yours,

  
DEAN Y. UCHIDA  
Administrator

C: Hawaii District Land Office

RECEIVED JAN 10 2001

BENJAMIN J. CAYETANO  
GOVERNOR  
STATE OF HAWAII



RAYNARD C. SOON  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

JOHIE M. K. M. YAMAGUCHI  
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
P.O. BOX 1879  
HONOLULU, HAWAII 96805

January 30, 2001

2001 JAN 31 P 1:00  
LAND USE COMMISSION  
STATE OF HAWAII

Mr. Steven S. C. Lim  
Carlsmith Ball LLP  
121 Waiianuenu Avenue  
Hilo, Hawaii 96720

Dear Mr. Lim:

Subject: Draft Environmental Assessment for Harrison J. and  
Sharene Z. Klein, Trustees, Klein Living Trust

Thank you for the opportunity to review the subject application.  
The Department of Hawaiian Home Lands has no comment to offer.

If you have any questions, please call Mr. Daniel Ornellas at  
586-3836.

Aloha,

*for*   
Raynard C. Soon, Chairman  
Hawaiian Homes Commission

c: State Land Use Commission  
OEQC

**END**

CERTIFICATION

I HEREBY CERTIFY THAT THE MICROPHOTOGRAPH APPEARING IN THIS REEL OF  
FILM ARE TRUE COPIES OF THE ORIGINAL DOCUMENTS.

2004

DATE

Sammy Yoshimura

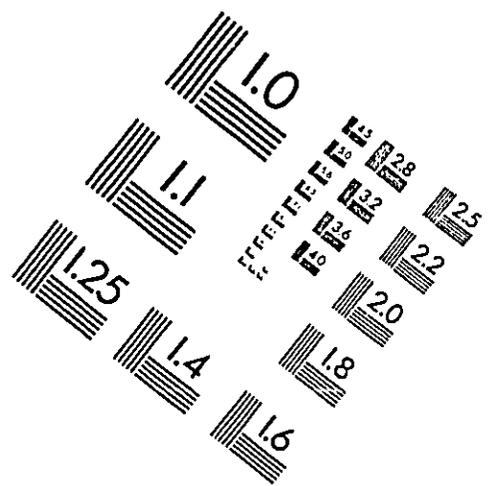
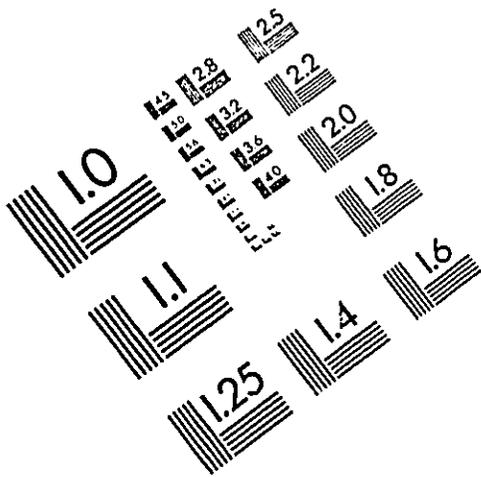
SIGNATURE OF OPERATOR



**AIM**

**Association for Information and Image Management**

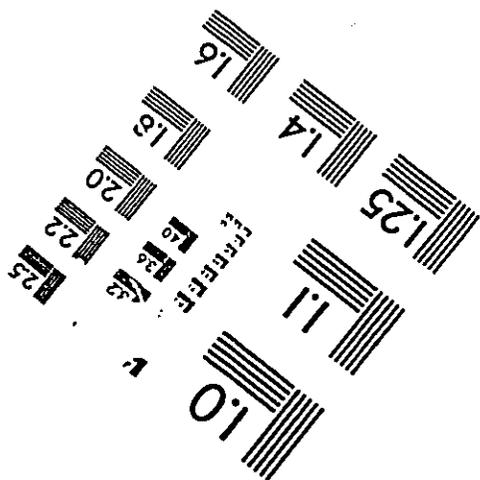
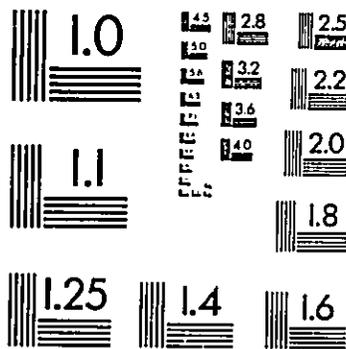
1100 Wayne Avenue, Suite 1100  
Silver Spring, Maryland 20910  
301/587-8202



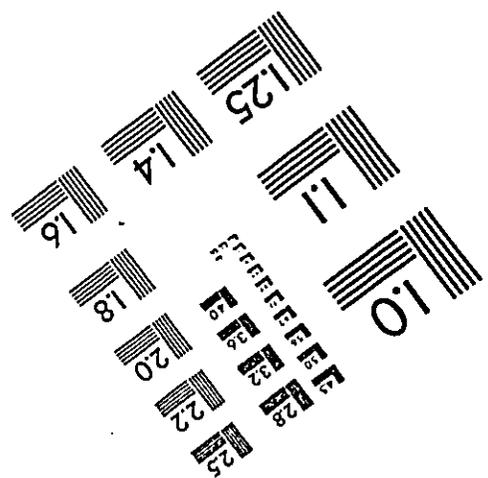
Centimeter



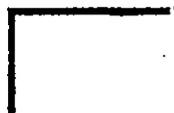
Inches



MANUFACTURED TO AIM STANDARDS  
BY APPLIED IMAGE, INC.



DENSITY TARGET



ADVANCED MICRO-IMAGE SYSTEMS HAWAII